# (21,130.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1908.

## No. 359.

THE WATERS-PIERCE OIL COMPANY, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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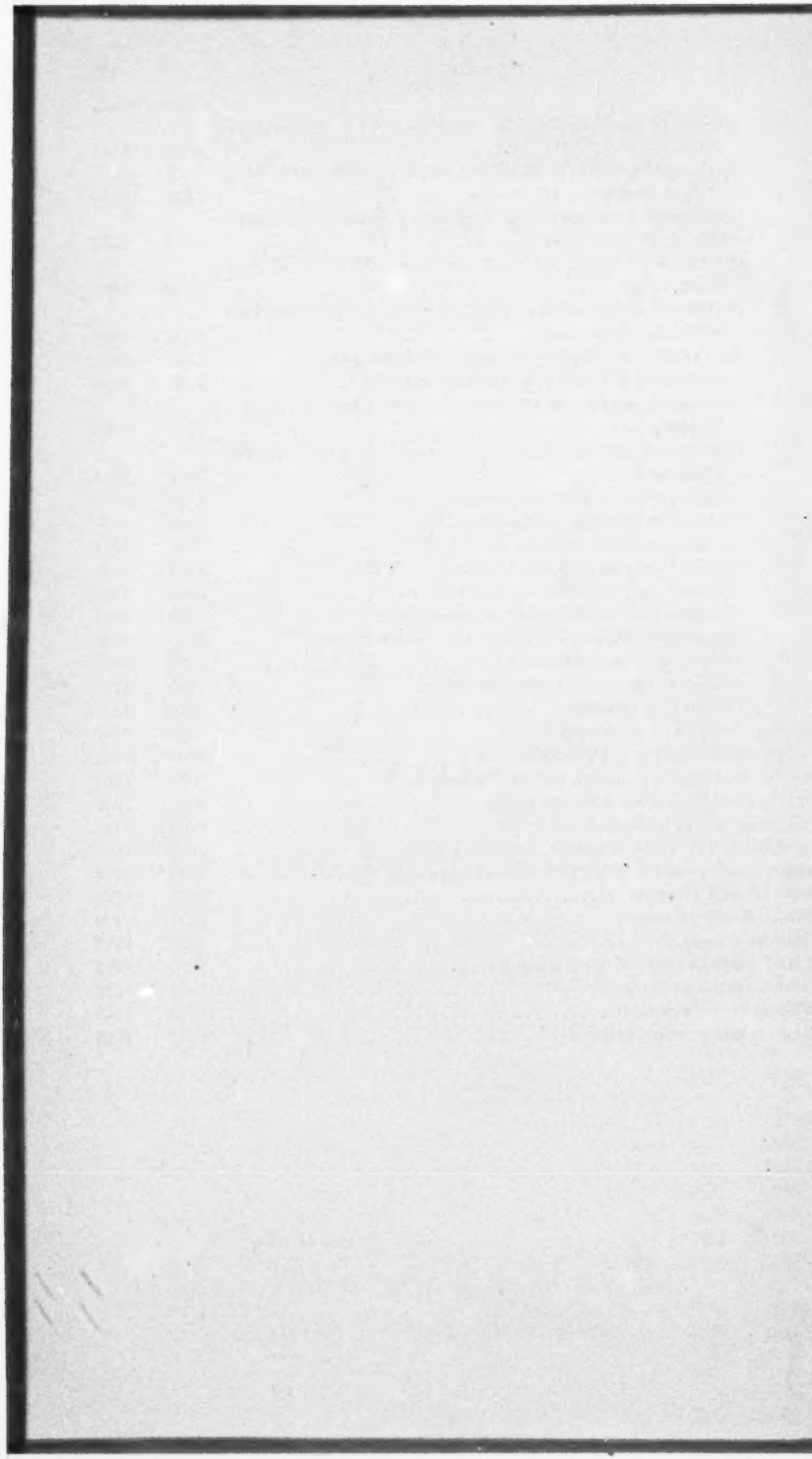

a

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

1 *Caption.*

THE STATE OF TEXAS, *County of Travis:*

At a term of the District Court of the 26th Judicial District of Texas, begun and holden at Austin, within and for the County of Travis, before the Honorable V. L. Brooks, and ending on the 29th day of June, A. D. 1907, the following case came on for trial, to wit:

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

2 *Agreement in Regard to Transcript.*

Filed July 30th, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

In this cause, for the purpose of avoiding unnecessarily encumbering the transcript, it is agreed that this suit was instituted and Plaintiff's Original Petition filed, on *September 22nd, A. D. 1906,* and that said petition stated substantially the same causes of action set up in the petition upon which plaintiff went to trial and which were, on the trial submitted by the court to the jury, and, as the sole purpose of incorporating the original petition in the transcript would be to show the date of the institution of this suit, it is agreed that the clerk, in making up the transcript in this case shall copy in the transcript, in lieu of the original petition, this agreement.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

R. V. DAVIDSON,
*Attorney General of Texas.*
J. P. LIGHTFOOT,
*Assistant Attorney General.*
JNO. W. BRADY,
*County Attorney, Travis County.*
GREGORY & BATTS,
ALLEN & HART,
*Attorney- for Plaintiff.*

(Endorsed:) No. 24551. The State of Texas *vs.* Waters-Pierce Oil Company. Agreement in Regard to Transcript. Filed July 30, 1907. D. J. Pickle, Clerk.

3 *Plaintiff's Second Amended Original Petition.*

Filed April 29, 1907.

No. 24551.

THE STATE OF TEXAS, *County of Travis:*

Leave of Court had, plaintiff files this its second amended original petition as follows:

No. 24551.

THE STATE OF TEXAS, *County of Travis:*

To the Honorable the District Court of the 26th Judicial District of Texas:

Plaintiff is the State of Texas, represented herein by and through R. V. Davidson, her Attorney General, and John W. Brady, County Attorney of Travis County, who is acting herein under instructions from and by the authority of the said Attorney General.

The defendant is the Waters-Pierce Oil Company, acting as and purporting to be a corporation, and claiming, acting and purporting to be incorporated under and by virtue of a charter granted and issued by the State of Missouri on the 29th day of May, A. D. 1900, and doing business in Texas and claiming to have authority to do business in Texas by virtue of a permit issued by the Secretary of State of the State of Texas on the 31st day of May, A. D. 1900.

4 II.

That heretofore, to-wit: on or about January 1st, 1870, John D. Rockefeller, John D. Archbold, H. H. Rogers, William Rockefeller, Henry M. Flagler, and a number of other persons, the names of some of whom cannot be ascertained by plaintiff, and the names of others of whom are hereinafter set out, conceived the scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas; that to that end they entered into a conspiracy and a series of conspiracies by and among themselves and by and with other individuals and corporations, including the defendant corporation, from that time up to the date of filing of this amended petition; none of said conspiracies has been abandoned, and each has continued and the conspiracy and conspiracies are still in existence and are still being carried out and actively prosecuted.

That to the end named and in pursuance of said conspiracy on or about May 7th, 1878, the parties aforesaid and William H.

Waters and Henry C. Pierce and the Chess Carley Company and the Standard Oil Co. (of Ohio) and the officers and stockholders of each of said companies entered into a further conspiracy as hereinafter set out.

And on or about Jan. 2, 1882, and Jan. 4, 1882, the corporations hereinbefore named and all the persons signing the trust agreement of those dates hereinafter set forth and the firms, individuals and corporations in said trust agreements set forth entered into a conspiracy as hereinafter set forth.

And said persons and other persons entered into the other conspiracies hereinafter specifically set forth.

That among the persons and corporations who primarily entered into the conspiracy aforesaid, and who have since entered into the conspiracy and conspiracies having for their purpose the unlawful undertakings hereinbefore and hereinafter detailed are the following:

H. C. Pierce.
C. M. Adams.
Andrew M. Finlay.
C. L. Ackert.
H. M. Tilford.
H. H. Rogers.
W. H. Tilford.
John D. Archbold.
William Rockefeller.
O. B. Jennings.
Benjamin Brewster.
H. M. Flagler.
W. P. Thompson.
H. A. Hutchings.
O. H. Payne.
Silas H. Payne.
C. M. Pratt.
R. H. McNall.
John D. Johnson.
—— Elliott.
—— Cary.
T. E. Buschnell.
Paul Babcock, Jr.
J. H. Alexander.
Clay Arthur Pierce.
M. M. Van Bueren.
Wade Hampton.
The Standard Oil Company.
The Standard Oil Company of Indiana.
The Standard Oil Company of New York.
The Standard Oil Company of Kentucky.
The Standard Oil Company of Ohio.
The Waters-Pierce Oil Company.
Standard Oil Company of Iowa.
The Continental Oil Company.

The Republic Oil Company.
The Union Tank Line Company.
The Security Oil Company.
The Galena Signal Oil Company.

All of the companies forming, participating in the formation of, or acquired by the Standard Oil Trust, and all officers and agents of said companies, and all companies and individuals mentioned in the Standard Oil Trust agreement hereinafter set forth, and all companies formed by the Standard Oil Trust, or formed by the Standard Oil Company, or acquired or controlled by said company and the officers of said companies.

That said conspiracy was so widespread and participated in by so many companies and persons that it is impossible for plaintiff to name all of them. And all of said conspiracies are still in existence and are still being carried out and actively prosecuted.

(2) That the conspiracy and conspiracies aforesaid have included and do include the controlling and monopolization of the sale of refined oils and all the products of petroleum in the State of Texas; that the conspiracy as herewith detailed in, of and with reference to the State of Texas, had and has continuously had and has among its purposes:

(*a*) The sale of all refined oil in Texas.

7 (*b*) The manufacture and sale of all the products of petroleum.

(*c*) The suppression and prevention of all competition in said business.

(*d*) The creation of a monopoly in refining and sale and transportation of petroleum and its products.

(*e*) The fixing, maintaining, increasing and regulating of the price of all oil and the products of petroleum.

(*f*) The suppression and prevention of all competition in the control and production of crude oil and fixing and controlling the amount of oil produced and sold in the State of Texas.

(3) That the means adopted in the carrying out of the conspiracy and conspiracies aforesaid, and the means used and employed by the conspirators aforesaid, including defendant, have been and are calculated to carry out the purposes of said conspiracy and have been and do result in the practical monopolization of the business of selling refined oil and the products of petroleum and in controlling the price and output of oil in the State of Texas, and in destroying and preventing competition.

## III.

That heretofore, to-wit: on or about May 7th, 1878, William H. Waters and Henry C. Pierce were engaged in the business of refining and selling petroleum and its products in the State of Missouri and in the State of Texas and elsewhere, and Chess-Carley Company and the Standard Oil Company (of Ohio) the last named company being controlled by the conspirators first herein named, were engaged in the sale of petroleum and its products in the States of Missouri and Texas and elsewhere; that upon said date, said named in-

dividuals and corporations, and the officers and agents of the latter,
in further pursuance of the general conspiracy to monopo-
8 lize and control the oil business, and especially for the pur-
pose of monopolization and controlling the oil business in a section of the United States, including the State of Texas, made and entered into a conspiracy to secure control and monopolize the oil business in said section, including the State of Texas, and to fix and control the price of oil in said territory and to eliminate and prevent all competition by and among themselves and between themselves and others in said business. This conspiracy and the acts thereunder have been adopted by the other conspirators, including defendant, and has not been abandoned, but is still being carried out.

(2) That in the accomplishment of the conspiracy and the unlawful purpose hereinbefore set out, said parties caused a corporation to be created under the name of the Waters-Pierce Oil Company (its charter being issued by the State of Missouri on said May 7th, 1878), the capital stock of which was placed at $100,000 divided into 1,000 shares of $100 each; that of said capital stock 400 shares were issued and assigned to W. H. Waters and H. C. Pierce, 400 shares to the Chess-Carley Company, and 200 shares to the Standard Oil Company.

That the company then organized is in fact the same company doing business under a reputed reorganization with a charter dated May 29th, 1900; that allegations of facts occurring prior to May 29, 1900, are with reference to said Company under its original charter, and occurring since then with reference to the company as acting under the charter of that date; the company as reorganized adopted all the acts, carried out and is carrying out all the contracts, schemes and conspiracies of the company as originally organized, and in every way has taken the place of the company as originally organized.

(3) That prior to this date, the conspirators first named herein had taken other steps to secure the control of the oil business in
the United States, and to that end, had organized the Stand-
9 ard Oil Company (of Ohio), and had bought the property
of and had secured the control of a large number of corporations and firms (the names of all of which cannot be stated by plaintiff), and had apportioned the territory of the United States to such corporations as they chose or saw fit to use for the transaction of the oil business; that the conspirators aforesaid conceived that the acquisition of all the oil business in the territory which W. H. Waters and H. C. Pierce and Chess-Carley Company were operating could best and most easily be accomplished by the formation of a corporation in which said last named parties should have stock, and said parties acquiesced in the policy and became parties to the conspiracy, and said parties and their successors and assigns, and the corporation aforesaid and its assigns and its stockholders and directors and other officers have ever since then, and up to this time, been parties to the conspiracy and have acquiesced in and adopted and aided in carrying out the plans adopted for the consummation of the purposes of said conspiracy.

(4) That in pursuance of and as a part of the general plan and conspiracy for the monopolization of the oil business, when the Waters-Pierce Oil Company was formed, it was agreed and understood (and the agreement has continuously since been acted upon and has since its organization been acquiesced in and acted upon by defendant to this time) that the Waters-Pierce Oil Company was to confine its business to the States of Texas, Arkansas, the Territory of Oklahoma and Indian Territory and parts of the States of Missouri and Louisiana, and the Republic of Mexico, and was not to do or attempt to do any business in any other part of the United States or elsewhere, and it was agreed and understood that neither the Standard Oil Company (of Ohio) and none of its subsidiary or dependent companies and none of the Companies set forth in
10 the trust agreement dated Jany. 2, 1882, and none of the companies controlled by the conspirators herein named should sell any oil, products of petroleum, or do any business in the products of oil in any of the territory named as the territory of the Waters-Pierce Oil Company (as above set out).

(5) That the understanding and agreement above referred to has been observed and carried out and insisted upon and been treated as effective by and between all corporations, trusts, quasi or reputed corporations and all concerns owning or claiming the property or the stock or business, or any part thereof, of any of the corporations primarily entering into the agreement or understanding and their successors and assigns, from the time of the creation of the Waters-Pierce Oil Company up to the time of the filing of this amended petition, and during all this period this agreement and understanding has been so observed by and between the Waters-Pierce Oil Company and the Standard Oil Company (of Ohio) and its successors, and the subsidiary companies and the other companies hereinafter named and all companies the control of which were in the Standard Oil Trustees and now controlled by the Standard Oil Company, in and with reference to the State of Texas, as to prevent all competition between said companies in said State, and to create a monopoly therein in the State of Texas, the officers, agents and employees of the Waters-Pierce Oil Company have, in the State of Texas, observed, abided by, and acted upon said understanding and agreement, and have during all of said time made same operative and effective, and said agreement and understanding has been observed and acted upon by defendant from the date of its incorporation to this time.

(6) That as a part of the contract, agreement, understanding and conspiracy at the times aforesaid, and as a consideration by which exclusive territory was set aside for the use, exploita-
11 tion and enjoyment of said Waters-Pierce Oil Company, it agreed and contracted to purchase all of its supplies of refined and unrefined oils, naval stores and other articles in which it was authorized to deal, from the Standard Oil Company and companies controlled by it, which said contract, agreement and understanding was enforced and observed by the defendant herein, and has at all times been observed by defendant since the date of its incorporation to the present time.

## IV.

Plaintiff further avers that in pursuance of the conspiracy and conspiracies hereinbefore effected and entered into, as set out, and in order to make more effective and binding and complete the monopolization of the oil business throughout the United States, including the State of Texas, a trust agreement was entered into and formed by the persons, firms and corporations hereinafter mentioned, including the parties named in said agreement, and the parties signing same and including the Waters-Pierce Oil Company.

(2) That in violation of the law and in abuse of its corporate powers and in the exercise of privileges, rights and franchises not conferred upon it, the Waters-Pierce Oil Company on or about the 2nd day of January, A. D. 1882, and on or about the 4th day of said month and year entered into and became a party to certain trust agreements, and ever since then has, and the defendant has, in the manner, and to the extent below stated, observed, performed and carried out said agreements, copies of which are as follows:

### Exhibit "A."

This agreement made and entered upon this 2nd day of January, A. D. 1882, by and between all the persons who shall now or may hereafter execute the same as parties thereto.

12 Witnesseth: I. It is intended that the parties to this agreement shall embrace three classes, to-wit:

1. All the stockholders and members of the following corporations and limited partnerships, to-wit:—

Acme Oil Company, New York.
Acme Oil Company, Pennsylvania.
Atlantic Refining Company of Philadelphia.
Bush & Company (limited).
Camden Consolidated Oil Company.
Elizabethport Acid Works.
Imperial Refining Company (limited).
Charles Pratt & Company.
Paine, Abbett & Company.
Standard Oil Company, Ohio.
Standard Oil Company, Pittsburg.
Smith's Ferry Oil Transportation Company.
Solar Oil Company (limited).
Sone & Fleming Manufacturing Company, (limited).

Also all the stockholders and members of such other corporations and limited partnerships as may hereafter join in this agreement, at the request of the trustees herein provided for.

2. The following individuals, to-wit:—W. C. Andrews, John D. Archbold, Lide K. Arter, J. A. Bostwick, Benjamin Brewster, D. Bushnell, Thomas C. Bushnell, J. N. Camden, Henry L. Davis, H. M. Flagler, John Huntington, H. A. Hutchins, Charles F. G. Heye, O. P. Jennings, Charles Lockhart, A. M. McGregor, William H. Macy, William H. Macy, Jr., Estate of Josiah Macy, William H.

Macy, Jr., executor, O. H. Payne, A. J. Pouch, John D. Rockefeller, William Rockefeller, Henry H. Rogers, W. P. Thompson, J. J. Vandergrift, William T. Wardwell, W. G. Warden, Joseph L. Warden Warden, Frew & Co., Louise C. Wheaton, H. M. Hanna
13 and Geo. W. Chapin, D. M. Harkness, O. H. Payne, trustee, Charles Pratt, Horace A. Pratt, C. M. Pratt, Juliah H. York, George H. Viles, M. R. Keith, trustee, George F. Chester.

Also all such individuals as may hereafter join in the agreement at the request of the trustees herein provided for.

3. A portion of the stockholders and members of the following corporations and limited partnerships, to-wit:—

American Lubricating Oil Company.
Baltimore United Oil Company.
Beacon Oil Company.
Bush & Denslow Manufacturing Company.
Central Refining Company of Pittsburg.
Cheesebrough Manufacturing Company.
Chess-Carley Company.
Consolidated Tank Line Company.
Inland Oil Company.
Keystone Refining Company.
Maverick Oil Company.
National Transit Company.
Portland Kerosene Oil Company.
Producers' Consolidated Land and Petroleum Company.
Signal Oil Works (limited).
Thompson & Bedford Company (limited).
Devoe Manufacturing Company.
Eclipse Lubricating Oil Company (limited).
Empire Refining Company (limited).
Franklin Pipe Company (limited).
Galena Oil Works (limited).
Galena Farm Oil Company (limited).
Germania Mining Company.
Vacuum Oil Company.
H. C. Van Tine & Company (limited).
Waters-Pierce Oil Company.

14 Also stockholders and members (not being all thereof) of other corporations and limited partnerships who may hereafter join in this agreement at the request of the trustees herein provided for.

## II. *Purposes of Organization.*

The parties hereto do covenant and agree to and with each other, each in consideration of the others, as follows:

1. As soon as practicable a corporation shall be formed in each of the following States, under the laws thereof, to-wit: Ohio, New York, Pennsylvania, New Jersey; provided, however, that instead of organizing a new corporation any existing charter and organization may be used for the purpose when it can advantageously be done.

2. The purposes and powers of said corporations shall be to mine for, produce, manufacture, refine and deal in petroleum and all its products, and all the materials used in such business, and transact other business collateral thereto. But other purposes and powers shall be embraced in the several charters such as shall seem expedient to the parties procuring the charter, or, if necessary to comply with the law, the powers aforesaid may be restricted and reduced.

3. At any time hereafter, when it may seem advisable to the trustees herein provided for, similar corporations may be formed in other States and Territories.

4. Each of said corporations shall be known as the Standard Oil Company of (and here shall follow the name of the State or Territory by virtue of the laws of which said corporation is organized).

5. The capital stock of each of said corporations shall be fixed at such an amount as may seem necessary and advisable to the parties organizing the same, in view of the purpose to be accomplished.

15 6. The shares of stock of each of said corporations shall be issued only for money, property or assets equal at a fair valuation to the par value of the stock delivered therefor.

7. All the properties, real and personal, assets and business of each and all of the corporations and limited partnerships mentioned or embraced in class first shall be transferred to and vested in the said several Standard Oil Companies. All of the property, assets and business in, or of each particular State, shall be transferred to and vested in the Standard Oil Company of that particular State, and in order to accomplish such purpose the directors and managers of each and all of the several corporations and limited partnerships mentioned in class first are hereby authorized and directed by the stockholders and members thereof (all of them being parties to this agreement) to sell, assign, transfer, convey and make over, for the consideration hereinafter mentioned, to the Standard Oil Company or companies of the proper State or States, as soon as said corporations are organized and ready to receive the same, all the property, real and personal, assets and business of said corporations and limited partnerships. Correct schedules of such property, assets and business shall accompany each transfer.

8. The individuals embraced in class second of this agreement do, each for himself, agree, for the consideration hereinafter mentioned, to sell, assign, transfer, convey and set over, all the property, real and personal, assets and business mentioned and embraced in schedules accompanying such sale and transfer to the Standard Oil Company or companies of the proper State of States, as soon as the said corporations are organized and ready to receive the same.

16 *Trustees in Control.*

9. The parties embraced in class third of this agreement do covenant and agree to assign and transfer all of the stock held by them in the corporations or limited partnerships herein named, to the trustees herein provided for, for the consideration and upon the

terms hereinafter set forth. It is understood and agreed that the said trustees and their successors may hereafter take the assignment of stocks in the same or similar companies upon the terms herein provided, and that when-ever and as often as all the stocks of any corporations or limited partnerships are vested in said trustees the proper steps may then be taken to have all the moneys, property, real and personal, of such corporation or partnership assigned and conveyed to the Standard Oil Company, of the proper State, on the terms and in the mode herein set forth, in which event the trustees shall receive stocks of the Standard Oil Companies, equal to the value of the money, property and business assigned to be held in the place of stocks of the company or companies assigning such property.

10. The consideration for the transfer and conveyance of the money, property and business aforesaid to each or any of the Standard Oil Companies shall be stock of the respective Standard Oil Company, to which said transfer or conveyance is made, equal at par value to the appraised value of the money, property and business so transferred. Said stock shall be delivered to the trustees hereinafter provided for, and their successors, and no stock of any of said companies shall ever be issued except for money, property or business, equal at least to the par value of the stock so issued for any purpose, except to the trustees herein provided for, to be held subject to the trustees hereinafter specified. It is understood, however, that this provision is not intended to restrict the purchase,
17 sale and exchange of property by said Standard Oil Companies as fully as they may be authorized to do by their respective charters; provided only that no stock be issued therefor except to said trustees.

11. The consideration for any stocks delivered to said trustees, as above provided for, as well as for stocks delivered to said trustees by persons mentioned or included in class third of this agreement, shall be the delivery by said trustees to the persons entitled thereto of trust certificates hereinafter provided for equal at par value to the par value of the stocks of the said several Standard Oil Companies so received by said trustees and equal to the appraised value of the stocks of other companies or partnerships delivered to said trustees.

The said appraised value shall be determined in a manner agreed upon by the parties in interest and said trustees.

It is understood and agreed, however, that the said trustees may with any trust funds in their hands, in addition to the mode above provided, purchase the bonds and stocks of other companies engaged in business similar or collateral to the business of said Standard Oil Companies on such terms and in such mode as they may deem advisable, and shall hold the same for the benefit of the owners of said trust certificates, and may sell, assign, transfer and pledge such bonds and stocks whenever they may deem it advantageous to said trust so to do.

### III. *Powers of Trustees.*

The trusts upon which said stocks shall be held, and the number, powers and duties of said trustees, shall be as follows:

1. The number of trustees shall be nine.

2. J. D. Rockefeller, O. H. Payne, and William Rockefeller are hereby appointed trustees to hold their office until the first Wednesday of April, A. D. 1885.

18 3. J. A. Bostwick, H. M. Flagler and W. G. Warden are hereby appointed trustees to hold their office until the first Wednesday of April, A. D. 1884.

4. Charles Pratt, Benjamin Brewster and John Archbold are hereby appointed trustees to hold their office until the first Wednesday of April, A. D. 1883.

5. Elections for trustees to succeed those herein appointed shall be held annually, at which elections a sufficient number of trustees shall be elected to fill all vacancies occurring either from the expiration of the term of office or trustee or from any other cause. All trustees shall be elected to hold their office for three years, except those elected to fill a vac*nacy* arising from any cause except expiration of term, who shall be elected for the balance of the term of the trustee whose place they are elected to fill. Every trustee shall hold his office until his successor is elected.

6. Trustees shall be elected by ballot by the owners of trust certificates or their proxies. At all meetings the owners of trust certificates who may be registered as such on the books of the trustees may vote in person or by proxy, and shall have one vote for each and every share of trust certificate standing in their names, but no such owner shall be entitled to vote upon any share which has not stood in his name thirty days prior to the day appointed for the election. The transfer books may be closed for thirty days immediately preceding the annual election. A majority of the shares represented at said election shall elect.

### *Must Meet in New York.*

7. The annual meeting of the owners of said trust certificates for the election of trustees, and for other business, shall be held at the office of the trustees in the City of New York on the first

19 Wednesday of April of each year, unless the place of meeting be changed by the trustees, and said meeting may be adjourned from day to day until its business is completed. Special meetings of the owners of said trust certificates may be called by a majority of the trustees at such times and places as they may appoint. It shall also be the duty of the trustees to call a special meeting of holders of trust certificates whenever requested to do so by a petition signed by the holders of 10 per cent. in value of such certificates. The business of such special meetings shall be confined to the object specified in the notice given therefor. Notice of the time and place of all meetings of the owners of trust certificates shall be given in one of the principal newspapers of each State in which a Standard Oil Company exists at least ten days before such meeting. At any

meeting, a majority in value of the holders of trust certificates represented consenting thereto, by-laws may be made, amended and repealed relative to the mode of the election of trustees, and other business of the holders of trust certificates; provided, however, that said by-laws shall be in conformity with this agreement. By-laws may also be made, amended and repealed at any meeting by and with the consent of a majority in value of the holders of trust certificates, which alter this agreement relative to the number, powers, and duties of the trustees, and to other matters tending to the more efficient accomplishment of the objects for which the trust is created, provided only that the essential intents and purposes of this agreement be not thereby changed.

8. Whenever a vacancy occurs in the board of trustees more than sixty days prior to the annual meeting for the election of trustees, it shall be the duty of the remaining trustees to call a meeting of the owners of Standard Oil trust certificates for the purpose of electing a trustee or trustees to fill the vacancy or vacancies. If any
20 vacancy occurs in the board of trustees, from any cause, within sixty days of the dates of the annual meeting for the election of trustees, the vacancy may be filled by a majority of the remaining trustees, or at their option, may remain vacant until the annual election.

9. If, for any reason, at any time, a trustee or trustees shall be appointed by any court to fill any vacancy or vacancies in said board of trustees, the trustee or trustees so appointed shall hold *him* or their respective office or offices only until a successor shall be elected in the manner above provided for.

*Title to Stock Passes.*

10. Whenever any change shall occur in the board of trustees the legal title to the stock or other property held in trust shall pass to and vest in the successors of said trustees without any formal transfer thereof, but if at any time such formal transfer shall be deemed necessary or advisable it shall be the duty of the board of trustees to obtain the same, and it shall be the duty of any retiring trustee, or the administrator or executor of any deceased trustee to make said transfer.

11. The trustees shall prepare certificates which shall show the interest of each beneficiary in said trust and deliver them to the person properly entitled thereto. They shall be divided into shares of the par value of $100 each, and shall be known as the Standard Oil trust certificates, and shall be issued subject to all the terms and conditions of this agreement. The trustees shall have power to agree upon and direct the form and contents of said certificates, and the made in which they are signed, attested and transferred. The certificates shall contain an express stipulation that the holders thereof shall be bound by the terms of this agreement and by the by-laws herein provided for.

12. No certificate shall be issued except for stocks and bonds
21 held in trust as herein provided for, and the par value of certificates issued by said trustees shall be equal to the par

value of the stocks of said Standard Oil Company and the appraised value of other bonds and stocks held in trust. The various bonds, stocks and money held under said trust shall be held for all parties in interest jointly, and the trust certificates so issued shall be the evidence of the interest held by the several parties in the trust. No duplicates certificates shall be issued by the trustees, except upon surrender of the original certificate or certificates for cancellation, or upon satisfactory proof of the loss thereof, and in the latter case they shall require a sufficient bond of indemnity.

13. The stocks of the various Standard Oil Companies held in trust by said trustees shall not be sold, assigned or transferred by said trustees, or by their beneficiaries, or both combined, so long as this trust indures. The stocks and bonds of other companies held by said trustees may be by them exchanged or sold and the proceeds thereof distributed pro rata to the holders of trust certificates, or said proceeds may be held and reinvested by said trustees for the purposes and uses of the trust, provided, however, that said trustees may, from time to time, assign such shares of stock of said Standard Oil Company as may be necessary to qualify any person or persons chosen or to be chosen as directors and officers of any of said Standard Oil Companies.

*Distribution of Dividends.*

14. It shall be the duty of said trustees to receive and safely to keep all interest and dividends declared and paid upon any of the said bonds, stocks and moneys held by them in trust, and to distribute all moneys received from such sources, or from sales of trust property, or otherwise by declaring and paying dividends upon the Standard Trust certificates as finds accumulate, which in their judgment are not needed for the use and expenses of said trust.

The trustees, shall, however, keep separate accounts of receipts from interest and dividends, and of receipts from sales or transfers of trust property and, in making any distribution of trust funds, in which moneys derived from sales or transfers shall be included, shall render the holders of trust certificates a statement showing what amount of the finds distributed has been derived from such sales or transfers. The said trustees may be also authorized and empowered by a vote of a majority in value of holders of trust certificates, whenever stocks or bonds have accumulated in their hands from money purchases thereof, or the stocks or bonds held by them have increased in value, or stock dividends shall have been declared by any of the companies whose stocks are held by said trustees, or whenever from any such cause it is deemed advisable so to do, to increase the amount of trust certificates to the extent of such increase or accumulation of values, and to divide the same among the persons then owning trust certificates, pro rata.

15. It shall be the duty of said trustees to exercise general supervision over the affairs of said several Standard Oil Companies, and, as far as practicable, over the other companies or partnerships, any

portion of whose stock is held in said trust. It shall be their duty, as stockholders of said company, to elect as directors any officers thereof, faithful and competent men. They may elect themselves to such positions when they see fit so to do, and shall endeavor to have the affairs of all of said companies managed and directed in the manner they may deem most conducive to the best interests of the holders of said trust certificates.

16. All the powers of the trustees may be exercised by a majority of their number. They may appoint from their own number an executive and other committees. A majority of each committee shall exercise all the powers which the trustees may confer upon such committee.

17. The trustees may employ and pay all such agents and attorneys as they may deem necessary in the management of said trust.

18. Each trustee shall be entitled to a salary for his services not exceeding $25,000 per annum, except the president of the board, who may be voted a salary not exceeding $30,000 per annum. Which salaries shall be fixed by said board of trustees. All salaries and expenses connected with or growing out of the trust shall be paid by the trustees from the trust fund.

19. The board of trustees shall have its principal office in the City of New York, unless changed by a vote of the trustees, at which office, or in some place of safe deposit in said city, the bonds and stock shall be kept. The trustees shall have power to adopt rules and regulations pertaining to the meetings of the board, the election of officers and the management of the trust.

20. The trustees shall render at each annual meeting a statement of the affairs of the trust. If a termination of the trust be agreed upon as hereinafter provided, or within a reasonable time prior to its termination by lapse of time, the trustees shall furnish to the holders of trust certificates a true and perfect inventory and appraisement of all stocks and other property held in trust, and a statement of the financial affairs of the various companies whose stocks are held in trust.

*Life of the Trust.*

21. This trust shall continue during the lives of the survivors and survivor of the trustee in this agreement named, and for twenty-one years thereafter; provided, however, that if at any time after the expiration of ten years two-thirds of all the holders in value, or if, after the expiration of one year 90 per cent. of all the holders in value of trust certificates shall, at a meeting of holders of trust certificates, called for that purpose, vote to terminate this trust at some time to be by them then and there fixed, the said trust shall terminate at the date so fixed. If the holders of trust certificates shall vote to terminate the trust as aforesaid, they may, at the regular meeting, or at a subsequent meeting called for that purpose, decide by a vote of two-thirds in value of their number, the mode in which the affairs of the trust shall be wound up, and whether the trust property shall be distributed, or whether it shall be sold, and

the values thereof distributed; or whether part, and if so, what part shall be divided, and what part shall be sold and whether such sale shall be public or private. The trustees who shall continue to hold their offices for that purpose shall make the distribution in the mode directed; or, if no mode be agreed upon, by two-thirds in value, as aforesaid, the trustees shall make distribution of the trust property according to law. But said distribution, however made, and whether it be of property or values, or of both, shall be just and equitable, and such as to insure to each owner of a trust certificate his due proportion of the trust property, or the value thereof.

22. If the trust shall be terminated by expiration of the time for which it is created, the distribution of the trust property shall be directed and made in the mode above provided.

23. This agreement, together with the registry of certificates, books of accounts and other books and papers connected with the business of said trust shall be safely kept at the principal office of said trustees.

BENJAMIN BREWSTER.
JOHN D. ARCHBOLD.
CHARLES PRATT.
HENRY H. ROGERS.
H. A. PRATT.
C. M. PRATT.
D. M. HARKNESS, *Trustee,*
By H. M. FLAGLER, *Attorney.*
THOMAS C. BUSHNELL.
W. C. ANDREWS.
CHAS. F. G. HEYE.
WILLIAM T. WARDWELL.
WM. H. MACY.
ESTATE JOSIAH MACY, JR.
WM. H. MACY, JR., *Ex.*
WM. H. MACY, JR.
A. M. McGREGOR.
J. N. CAMDEN,
By H. M. FLAGLER, *Attorney.*
O. H. PAYNE,
By H. M. FLAGLER, *Attorney.*
GEO. F. CHESTER, *Trustee.*
GEO. H. VILAS, *Trustee.*
W. G. WARDEN.
H. M. FLAGLER.
JOHN D. ROCKEFELLER.
WM. ROCKEFELLER.
J. J. VANDERGRIFT.
MRS. H. M. FLAGLER,
Per H. M. FLAGLER.
A. J. POUCH.
O. B. JENNINGS.
D. M. HARKNESS,
By H. M. FLAGLER, *Attorney.*

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W. P. THOMPSON,
By H. M. FLAGLER, *Attorney.*
S. V. HARKNESS,
By H. M. FLAGLER, *Attorney.*
JOHN HUNTINGTON,
By H. M. FLAGLER, *Attorney.*
LIDE J. ARTER,
By H. M. FLAGLER, *Attorney.*
H. M. HANNA AND
GEO. W. CHAPIN,
By H. M. FLAGLER, *Attorney.*
LOUIS C. WHEATON,
By H. M. FLAGLER, *Attorney.*
O. H. PAYNE, *Trustee,*
By H. M. FLAGLER, *Attorney.*
CHARLES LOCKHART,
JOSEPH L. WARDEN,
By HENRY L. DAVIS, *Attorney.*
JULIA H. YORK,
By H. M. FLAGLER, *Attorney.*
H. A. HUTCHINS,
By H. M. FLAGLER, *Attorney.*
M. R. KEITH, *Trustee.*
D. BUSHNELL.
WARDEN, FREW & CO.
HENRY L. DAVIS.

27 EXHIBIT B.

*The Agreement.*

Whereas, in and by an agreement dated Jan. 2, 1882, and known as the Standard Trust agreement, the parties thereto did mutually covenant and agree, *inter alia* as follows, to-wit: "That corporations to be known as Standard Oil Companies, of various States, should be formed, and that all the property, real and personal, assets and business of each and all of the corporations and limited partnerships mentioned or embraced in class I of said agreement should be transferred to and vested in the said several Standard Oil Companies; that all the property, assets and business in or of each particular State should be transferred to and vested in the Standard Oil Company of that particular State, and the directors and managers of each and all of the several corporations and associations mentioned in class I were authorized and directed to sell, assign, transfer and convey and make over to the Standard Oil Company or Companies of the proper State or States as soon as said corporations were organized and ready to receive the same, all the property, real and personal, assets and business of said corporations or associations; and,

Whereas, it is not deemed expedient that all of the companies and associations mentioned should transfer their property to the

said Standard Oil Companies at the present time, and in case of some companies and associations it may never be deemed expedient that the said transfer should be made and said companies and associations go out of existence; and,

Whereas, it is deemed advisable that a discretionary power should be vested in the trustees as to when such transfer or transfers should take place, if at all. Now, it is hereby mutually agreed between the parties to the said trust agreement, and as supplementary
28 thereto that the trustees named in the said agreement and their successors shall have the power and authority to decide what companies shall convey their said property as in said agreement contemplated, and when the said sales and transfers shall take place, if at all, and until said trustees shall so decide, each of said companies shall remain in existence and retain its property and business, and the trustees shall hold the stocks thereof in trust as in said agreement provided. In the exercise of said discretion the trustees shall act by a majority of their number as provided in said trust agreement. All portions of said trust agreement relating to this subject shall be considered so changed as to be in harmony with this supplemental agreement.

In witness whereof, the said parties have subscribed this agreement, this 4th day of January, 1882.

BENJAMIN BREWSTER.
JOHN D. ARCHBOLD.
J. A. BOSTWICK.
CHARLES PRATT.
HENRY H. ROGERS.
H. A. PRATT.
C. M. PRATT.
D. M. HARKNESS, *Trustee.*
D. M. HARKNESS.
T. C. BUSHNELL.
W. C. ANDREWS.
CHARLES F. G. HEYE.
WILLIAM T. WARDWELL.
WILLIAM H. MACY.
ESTATE OF JOSIAH MACY, JR.
WILLIAM H. MACY, JR., *Executor.*
WILLIAM H. MACY, JR.
A. M. McGREGOR.
J. N. CAMDEN.
29 JULIA H. YORK,
By B. H. Y.
O. H. PAYNE.
GEORGE F. CHESTER, *Trustee.*
M. R. KEITH, *Trustee.*
H. M. FLAGLER.
JOHN D. ROCKEFELLER.
WILLIAM ROCKEFELLER.
J. J. VANDERGRIFT.

MRS. H. M. FLAGLER,
By H. M. FLAGLER.
A. J. POUCH.
O. B. JENNINGS.
W. O. THOMPSON.
S. V. HARKNESS.
JOHN HUNTINGTON.
LIKE K. ARTER.
H. M. HANNA.
GEORGE W. CHAPIN.
H. M. HANNA, *Attorney in Fact.*
LOUISE C. WHEATON,
By H. M. FLAGLER.
O. H. PAYNE, *Trustee.*
CHARLES LOCKHART.
JOSEPH L. WARDEN.
HENRY L. DAVIS.
W. G. WARDEN.
WARDEN, FREW & CO.
D. BUSHNELL.
H. A. HUTCHINS.
GEORGE H. VILAS, *Trustee.*

30 (3) That said defendant so entered into and became a party to the conspiracy then formed and carried out and observed and performed the same up *the* the present time; that all of the parties entering into same observed and carried out said contracts in other sections of the United States and the State of Texas.

That each of the corporations mentioned in said trust agreement and each of the individuals mentioned therein or signing same entered into and became a party to the conspiracy and conspiracies hereinbefore detailed and described and said companies and persons have participated in and been parties to the schemes and devices that have since been used to carry out the purposes intended to be accomplished by said trust agreement, and have been parties to the conspiracies to accomplish such purposes, and defendant and all of its officers and stockholders have ever since its incorporation participated in such conspiracies and aided in carrying out the purposes and schemes set forth in said agreement and intended to be accomplished by it.

(4) That the stock owned and held in the names of Chess-Carley Company and the Standard Oil Company was transferred by defendant's transferring officer upon defendant's stock books to the certain nine trustees who were appointed and named in the first one of said trust agreements upon the request of the respective owners of said shares and in prusuance of the provisions of said trust agreements.

(5) That thereafter on or about the 13th day of June, A. D. 1882, said defendant, Waters-Pierce Oil Company increased its capital stock from $100,000 to the aggregate amount of $400,000 capital; that said increase- capital of $300,000 was divided into

3,000 shares of $100 each, the certificates of stock being issued as follows:

| | | |
|---|---|---|
| 31 | Chess-Corley Company, 600 Shares | $60,000 |
| | William H. Waters, 1200 Shares | 120,000 |
| | Trustees of Standard Oil Trust, 1200 Shares | 120,000 |

That said corporation, through its proper officers, issued said 1200 additional shares of the capital stock to the trustees of the Standard Oil Trust as above stated, and that by virtue of so holding and controlling said shares, together with such shares as had been formerly acquired by it, said nine trustees were, after the signing of said agreements, able to choose, and did annually choose, such boards of directors of defendant company as they (the said nine trustees) saw fit, and were able to and did control the actions of the defendant in the conduct and management of its business up to the time of the dissolution of the Standard Oil Trust and the adoption of another scheme for the transaction of the business of the Standard Oil Trust, which was afterwards adopted and enforced as hereinafter set out.

(6) That Waters-Pierce Oil Co., has never taken any corporate action or made any complaint against its stockholders or its directors, and officers signing and entering into said trust agreement, or being controlled under said agreement, or either of them, nor against its said stock holders or officers surrendering their stock in the said company to said nine trustees, nor against its stockholders or officers or directors receiving the Standard Oil Trust Certificates which were issued and delivered to them as aforesaid, by said nine trustees, in exchange for its stock, nor against any of the acts herein recited, and that none of the officers, directors or stockholders of said company have at any time objected or made complaint against such surrender and exchange of stock or against any of said recited acts, but, on the contrary said company, in its corporate capacity, has, and
32 all of its officers and stockholders have, ever since the acts in question acquiesced in such transfer and exchange, and in the annual election of said nine trustees and the directors for said Waters-Pierce Oil Co., as well as in all of said recited acts; that the directors of said company, chosen in the manner aforesaid, either directly or through their employees, managed the business of that company so as to conform to the instructions issued from time to time by the said nine trustees aforesaid, and since the nominal change in the instructions of the managers of the Standard Oil Company.

(7) That the net earnings of the said Waters Pierce Oil Company were, after the signing of said agreement, declared and paid out as dividends upon its capital stock; that the nine trustees appointed under said trust agreements, as aforesaid, received up to the dissolution of the Standard Oil Trust the proportions of such dividends which were properly distributed and payable upon the stock held by said nine trustees in said company; that there were besides those set forth in the trust agreement, a large number of other corporations (plaintiff being unable to ascertain or state the number) in the United States whose organizations were made, stockholders and directors elected, and whose affairs and business and dividends were conducted and paid under and pursuant to the provisions of the

Trust agreements hereinbefore set forth, in a manner similar to that herein described in respect to said Waters-Pierce Oil Company, and from the dividends so accumulated in the hands of said nine trustees, dividends were from time to time, as the interests of the trust justified, declared and paid out by said nine trustees to the holders of said Standard Oil Trust certificates which had been issued to them.

(8) That said board of trustees of said Standard Oil Trust controlled managed and directed the business affairs of said company without protest or resistance on the part of said Company, but, on the contrary, with its sanction and acquiescence and the
33 consent and co-operation of all its stockholders up until March 2nd, 1892, when said Standard Oil Trust and its subsidiary corporations were ousted from the State of Ohio by a judgment of the Supreme Court of Ohio at which time said Standard Oil Trust voted to go into voluntary dissolution.

(9) That at the time of said reputed dissolution the Standard Oil Company of New Jersey, one of the subsidiary corporations owned and controlled by the Standard Oil Trust aforesaid, took over the entire holdings of stock, including that in the Waters Pierce Oil Company theretofore held by said nine trustees of the said Standard Oil Trust, and thereafter and up to this time the said Standard Oil Company of New Jersey (name subsequently changed to Standard Oil Company) performed the functions in carrying the conspiracies, contracts, agreements and understandings aforesaid that had primarily been performed by the Standard Oil Company of Ohio, and later by the said Standard Oil Trust, into effect and execution, and have continually up to this time managed, controlled, directed and dominated the business affairs of all the persons, firms and corporations, including defendant, originally entering into said trust agreements aforesaid, and have since from time to time, created, formed and acquired new corporations in different sections of the United States to carry on its said business in conformity to said conspiracies and agreements as hereinbefore set out; that since 1892 contin-ously each and every day up to this time the Standard Oil Company has owned and controlled a majority of the capital stock of the Waters-Pierce Oil Company, directed its affairs, limited its operations without protest of said corporation, or any corporate action on the part of defendant resisting said control, but, on the contrary, at all times with its sanction, acquiescence and hearty co-operation, and with the knowledge and consent of all its stockholders.

34 (10) That the affairs of the Waters Pierce Oil Company were thereafter controlled, managed and directed by the said Standard Oil Company; that said Standard Oil Company received the 2750 shares of the capital stock of said corporation theretofore held by the Standard Oil Trust as aforesaid; that all of the conspiracies, contracts, agreements and understandings made, entered into and effected between said defendant company and the Standard Oil Company of Ohio and the Standard Oil Trust and its allied interests and subsidiary corporations and the oil concerns and corporations named with trust agreement aforesaid, were continued in full force and effect and were observed each and every day thereafter between the Standard Oil Company and the corporations controlled by

it and the Waters-Pierce Oil Company, and have been continuously so observed by all of said parties, including the defendant, from the date of its organization, down to the present time.

V.

That prior to the 6th day of July, A. D. 1889, and continuously thereafter up to and including May 31st, 1900, the Waters-Pierce Oil Company, did business in the State of Texas, having filed with the Secretary of State of the State of Texas, in accordance with the requirements of law a certified copy of its articles of incorporation, and secured a permit to transact business in the State. By virtue of the permit granted by the State of Texas to said corporation it engaged in business in the State, established itself in every county through out the state and transacted business in the State of Texas, and while so engaged violated the statutes of the State of Texas against illegal combinations in restraint of competition in trade and thereby incurred a forfeiture of its permit to do business in the State. Suit was filed by the State of Texas in the District Court of Travis County, Texas, for the cancellation of said permit; upon trial a verdict was rendered against the company and judgment was duly en-
35 tered cancelling said permit. The judgment was affirmed by the Court of Civil Appeals of Texas, a writ of error denied by the Supreme Court of Texas, and a writ of error was granted by the Supreme Court of the United States to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, bringing the case before the Supreme Court, by which Court said judgments were affirmed March 19th, 1900, cancelling the permit of said defendant to transact any business except an interstate business in the State of Texas, and an injunction issued restraining said corporation from any further transaction of business within this State.

(2) That through an agreement with the Attorney General of the State of Texas, said corporation was granted until the 31st day of May, 1900, in which to wind up its business affairs and to withdraw from the State of Texas.

(3) That in further pursuance of the conspiracy aforesaid and for the purpose of maintaining the monopoly and control which had been acquired by the conspirators aforesaid through the operations of the Waters Pierce Oil Company in the State of Texas, and for the purpose of defrauding the State of Texas, and for the purpose of fraudulently rendering ineffective the judgments of the Courts of the State of Texas and of the United States, the manager, officers and agents of the Standard Oil Company, the Waters-Pierce Oil Company, and its officers, and H. C. Pierce and the other conspirators hereinbefore mentioned, determined to go through the form of dissolving the corporation known as the Waters Pierce Oil Company, and of creating a new corporation for the holding of property and the transaction of the business of the Waters-Pierce Oil Company and carrying out the plans and conspiracies aforesaid.

(4) That a paper was prepared certifying that the stockholders of the Waters-Pierce Oil Company had voted to dissolve
36 said corporation, which papers was filed with the Secretary of State of Missouri, May 29th, 1900, and another charter

was taken out by the old stockholders, giving the same name, the same capital stock, and the purposes, and being in fact the same corporation.

(5) Plaintiff alleges that the Waters-Pierce Oil Co. was not dissolved in accordance with the statutes and laws of the State of Missouri.

That said laws governing such corporations provide in effect that if the corporation be insolvent a majority of its stockholders, or the directors of the corporation, and if the corporation be not insolvent then the stockholders holding at least two-thirds of its shares may pass a resolution favoring dissolution; that after the passage of said resolution such corporation may be dissolved by a judgment of the Circuit Court of the County in which its principal office is located, and if such office be in the City of St. Louis, such judgment of dismissal may be rendered by either of the circuit courts of the Eighth Judicial Circuit; that before such dissolution by judgment of a Court can be had an application shall be filed by a petition, verified by the president and secretary, or by a majority of the directors of the corporation, setting forth a clear and concise statement of the reasons which induce the stockholders to desire a dissolution of the corporation; that among other things said petition shall contain a full and true inventory of all the estate, real and personal, in law and equity, of such corporation, and all books, vouchers and securities relating thereto, also a full and true account of the capital stock of such corporation, specifying the names of the stockholders, their residences, the number of shares belonging to each, the amount paid in upon said shares, and the amount due thereon; also all incumbrances on the property of such cor-
37 poration by judgment, mortgage, pledge or otherwise; a list of all creditors of such corporation, and all *all* engagements entered into by said corporation, not fully satisfied or cancelled. That upon filing of such petition an order shall be made by the Court, if filed in term time, or by the Clerk, if filed in vacation, requiring all persons interested in such corporation to show cause, if any they have, why such corporation should not be dissolved, on or before a day or term of said Court therein named; that the several officers and stockholders may enter their voluntary appearance and all stock holders and creditors and persons having unexecuted contracts with said corporation, who do not enter their voluntary appearance, shall be notified by *by* summon under the hand and seal of the clerk of the Court, reciting the filing of said petition, its general purport and nature, and citing them to appear in said Court on a day to be named in said writ to show cause, if any they have, against said dissolution; that such day shall be fixed at not less than twenty one days nor more than thirty days after the filing of said petition; that in addition to said summons a notice of a general nature and cause of said application shall be published in some newspapers of general circulation in the county in which said proceeding in commenced for three weeks consecutively, and proof of service and publication aforesaid shall be made before any order is made upon said petition; that the court shall have the power

to continue such application for service upon all interested parties from time to time and to issue new writs, if necessary, according to the practice therein. That if, upon a hearing of such application the court shall be satisfied that the prayer of such petition can be granted without prejudice to the public welfare, or the interest of the corporation, the creditors or incorporators of such corporation,

38 if may enter a judgment or decree dissolving such corporation, and directing the president and directors to take charge of its assets and administer them as now provided by law; that whenever the Court shall grant a judgment of dissolution, the clerk thereof shall send a certified copy of the order of the Court to the Secretary of State and said copy shall be filed with the incorporation papers of said company. That the president or secretary of every domestic incorporated company in said State, when it shall dissolve, is required to file with the Secretary of State thereof an affidavit to that effect, and for any failure to comply with such provisions the said company or its officers are subject to a penalty of from fifty to five hundred dollars; that the mere retirement from business of a domestic corporation without dissolution shall not exempt it from the requirement to make said reports.

That the laws of the State of Missouri, governing the manner of dissolution of corporations such as defendant, the substance of which have been hereinbefore stated are contained in the Revised Statutes of Missouri, (1889) and that Sections 976, 977, 978, 979, 980, 981, and 1018 especially apply and control the dissolution of such corporations in this State. That said Statutes constitute the only way in which a corporation such as defendant company or the old Waters Pierce Oil Company as aforesaid could be dissolved in that State so as to affect the rights of others, and said Waters Pierce Oil Company did not comply with said laws in undertaking to dissolve, nor did its stockholders or officers do so, nor was said corporation otherwise legally dissolved under the laws of said State.

(5) At the time of the alleged dissolution the stock of the Waters Pierce Oil Company was owned as follows:

By H. C. Pierce, 1250 shares;

By the Standard Oil Company of New Jersey, 2750 shares;

39 One of the shares of H. C. Pierce was held in the name of Andrew M. Finlay in order that he might be eligible for membership on the board of directors in said Pierce's behalf, and C. M. Adams and J. P. Gruet held each a certificate of the stock of the Standard Oil Company of New Jersey for one share that they might be representatives of the Standard Oil Company's interest on the board of directors. Prior to the reputed reorganization the following persons, named by the Standard Oil Company and H. C. Pierce, were members of the board of directors; H. C. Pierce, J. P. Gruet, H. M. Tilford, A. M. Finlay and C. M. Adams.

In the charter issued May 29th, 1900, said Standard Oil Company and H. C. Pierce substituted the name of J. D. Johnson, Attorney for the defendant for that of H. M. Tilford, leaving the directors otherwise the same. That of the new stock, as of the old, H. C. Pierce was to own 1250 shares and the Standard Oil Com-

pany of New Jersey was to own 2750 shares, all of which was effected.

That the actions taken by the Standard Oil Company and H. C. Pierce were subsequently, at their direction, confirmed by themselves and their employees and agents constituting the board of directors of the Waters Pierce Oil Company and by defendant herein. That the difference between the assets and liabilities of the Waters Pierce Oil Company was determined and a nominal liquidation was accomplished by giving to the stockholders (the said Pierce and the Standard Oil Company of New Jersey) notes for the amounts thus determined in proportion to interests in the stock. That until said notes were discharged the profits were not paid in the form of dividends but were used to discharge the obligations nominally due the stockholders.

(8) That for the nominal capital stock of the Waters
40 Pierce Oil Company under the new charter the check of H. C. Pierce was given for $400,000; that at the time of the alleged dissolution the company had in cash more than $400,000 which sum was nominally paid to the stockholders as a dividend of the old company and afterwards returned to the new company for the discharge of said $400,000 capital stock of the new company; that said H. C. Pierce was reimbursed by the Standard Oil Company for the entire amount of money advanced by H. C. Pierce in his check of $400,000; that said check was given by H. C. Pierce in order to deceive the public and cover up the real transaction and fraud perpetrated upon the State of Texas as hereinbefore alleged.

That the said H. C. Pierce understood at the time of said reorganization, and acted upon the understanding with the Standard Oil Company that the 2750 shares theretofore owned by the Standard Oil Company should be by him transferred to said Standard Oil Company immediately after said fraudulent reorganization, and in pursuance of said agreement and understanding, the 2750 shares aforesaid, of the alleged new incorporation, were endorsed in blank by said H. C. Pierce and placed under the control of the Standard Oil Company; that said 2750 shares remained upon the Stock Books of said corporation in the name of H. C. Pierce until June 1904, with the exception of two shares which were held by C. M. Adams and J. P. Gruet as the representatives of the Standard Oil Company's interest in the directorate of the defendant company.

(9) That during the period of time between May 29th, 1900, and June 1904, the period in which the stock belonging to the Standard Oil Company stood in the name of H. C. Pierce, said H. C. Pierce in order to deceive the public and cover up the fraudulent character of said transactions, and in order to secrete the true ownership of said 2750 shares, collected from defendant corpo-
41 ration all dividends paid by said defendant corporation both on the 1250 shares owned by himself and 2748 shares owned by the Standard Oil Company of New Jersey standing in the name of H. C. Pierce.

That upon receipt of dividend checks as aforesaid, the said H. C. Pierce with the knowledge and sanction of defendant corporation

and its officers and all its stockholders, transmitted to the Standard Oil Company, through its proper representative, the dividends collected by H. C. Pierce, and owned by said Standard Oil Company (of New Jersey);

(10) That in June, 1904, the said 2748 shares of stock was transferred on the books of defendant from H. C. Pierce to M. M. Van Buren, a son-in-law of John D. Archbold, said Archbold being an officer of the Standard Oil Company; said Van Buren has since 1904 held said stock in his name without consideration for the benefit of the Standard Oil Company.

That all of the aforesaid acts and conspiracies and fraudulent transactions were effected and enforced with the full knowledge and sanction of the defendant corporation and all its stockholders and by said stockholders and for the purposes aforesaid.

(11) That the conduct of the business of defendant Waters Pierce Oil Company was in no sense changed by or after the nominal reorganization; that the same office, books and equipment were kept as they had been before kept and by the same persons; that the employees were the same; that no difference or changes were made in the employees or representatives; that the same property, appliances and methods were used as before; that the same accounts were kept with the same persons; that the same reports were made to the Standard Oil Company, and the same instructions were received from it, and the same control exercised by it as before the alleged reorganization; that the old contract and understanding and agreement about the division of territory was maintained and respected and enforced; the same salaries were paid to the same persons, and in no respect, in name or otherwise, was the Waters-Pierce Oil Company or its business different or changed after May 29th, 1900, from what it had been before that date, except as here now indicated:

42

(12) That the sole purpose of the reputed and nominal reorganization was to perpetrate a fraud upon the State of Texas and to enable the company to maintain its business and get the benefit of and maintain its monopoly in the State of Texas; that said purposes have been and are being accomplished.

(13) That after the judgment in the case aforesaid of State of Texas *vs.* Waters-Pierce Oil Company and prior to the reorganization aforesaid, it was agreed and understood by and between the Standard Oil Co. and its officers and managers and H. C. Pierce that in pursuance of the conspiracies and the purpose herein stated the latter, who had theretofore been removed from the Presidency of the Waters Pierce Oil Co. by the said other parties, should be restored thereto, and it was agreed and understood that he would proceed to the State of Texas, and take such steps as might be necessary to obviate and defeat the effect of the judgment aforesaid and to dispose of a case then pending in the District Court of McLennan Co. wherein the State of Texas was Plaintiff and the Waters-Pierce Oil Co. was defendant, wherein the State was suing for penalties for a violation of the laws of Texas; that in pursuance of this agreement and understanding, H. C. Pierce, acting for said Waters Pierce Oil

Co. and all the stockholders, directors, and officers of the Waters Pierce Oil Co. arranged with and employed attorneys, and with them went into the State of Texas, made an effort to dispose of the case pending at Waco and expended money therein and consulted with officers of the State with reference to the readmission of the
43 Waters Pierce Oil Co. into the State; that a course of procedure was determined upon, which was carried out as hereinbefore stated; that all sums of money paid and contracted to be paid by said Pierce were paid by the Waters Pierce Oil Co. after the reputed reorganization and all the expenses incident to the said operations of Pierce and the attorneys aforesaid in Texas were so paid, and all of said expenses were thereafter audited and allowed by the Standard Oil Co.

(14) That all the expenses incurred in the case aforesaid, pending in the District Court of McLennan County until its final disposition were discharged by defendant.

## VI.

That contemporaneously with the reputed reorganization aforesaid and as a part of the general plan and scheme determined upon to monopolize the oil business in the State of Texas, H. C. Pierce, as President of Waters-Pierce Oil Company filed an affidavit with the Secretary of State of Texas, as hereinafter set out; the affidavit aforesaid made by said H. C. Pierce, as aforesaid, is as follows:

### *Affidavit.*

THE STATE OF TEXAS, *County of Travis:*

I, Henry Clay Pierce, do solemnly swear that I am the President (President, Secretary, Treasurer, or Director) of the corporation known and styled Waters-Pierce Oil Company, duly incorporated under the laws of Missouri on the 29th day of May, 1900, and now transacting or conducting business in the State of Texas, and that I am duly authorized to represent said corporation in making
44 this affidavit, and I do further solemnly swear that the said Waters-Pierce Oil Company, known and styled as aforesaid, has not since the 31st day of January, 1900, created, entered into or become a member of or a party to, and was not, on the 31st day of January, 1900, nor at any day since that date, and is not now a member of or any party to any pool, trust, agreement, combination, confederation or understanding, with any other corporation, partnership, individual, or any other person, or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation, to fix or limit the amount of supply or quan-

tity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid, and that it has not issued, and does not own any trust certificates for any corporation, agent, officer, or employee, or for the directors or stockholders or any corporation, has not entered into and is not now in any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholders or directors thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured
45 product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article; that it has not entered into any conspiracy, defined in the preceding sections of this act, to form or secure a trust or monopoly in restraint of trade; that it has not been since January 31st, A. D. 1900, and is not now a monopoly by reason of any conduct on its part which would constitute it a monopoly under the provisions of sections 2, 3, 4, 5, 6, 10, and 11 of this Act, and is not the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw material or preparing the same for market by any wrapping, baling or other process, and while leasing, renting or operating the same refuses or fails to put the same on the market for sale; that it has not issued and does not own any trust certificates and has not, for any corporation or any agent, officer or employé thereof, or for the directors or stockholders thereof, entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with the stockholders, directors or officers, agent or employee of any corporation, or corporations, the purpose and effect of which combination, contract or agreement, would be a conspiracy to defraud, as defined in Section 1 of this Act, or to create a monopoly, as defined in sections 2, 3, 4, 5, 6, 10, and 11 of this Act.

HENRY CLAY PIERCE,
*President, Secretary, Treasurer or Director.*

(2) That the Secretary of State of the State of Texas granted the permit dated May 31st, 1900; that all of said representations made by said H. C. Pierce in said affidavit, were false and fradulent and known by him to be false and fraudulent at the time they
46 were made, and were made by him for the purpose of deceiving the officers of the State of avoiding the judgment aforesaid, and in pursuance and furtherance of the conspiracies hereinbefore alleged.

(3) That at the time of the making of the affidavit and the issuance of the permit above set forth 2750 of the 4,000 shares of the said defendant company were owned, held and controlled by the

Standard Oil Company of New Jersey, a corporation doing the same character of business as the Waters-Pierce Oil Company. The management and control of the defendant company was directed and has continued to be directed up to this time by persons and corporations controlling and directing the Standard Oil Company, and a large number of other corporations who, in violation of law, were controlling and monopolizing the oil business of the United States, including the State of Texas, and fixing and controlling the price of oil and the products of petroleum.

(4) That the Waters-Pierce Oil Company and said Standard Oil Company were maintaining a monopoly of the oil business in the State of Texas and maintaining and fixing and controlling the price of oil and products of petroleum in said State, and preventing competition therein; that all parts of said affidavit were false and untrue, and were made for the purpose of evading the laws of Texas and of committing a fraud upon said State and maintaining the monopoly herein alleged and the carrying out of the conspiracies entered into between defendant and the Standard Oil Company, and the other conspiracies herein named.

## VII.

That by and through the machinery hereinbefore described and in pursuance of the conspiracy to monopolize the entire oil business the conspirators herein named have in addition to the cor-
47 porations, concerns and businesses herein specifically named and a large number of others the names of which cannot be ascertained, taken over and acquired the following companies and businesses:

The Consolidated Tank Line Company.
The Missouri, Kansas & Texas Tank Line.
The Chess-Carley Company.
Shurmer, Teagle & Co.
The Cleveland Refining Co.
The Scio Refining Co.
Scofield, Shurmer & Teagle.
The Republic Oil Company.
The Vacuum Oil Company.

That said businesses and companies were acquired for the purpose of destroying competition, and were especially acquired to prevent competition with the Waters Pierce Oil Company, and has had that effect; and said companies have either been put entirely out of business, or are being so controlled as to aid in the scheme of monopoly; and the defendant was a party to said acquisition for said purpose, and now participates in and is a party to the arrangement, which prevents competition from said companies, and has been ever since its incorporation.

## VIII.

That there is maintained at 26 Broadway, New York, an organization of which W. H. Tilford, L. D. Clarke, Silas G. Payne,

John D. Rockefeller, C. M. Pratt, F. G. Barstow, Wade Hampton, R. H. McNall, H. M. Tilford, W. E. Bemis, S. C. T. Todd, H. C. Arnold, R. P. Tinsley, E. T. Bedford, M. F. Elliott, Henry M. Flagler, John D. Archbold, H. H. Rogers, Ealter C. Teagle, James A. Moffatt, W. P. Cowan, Geo. B. Wilson, Jas. R. Taylor, Charles L. Nichols, Walter Jennings, Howard Page, E. T. Wilson, L. J.
48 Drake, one O'Connor, and other persons whose names cannot be ascertained by plaintiff (all of said persons being parties to the conspiracies herein set out), who have succeeded in bringing under their direction and control, and are now controlling a large number of corporations engaged in the business of buying and selling oil and other products of petroleum, who but for this control would be competing companies for such business, and who could and would be competing companies for that business in the State of Texas. That some of the companies controlled by said organization and said persons are the following:

The Standard Oil Company of Indiana.
The Standard Oil Company of Ohio.
The Standard Oil Company of Kentucky.
The Republic Oil Company.
The Continental Oil Company.
The Waters Pierce Oil Company.
The Standard Oil Company of Iowa.

And said organization has secured control of a large number of other oil buying and selling companies, the names of which plaintiff has been unable to ascertain. That said organization and said persons also control a number of oil refineries, among which are the refineries at Whiting, Indiana, Neodesha, Kansas, Corsicana, Texas, and Beaumont, Texas, and Franklin, Pa. They are also in control of the Union Tank Line Company. That all of said companies, including the defendant, are controlled by said organization, and persons with the acquiescence and consent of said companies, and with the consent of defendant company and all of its officer- and stockholders. That by this control all competition between said companies, is destroyed, and especially all competition between said companies in the State of Texas is destroyed; that certain sections and parts of the United States are assigned to said companies
49 for business; that the Waters Pierce Oil Company is permitted to do business in Texas, and with its knowledge and consent and upon its insistence and demand all other companies under said control are excluded from Texas. That by reason of said control said companies, including defendant, are required (and defendant acquiesces in and agrees to the arrangement) to secure all the oil used and sold by them from such refineries, and at such prices as are determined by that organization and said persons, whereby a monopoly in the selling of oil is accomplished, and defendant is excluded (with its consent) from buying oil from refineries not controlled by said organization, and thereby the price is *is* affected and increased; that by said control a number of corporations are brought under one management and said consolidation and affiliation is made for the purpose of and has the effect of monopolization,

controlling and effecting the business in oil and the products of petroleum in Texas, and effecting the prices in said State of said products.

That since the reputed reorganization of the Waters Pierce Oil Company under the charter dated May 29th, 1900, said Company operating under said charter, has repeatedly and continuously violated the laws of the State of Texas in the following particulars and respects:

(2) That the organization primarily incorporated as the Standard Oil Company of Ohio, and which subsequently became merged in the Standard Oil Trust aforesaid, and the Standard Oil Company, another member of said trust, together with the corporations control-ed by it, is domiciled at 26 Broadway, in the City of New York; Through the several corporations is has acquired it controls substantially all the oil business of the United States, including the State of Texas. The United States is parceled out at its pleas-
50 ure to the several corporations under its control for the sale of refined oil, all competition between them being destroyed, and the other branches of the oil business, such as producing and refining oils are handled by the Standard Oil Company directly or through other corporations;

(3) That the connection between the Standard Oil Companies and the Waters Pierce Oil Company has been hereinbefore detailed; that the Standard Oil Company secured control of the company upon its organization, and has exercised control at all times, except when prudential or political reasons rendered it advisable for H. C. Pierce, the other stockholder, to actually or nominally control, and that all this was done with the sanction and acquiescence of defendant and all of its stockholders.

(4) That in carrying out the unlawful agreements hereinbefore detailed, H. C. Pierce, and the managers of the Standard Oil Company have frequently come in conflict; but in all things looking to the complete monopolization of the oil business and the fixing and maintaining prices destroying competition, all of said stockholders and each of said companies have acted in absolute harmony, and said Pierce has never taken any step to protect the company from the unlawful control of the other company, but the acquisition of that control was with the concurrence of said Pierce.

(5) That the division of territory previously agreed upon whereby the business operations of the Waters Pierce Oil Company should be confined to the territory hereinbefore named and whereby neither the Standard Oil Company nor any of the companies under its control (other than the Waters Pierce Oil Company) should sell refined oil and the products of petroleum therein has been insisted upon by the Waters Pierce Oil Company since May 31st, 1900, as before, and has been acquiesced in by said Standard Oil Company and its allied interests and subsidiary corporations
51 under its control and all the oil companies and concerns named in the trust agreement hereinbefore set out all of whom are engaged in the same business as defendant, and has been observed by said Standard Oil Company (except in so far as it may

have secretly and surreptitiously operated in said territory); that during that period said Waters Pierce Oil Company has by and in the State of Texas, through its officers, agents and employees, and through all of its stockholders of said defendant company maintained and undertaken to enforce and has enforced an agreement, understanding and conspiracy which has precluded and prevented other corporations engaged in the sale of oil and its products, from selling oil in said territory, and has thereby maintained and controlled the price of oil and its products and established and maintained a monopoly, and said agreement and said monopoly so established from the time of the organization of the Waters Pierce Oil Company has been maintained by defendant from May 29, 1900.

(6) That the organization of the business at 26 Broadway, New York, of the Standard Oil Company, and its subsidiary companies, consists of a number of persons (all engaged in the conspiracy herein set up) constituting a committee of which one H. M. Tilford was a member; that each of said persons constituting such committee has imposed upon him the particular duty of looking after some one or more of the divisions of the territory of the United States, including the State of Texas, and of the corporations assigned or permitted to do business in that territory; that the general policy of the concern is determined by the members of this committee in conference; that the individual to whom the reports of the operations of the Waters Pierce Oil Company, defendant, were made prior to the putative reorganization was H. M. Tilford, and that instructions as to prices, expenses and the conduct of the business were signed by him or under his direction.

52 That after May 31st, 1900, the Standard Oil Company placed upon the pay roll of Waters Pierce Oil Company one R. H. McNall under the designation of "Commercial Agent," and named his place of business as 75 New Street (which is the back door of the building known as 26 Broadway); that said McNall had been and thereafter continued to be a clerk in the office and under the control of H. M. Tilford. The duty performed by him with reference to the business of defendant was to permit the reports required by the Standard Oil Company of defendant to be addressed to him and to sign the letters of instructions as prepared by the officers of the Standard Oil Company and forward them to the Waters Pierce Oil Company, and the nominal change thus made in the business of the corporation was made for the purpose of rendering more difficult a discovery of the falsity of the affidavit of said H. C. Pierce, and of more efficiently hiding the unlawful character of the business carried on by the defendant and the Standard Oil Company and its allied interests, and carrying out the objects of the conspiracy herein set out.

(7) That in addition to other methods of control and supervision, as herein detailed, the Standard Oil Company has continuously since May 31st, 1900, sent auditors in its own employ to the general officers of the defendant Waters Pierce Oil Company and checked up the books and accounts of the Waters Pierce Oil Company, and made reports thereof to the Standard Oil Company showing every detail of the business of the defendant company; that all of this was done

with the knowledge, sanction and acquiescence of the defendant corporation, and that in order and for the purpose of rendering more difficult the discovery of the falsity of said affidavit of said H. C. Pierce and of concealing the unlawful combination and conspiracy between the defendant and other parties, the auditors sent to
53 St. Louis by the Standard Oil Company were upon its order placed upon the pay roll of the Waters Pierce Oil Company as employees of the defendant Waters Pierce Oil Company; that these auditors were sent to St. Louis at the will and pleasure of the Standard Oil Company in which said action the defendant Waters Pierce Oil Company and all its stockholders had at all times acquiesced.

(8) That since May 29th, 1900, by reason of the ownership and control of 2750 shares of the capital stock of the Waters Pierce Oil Company by the Standard Oil Company, fraudulently and ficticiously held in the name of H. C. Pierce and M. M. Van Beuren, as hereinbefore alleged, the said Standard Oil Company has at all times since that date controlled the said defendant with its sanction and acquiescence and the consent of all its stockholders, as it did prior to that time.

(9) That since May 28th, 1900, as before, the agreement which had theretofore been entered into by and between the Standard Oil Company and H. C. Pierce and the Waters Pierce Oil Company, that the Waters Pierce Oil Company, defendant, should not buy refined oil or other products of petroleum except from the Standard Oil Company, or corporations designated by said company, has been carried out and acted upon by said companies in the State of Texas, and said Waters Pierce Oil Company has thereby been prevented from buying oil and the products of petroleum from refineries in Texas other than those owned and controlled by the Standard Oil Company; that the agreements and conspiracies herein alleged have been enforced and observed by the defendant company and the Standard Oil Company and all the corporations engaged in producing and refining petroleum in the State of Texas controlled by said Standard Oil Company.

That the Standard Oil Company owns and controls the Corsicana Refinery located at Corsicana, Texas, and the Security
54 Oil Company located at Beaumont, Texas, and other refineries in Texas, the names of which are unknown to plaintiff. That said Corsicana Refinery and Security Oil Company are refiners in this State of crude petroleum. That under the terms of the agreement and understanding hereinbefore referred to and is being acted upon and carried out by defendant the Standard Oil Company and its allied and subsidiary corporations said refineries have not been permitted and have not sold their products in the State of Texas to any company operating in said State and engaged in the sale of oil and the products of petroleum other than the defendant company and the agreement and understanding aforesaid has in this respect been acted upon and carried out since the establishment of said refineries and up to the present time.

That under the terms of said agreement and understanding acted upon by said defendant and the Standard Oil Company and its allied

and subsidiary corporations the price at which said defendant buys oil and the products of petroleum is fixed and controlled by the Standard Oil Company, and has been so fixed and controlled at all times since the making of said agreement, and thereby defendant is prevented from buying at a lower or different price than that fixed by the Standard Oil Company and the price of petroleum is thereby effected and controlled.

That since May 31st, 1900, as before, the Waters Pierce Oil Company has observed and operated under an agreement or understanding with the Standard Oil Company and the corporations controlled by it that it would not sell any oil to ships at any port of Texas upon its own account.

That since May 31st, 1900, as before, and continuously and each day since the Waters Pierce Oil Company, for the purpose of carrying out the objects of the conspiracies aforesaid and of securing a monopoly of the oil business in Texas and of destroying
55 all competition therein and of exacting from the people of Texas unreasonable and unconscionable prices for oil and the products of petroleum, has, as set forth in the succeeding paragraphs, bought out competing businesses, has maintained at a number of points oil selling concerns apparently in opposition to it, has made exclusive contracts with merchants by which they were prevented from handling the products of other companies, have cut prices below the costs of oil until competition was destroyed and then recouped by extraordinary increase of prices, has given rebates, gratuities and bribes, has, in connection with the Standard Oil Company, maintained a system of spies, has corrupted the employees of railroads and other concerns; that the methods here i-dicated have and do constitute the course of business of defendant.

That in pursuance and furtherance of the conspiracies hereinbefore alleged, and for the purpose of creating and maintaining a monopoly in the business of refining and selling of refined oils and all the products of petroleum, and for the purpose of destroying all competition between the Waters Pierce Oil Company and all other persons, firms and corporations doing business in the State of Texas in competition with said Waters Pierce Oil Company, plaintiff says that the Waters Pierce Oil Company hereinbefore referred to, bought out competing businesses, doing business in the State of Texas in competition with said Waters Pierce Oil Company, and did maintain at a number of points oil selling concerns apparently in opposition to it, in this, to-wit:

That it entered into the contracts and agreements attached hereto and marked Exhibit "C" for identification, and made a part of this petition, with the persons and corporations named in said contracts and agreements, and for the accomplishment of the purposes
56 therein set forth; and all of said contracts and agreements were enforced and carried out by said Waters Pierce Oil Company and the other persons, firms and corporations parties thereto; that it entered into exclusive contracts with the Eagle Refining Company, W. M. K. Rose, W. A. Smith, C. A. Carpenter, and A. W. Clem, binding the company and each of said individuals not to engage in business in Missouri, Arkansas, Texas, Louisiana west of the

Mississippi, Oklahoma and Indian Territory, or Mexico, for a period of fifteen years; that upon the reputed reorganization of the Waters Pierce Oil Company, defendant, on May 29, 1900, it assumed, ratified and carried out, and in all things enforced said contracts and agreements up to the present time.

That the Waters Pierce Oil Company for the purposes aforesaid, in the year 1896 bought out the business of the Texas Oil and Gasoline Company and of one Roy Campbell, doing business in the City of San Antonio and elsewhere in the State of Texas, and entered into contracts and agreements with the Texas Oil and Gasoline Company and said Roy Campbell whereby said Texas Oil and Gasoline Company was thereafter operated under said name as a competing concern of the Waters Pierce Oil Company, by the Waters Pierce Oil Company, aforesaid; that it was so operated by said Waters Pierce Oil Company until May 29th, 1900; that upon the reorganization and incorporation of the Waters Pierce Oil Company, defendant, on May 29th, 1900, it acquired the said business of the Texas Oil and Gasoline Company and continued to operate it under that name, and for the purposes aforesaid, from that time down until the present time, and in all things ratified and enforced said contracts and agreements and maintained them in full force and effect as aforesaid.

That the Waters Pierce Oil Company entered into many other contracts of this character (the making of such contracts constituting its manner and course of business), all of which contracts
57 have been by defendant, ratified, confirmed and in all things carried out.

That among the other purposes for which the Eagle Refining Company and the Texas Oil and Gasoline Company have been used and utilized by the Waters Pierce Oil Company, defendant, has been to cause said companies to solicit and secure the business of merchants and dealers in oil in the State of Texas who would not patronize the defendant Waters Pierce Oil Company and who were buying oil and petroleum supplies from independent concerns, that is, concerns not dominated and controlled by the Standard Oil Company.

Plaintiff further says that the Waters Pierce Oil Company, defendant, upon its reputed reorganization, entered into and maintained exclusive contracts and agreements with the Eagle Refining Company and the Texas Oil and Gasoline Company, aforesaid, whereby it was agreed that the said Eagle Refining Company and the Texas Oil and Gasoline Company would not for a period of 15 years enter into the business of refining and selling refined oil and gasoline and other products of petroleum in competition with said Waters Pierce Oil Company, defendant, and that said contracts and agreements were in all things carried out and enforced.

That in further pursuance of the unlawful purposes hereinbefore set forth, said Waters Pierce Oil Company, has made exclusive contracts by which it has prevented the handling of the products of other companies, has given rebates secretly, and has unfairly and secretly reduced prices at certain points when competition appeared

at such points, these acts constituting the ordinary course of business of defendant. That course of business is indicated by the following specific instances in the State of Texas: On Jan. 13, 1904, reduced the price of brilliant oil at Rusk, Texas, and at
58 Overton, Texas; Jan. 14, 1904, reduced the price of brilliant oil to less than schedule price at Henderson, Texas; On January 26th, 1904, on account of Gulf Refining Co. competition reduced the price to less than the schedule price at Carthage, Crockett, Gilmer, Nacogdoches, and Winnsboro, Texas, and on account of competition by Richardson-Gay Oil Co., at Mt. Pleasant, Texas; on Jan. 27th, 1904, reduced the price of oil at less than schedule price at Garrison, Texas, on account of Lone Star Oil Co. competition and at Marshall, Texas, on account of Richardson-Gay Oil Co. competition; on Feb'y 1, 1904, reduced the price of refined oil at less than schedule price on account of Richardson-Gay Oil Co. competition; on Feb'y 1, 1904, allowed a secret rebate tc W. E. Crosby on account of Richardson-Gay Oil Co. competition; on Feb'y 9, 1904, allowed a secret rebate to the Nacogdoches Grocery Co.; that on Jan. 14, 1904, said company authorized sales below the schedule price to the larger merchants of Weatherford, Texas, to prevent Richardson-Gay Oil Company from making up a car load; on Jan. 14, 1904, J. M. Radford Grocery Co., at Cisco and other points was allowed by defendant a discount of 12½% on their purchases of refined oil on account of competition; that on Jan. 20, 1904, the Roby Mercantile Grocery Co., of Roby, Texas, was allowed a discount on account of competition of the Lone Star Oil Company; that on Jan. 21, 1904, J. P. Darby of Lampasas, Texas, was allowed a rebate on account of Richardson-Gay Oil Company competition; on Feb'y 21, 1904, Beaumont white-water an inferior oil was put in and sold at Stamford, Texas, under the Eupion Brand on account of Lone Star Oil Company competition; on Feb'y 5, 1904, the schedule prices at Dallas, Texas, were reduced on account of use of inferior oil and on account of the competition of Richardson-Gay Oil Company. That all of the rebates and discounts above set forth were secretly made and in the conduct of unfair competition for
59 the purpose of making more complete the monopoly accomplished and otherwise herein set forth, and for the purpose and destroying unfairly the business of the competing concerns here set forth. That in many hundred cases defendant has pursued a like course, this constituting the ordinary method for the conduct of its business; among the person- to whom rebates were given for the purposes named being W. E. Crosby, J. P. Darby, D. J. Brown and J. F. Younger. That in further pursuance of the unlawful purposes hereinbefore set forth and as a part of its general course and scheme of business and in the further monopolizing of the business in petroleum as a product and in the further unfair destruction of competition, secret and questionable means were used in obtaining information concerning the business of competitors; that one, E. M. Talliafero, of Houston, Texas, was employed by the said Waters Pierce Oil Co. to ascertain from the employees of the railroads of Texas information concerning all shipments of oil by competing

concerns including amount of such shipment, the car number and initial, and was also employed to ascertain from the Clerks in the employe of the United States Custom Service at Sabine Pass and Port Arthur, Texas, the amount of all shipments of oil and the consignors and consignees thereof destined for Standard Oil territory; that the information thus obtained was furnished by the Waters Pierce Oil Co. to the Standard Oil Co. in exchange for like information secured by the Standard Oil Co. with reference to shipments in to the Waters Pierce Oil Co. territory.

Plaintiff says that on February 2, 1904, defendant entered into a contract with Paul W. Joplin, whereby the said Joplin bound and obligated himself to make no purchases of oil from anyone except defendant; that on January 25, 1905, said company entered into a contract with the Austin Electric Street Railway Company,
whereby said Company agreed to make no purchases of oil
60 except from defendant; that the making of such contracts constitutes the ordinary course of business of defendant, and a large number of such contracts have been made by defendant; said contracts are made for the purpose of monopolizing the oil business and are calculated to effect that end.

That by virtue of the facts hereinbefore set out the following, among other unlawful results, have been accomplished:

(1) The Waters Pierce Oil Company, which alone has been granted a permit to do business, is dominated and controlled and its business dictated by the Standard Oil Company of New Jersey, which has not been granted a permit to do business in Texas.

(2) A large number of individuals and corporations doing business in the sale of oil and petroleum products are excluded from doing business in the State and competition is lessened.

(3) The price of oil has been maintained at an exorbitant figure, being from ten to twenty-five per cent. higher than that of oil sold in the territory not claimed by defendant.

(4) Competition has been suppressed and business destroyed in the State by unconscionable and unfair means.

(5) A substantially complete monopoly in petroleum products has been established, the defendant having sold during the period of ten years past at least ninety five per cent. of all petroleum products sold.

Plaintiff says that refined oil and the other products of petroleum are articles of prime necessity to all the people of Texas.

Plaintiff further avers:

That as hereinbefore alleged the Waters Pierce Oil Company is a corporation created under and by virtue of the laws of the State
of Missouri, and was, as hereinbefore alleged, granted a per-
61 mit to transact business in the State of Texas.

That in granting said permit the State of Texas conferred upon said corporation the right to exercise in Texas only such powers as are granted by law to such corporations created for the purposes set forth in its said permit.

That said corporation in pursuance of its business immediately established stations and officers in the counties, cities, towns and

villages of Texas for the transaction of its business and supplying to the people of Texas oils and the products of petroleum; that in abuse of its corporate rights, franchise and powers, it forthwith began and has since maintained a war of extermination of all competitors within this State as hereinbefore set forth; that if formed alliances and conspiracies with divers other corporations within and without this State as hereinbefore set forth whereby it was enabled to establish and has established, a monopoly of said oil business in this State; that it has by a system of unfair competition and by various devices hereinbefore set forth, destroyed the business of its competitors; that at points where no competition existed said Waters Pierce Oil Company arbitrarily and for the purpose of recouping its losses at competitive points sold oils and the products at extraordinary and exorbitant prices far above the true market value thereof, and by reason of its monopoly of said business wrought great oppression upon the people of this State; that by reason of all the acts and conspiracies herein alleged it has succeeded in establishing a monopoly of the business of dealing in and selling oil within this State in violation of the Constitution of this State and the common law in force in this State.

That all the unlawful acts, combinations, agreements, conspiracies and monopolies hereinbefore recited are acts committed in
62 abuse and violation of the corporate rights and powers granted to said defendant by the State of Texas and is at the common law in force in this state such an abuse of its power, rights and franchises as a corporation, and the rights of the people of the State under its constitution and laws as to amount to a misuser of its corporate rights and powers and by reason thereof it has forfeited its rights to do any further business in this State.

Plaintiff says that by the acts, doings and undertakings hereinbefore set out the Waters Pierce Oil Company has violated the Constitution, the Statutes and the common law of the State of Texas, and has become liable to the penalties provided by law and to a cancellation of its permit to do business in this State.

Plaintiff says that defendant has especially violated the provisions of the law approved May 28, 1899, Chapter 146 of the Acts of 1899, and plaintiff says that defendant, a corporation transacting and conducting a business in this State, created, entered into and became a member of and party to a pool, trust, agreement, combination, confederation, and understanding with another and other corporations and with individuals and persons to regulate and fix the price of an article of manufacture, merchandise, and commodity, and said defendant entered into and became a member of and a party to a pool, trust, agreement combination, confederation and understanding with the Standard Oil Company and its officers and agents and many other corporations, the names of which plaintiff is unable to state, to regulate and fix the price of refined oil and the products of petroleum; and plaintiff says that defendant became and was continuously from the 31st day of May, 1900, a monopoly and was a party to a union, combination and consolidation and affilia-

tion of capital, credit, property, assets, skill and acts by and
63 between persons and corporations, to-wit: the Standard Oil Company and its agents and employees and other corporations, as aforesaid, and the defendant and its agents and officers, to regulate and fix the price of an article of manufacture, merchandise, commodity and product of mining, to-wit: the price of oil and the products of petroleum and to fix and limit the amount and quantity of such article, and to prevent competition in the sale and mining of said article, and said corporation affiliated, amalgamated and consolidated for the accomplishment of said illegal purpose and for said purposes the said Standard Oil Company acquired and after the 31st day of May, 1900, retained with the consent of defendant company and its stockholders the stock of said defendant; and said defendant was thereby guilty of a conspiracy to defraud and of a conspiracy to form or secure a trust or monopoly in restraint of trade; and said defendant being engaged in the buying and selling of the products of petroleum entered into a pool, and trust, agreement and combination, confederation, association and understanding by and with the Standard Oil Company of New Jersey and the corporation controlled by it to control and limit the trade in the products of petroleum and to limit competition in such trade; and said unlawful acts were done and performed by defendant upon each and every day from the 31st day of May, 1900, to the 31st day of March, 1903, and thereby said defendant became liable to pay the State of Texas Five Thousand Dollars ($5000) per day for each of such days, and became liable to have its permit to do business in this State cancelled.

That by said acts, hereinbefore set out, continued and carried out continuously since the 31st day of March, 1903, up to this time the said defendant has especially violated the act of March 31st, 1903, and became liable to the penalties thereof; that defendant has thereby became a party to a trust and to a combination of
64 capital, skill and acts by and between itself and the Standard Oil Company and the corporations controlled by it to create and which tends to create and carry out restrictions in trade and commerce, to-wit: the trade and commerce in petroleum and its products, and in the preparation of said products for market, and which created and tended to create and carry out restrictions in the free pursuit of a business authorized and permitted by the laws of this State, to-wit: the business of buying and selling the products of petroleum and to fix, maintain, increase and reduce the price of merchandise, produce and commodities, and to prevent and lessen competition in the manufacture, sale and purchase of mrechandise and commodities and to lessen competition, and to fix and maintain a standard and figure by which the price of an article is affected and controlled, and to make, enter into, execute and carry out or maintain a contract and agreement by which the parties bound themselves not to sell a certain article, to-wit: the products of petroleum, and by which they affect and maintain the price of such articles and preclude free and unrestricted competition among themselves and others in this State in the sale of said products and pooled, com-

bined and united their interests in connection with the sale and purchase of such commodities, and by which some of said parties agreed to abstain from continuing in business and from the sale or purchase of certain commodities in the State of Texas, and said defendant and said Standard Oil Company and the companies controlled by it entered into a combination and consolidation by which the directors of the affairs of two and more corporations were brought under the same management and control for the purpose of producing a trust, and said Standard Oil Company acquired a controlling interest in the stock of defendant corporation for the purpose and with the effect of preventing competition, and said defendant and said
65 Standard Oil Company entered into a conspiracy in restraint of trade. That all of said illegal acts were committed and performed by defendant upon each of the days from the 31st day of March, 1903, to this time, whereby it has become liable to pay the State of Texas penalties to the amount of $50.00 per day for each of said days, and has become liable to have its permit to do business in this State cancelled.

Plaintiff prays that it have judgment cancelling the permit issued to defendant on the 31st day of May, 1900, and for an injunction restraining it from doing any business other than an interstate business within this State, and that it have judgment for the sum of $5,239,000.00, penalties, and it prays for costs and for general relief.

R. V. DAVIDSON,
*Attorney General.*
JEWEL P. LIGHTFOOT,
*Assistant Attorney General.*
JOHN W. BRADY,
*County Attorney of Travis Co.*
GREGORY & BATTS AND
ALLEN & HART,
*Attorneys for the State.*

66 EXHIBIT C.

This agreement, made and entered into at the City of Cleveland, State of Ohio, this the 5th day of October, 1894, by and between the Eagle Refining Company, a corporation organized under the laws of the State of Ohio, party of the first part, S. S. Drake of the City of Bedford, State of Ohio, A. G. Carpenter, W. A. Smith, and W. H. K. Rose, of the City of Cleveland, State of Ohio, and A. W. Clem of the City of Dallas, State of Texas, parties of the second part, and the Waters Pierce Oil Company, a corporation organized under the laws of the State of Missouri, party of the third part, witnesseth: That in consideration of the original agreement between the said Eagle Refining Company and the said Waters Pierce Oil Company, which is hereto attached and made a part hereof, and the payment of the Eagle Refining Company of the sums of money required by the said agreement to be paid to it by the said Waters Pierce Oil Company, to-wit: the sum of ten thousand four hundred and ninety four dollars and nineteen cents, receipt of all which is hereby ac-

knowledged by it; the said Eagle Refining Company has sold, assigned, transferred, set over and delivered, and by these presents does sell, assign, transfer, set over and deliver unto the said Waters Pierce Oil Company, all its plant, stock, storage tanks and merchandise, heretofore owned and used in the business carried on by it in the State of Texas, enumerated in said original agreement and the inventory hereto attached and made a part hereof, together with the good will of said business in said State.

And for the said consideration, the said Eagle Refining Company gives and grants to the said Waters Pierce Oil Company the exclusive right and authority to use in and in connection with, the business carried on by the said Waters Pierce Oil Company, in the State of Texas, Missouri, Arkansas, Louisiana, west of the Mississippi River, the Indian and Oklahoma Territories and the Republic of Mexico, its said name of Eagle Refining Company, and all its brands, labels, and trade marks heretofore used by said Eagle Refining Company in said States, Territories and Republic, or either of them.

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And for the said consideration and other valuable considerations moving to them and each of them, the said Eagle Refining Company and the said S. S. Drake, A. G. Carpenter, W. A. Smith, W. H. K. Rose and A. W. Clem, who are respectively the President, Vice President, Secretary, Treasurer, General Manager and Agent of the said Eagle Refining Company covenant and agree to and with the said Waters Pierce Oil Company, that neither the said Eagle Refining Company nor the said parties of the second part shall or will for a term of fifteen years from and after the date of these presents, directly or indirectly, manufacture, refine, buy, sell or deal in, petroleum or other oils or their products, or any goods, wares, or merchandise, manufactured, handled or dealt in, by the said Waters Pierce Oil Company, in the said States of Missouri, Arkansas, Louisiana, west of the Mississippi River, Texas, and the Indian and Oklahoma Territories and the Republic of Mexico.

In witness whereof, the said Eagle Refining Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed, and the said parties of the second part have hereunto set their hands—all done at the said City of Cleveland the day and year first above written.

(Signed) THE EAGLE REFINING CO.
S. S. DRAKE, Pres't.
S. S. DRAKE.
A. G. CARPENTER.
W. A. SMITH.

68 (Signed) WM. H. K. ROSE.
A. W. CLEM.

For value received, the undersigned, A. W. Clem, has released, assigned, transferred and set over, and by these presents, does release, transfer, and set over, to the said Waters Pierce Oil Company whatever interest he has, holds or owns in and to the property, business, good will, labels, trade marks, etc., mentioned in the foregoing instrument.

In witness whereof, I have hereunto set my hand at the City of Cleveland, State of Ohio, the 5th day of October, 1894.

A. W. CLEM.

WATERS PIERCE OIL COMPANY,
ST. LOUIS, MO., *September 13th*, 1894.

(*Memorandum of Agreement.*)

Mr. W. H. K. Rose, General Manager, Eagle Refining Co. Cleveland, Ohio.

DEAR SIR: In accordance with your verbal understanding of yesterday, we are to purchase the Eagle Refining Company of Cleveland, Ohio's plant, stock, business, etc., situated in the State of Texas, and are to pay for same their present value, which shall be actual costs where located, according to your inventory to be furnished us. It is understood that if the plant referred to cost, according to your books more than $5,600.00 we are not to pay you more than that amount for it; also, that if any part of the plant enumerated in your
69 inventory and as shown by your books is missing, its cost value is to be deducted from the $5,600.00.

In addition to the $5,600.00 or less above provided to be paid you we are to purchase from you at your actual costs two storage tanks now at Ft. Worth, Texas, also one lot of ground, at Oak Cliff, Texas. We are also to receive from and pay to you your actual costs for your merchandise on hand everywhere located in the State of Texas. All cash, notes, books, accounts or other assets belonging to your Texas business is to remain your property and Mr. A. W. Clem, may, while in our employ, collect and handle such assets for your account as you may direct without costs to you so far as his services are concerned.

A transfer of this property is to be made to us by you on or before October, 1st, 1894, and a legal contract executed by each of us providing for the Eagle Refining Company of Cleveland, Ohio, and the individuals now connected therewith, refraining from transacting any business in petroleum or other oils and goods handled by this Company in the States of Missouri, Arkansas, Louisiana west of the Mississippi River and Texas, the Indian and Oklahoma Territories and Republic of Mexico during a term of fifteen years from October 1st, 1894; also that the Waters Pierce Oil Company are to have the privilege of continuing and enlarging the present business of the Eagle Refining Company of Cleveland, Ohio, in that name, also the use of its trade marks, brands, etc., within the States of Missouri, Arkansas, Louisiana west of the Mississippi River, and Texas, the Indian and Oklahoma Territories and the Republic of Mexico.

It is further understood that so much of the $2500.00 which we are to pay under our agreement of this date with A. W.
70 Clem shall be paid by us to you as may be necessary to make good to you Mr. Clem's acknowledged indebtedness to you.

Your- truly,
(Signed) H. C. PIERCE, *President.*

We hereby accept the above agreement.
(Signed) WM. H. K. ROSE.

Subject to approval of the company.

CLEVELAND, O., *Oct.* 1*st*, 1894.

This is to certify that at a special meeting of the directors of the Eagle Refining Co. held in the City of Cleveland, Ohio, on the first day of October, 1894, the following resolutions were passed:

Resolved: That we hereby accept the proposition of the Waters Pierce Oil Co., of St. Louis, Mo. for the purchase of our branch in Dallas, Texas, and other towns named in said proposition, including also such other territory as named therein. And we hereby authorize our General Manager, W. H. K. Rose, to accept said proposition, in behalf of this Company, with authority to execute all the necessary papers for transferring and completing the same; and for the purpose of conveying the real estate at Dallas, Texas, the Vice President of this Company, A. G. Carpenter, Esq., and the Secretary, W. A. Smith, are hereby authorized and empowered to execute a deed conveying said premises in fee simple.

In witness whereof, I hereunto set my hand as the Secretary of said Company, and attach the corporate seal hereto this 1st day of October, 1894.

(Signed) W. A. SMITH, *Sec'ty.*

[Seal of Eagle Refining Co.]

71 This memorandum of agreement made and entered into at the City of St. Louis, State of Missouri, this 5th day of October, 1894, by and between the Waters Pierce Oil Company, a corporation, organized under the laws of said State, the first party, and A. W. Clem, of the City of Dallas, State of Texas, the second party, witnesseth:

That the first party has employed, and by these presents does employ the second party as a manager, assistant manager, agent or salesman, of or in a branch or department of its business in Texas, or elsewhere, or in such other like capacity, as the first party, or its duly authorized officers or agents, may from time to time determine, for a term of three years, beginning on the first day of October, 1894, and ending on the first day of October, 1897, and promise- and agrees to pay the second party, for the faithful performance of the duties and services of said employment, as prescribed herein, the sum of two hundred and fifty dollars ($250.00) per month, payable at the end of each month.

That the said A. W. Clem has accepted and by these presents does accept said employment, and promises and agrees to faithfully perform the duties and services thereof as they may from time to time be prescribed and directed by the authorized officers and agents, and the rules and regulations of the first party.

In witness whereof, the first party has caused these presents to be executed by H. C. Pierce, its president, and the second party has

hereunto set its hand, in duplicate, the day and year first above written.

A. W. CLEM.
WATERS PIERCE OIL CO.,
By H. C. PIERCE, *P't.*

72 (Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Plaintiff's Second Amended Original Petition. Filed April 29, 1907. D. J. Pickle, Clerk.

*Defendant's Third Amended Original Answer.*

Filed May 8, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

In the above entitled and numbered cause, now comes the Waters Pierce Oil Company, which was granted a charter and became duly incorporated under the laws of the State of Missouri on the 29th day of May, 1900, and which was, in due form of law, granted a permit to do business in the State of Texas on the 31st day of May, A. D. 1900, and whose local agent, W. T. Quillan, was served with the writ of citation in this suit, and, leave of the court having been first obtained, files this, its Third Amended Original Answer herein, in lieu of its Second Amended Original Answer filed herein on the 28th day of November, A. D. 1906, and for answer herein says:

I.

By way of pleas in abatement of this action on account of matters appearing upon the face of plaintiff's petition this defendant says:

1. This defendant excepts to plaintiff's petition, and says that there is a misjoinder of causes of action therein, in that
73 the State attempts to set up certain alleged frauds growing out of the dissolution of another corporation of the same name as this defendant, and certain other alleged frauds charged to have been committed in connection with the procurement by this defendant of the permit to do business in Texas issued to this defendant by the Secretary of State of the State of Texas on May 31st, 1900, all of which allegations appear to be pleaded in the form of an equitable action to set aside and rescind defendant's said permit to do business in Texas, and in the same partition, and in one continuous or common count, the State sets up certain alleged acts and offenses alleged to have been committed by this defendant in alleged violation of the anti-trust act of 1899, and certain other alleged acts and offenses alleged to have been committed by this defendant in al-

leged violation of the anti-trust act of 1903, and upon which the State seeks to recover penatlies and to cancel defendant's permit to do business in Texas, and in the same common or continuous count the State alleges certain acts of defendant alleged by it to constitute a misuser of its said corporate franchise and permit to do business in this State, such as, it is claimed by the plaintiff, entitled plaintiff to cancel its said permit to do business in this State independently of the penal statutes of this State under which such penalties and cancellation of permit are sought, as above set forth, thus presenting several and wholly distinct causes of action, not depending upon the same state of facts, and which, if tried together will produce a great confusion of issues to the prejudice of this defendant, and this defendant says that the State should be put to an election as to which of said several causes of action it will prosecute in this suit, and that it be required to replead and omit from the petition all matters not pertinent to the particular cause of action upon which it shall rely, and defendant prays that this be done.

2. This defendant further excepts to plaintiff's petition,
74 and says that the same is duplicitous and insufficient in law, in that it fails by any positive allegation to set out or show whether it sues this defendant as a corporation duly chartered, or whether it proposes to sue defendant as a partnership or association of persons and to attack its charter as issued by the State of Missouri as void, and thus seek to set aside its permit to do business in Texas on the ground that its said charter was illegally issued; and, therefore, there is a failure by the State to designate and identify the party or parties sued herein with sufficient certainty to enable this defendant to properly plead or answer herein, and of this exception defendant prays judgment and moves the Court to strike out the plaintiff's petition.

3. This defendant further specially excepts to plaintiff's petition and says that the same is duplicitous and contradictory in all allegations with reference to all acts and doings by or with respect to the Waters Pierce Oil Company and charged to have been committed prior to the 29th day of May, A. D. 1900, when, according to the petition, this defendant first became incorporated on that date, for the reason that in all such allegations the said acts and doings are alleged to have been performed by or with respect to this defendant notwithstanding this defendant was not in existence, and there is, therefore, such confusion and contradiction upon the face of plaintiff's petition as to require that it be stricken out, and defendant prays the court that this be done.

4. This defendant further excepts to plaintiff's petition on account of the allegation contained in the third paragraph of subdivision five thereof, wherein it is charged "That in further pursuance of the conspiracy aforesaid, etc., the manager, officers and agents of the Standard Oil Company, the Waters Pierce Oil Company, and its officers, and H. C. Pierce and the other con-
75 spirators hereinbefore mentioned determined to go through the form of dissolving the corporation known as the Waters Pierce Oil Company, and of creating a new corporation for the

holding of property and the transaction of the business of the Waters Pierce Oil Company and carrying out the plans and conspiracies aforesaid," and on account of the allegations contained in the fourth and fifth paragraphs of said subdivision of the petition and says that the petition is insufficient and that this suit should be abated for the reason that none of the parties engaged in the said alleged conspiracy and in the organization of the defendant are made parties to this suit, and hence, this court has no jurisdiction to adjudicate with respect to their acts, doings or rights in the premises, and this defendant further says that if it did not become a corporation *de jure* by reason of the incorporation sought to be attacked by plaintiff in said portion of the petition, then the only persons who could be made responsible and liable for the said alleged frauds and conspiracies are not made parties to this action, and defendant further says that it appears from the petition that it could not have participated in a fraud precedent to its creation as a legal corporation, and of this defendant prays judgment of the Court.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. O'DELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

J. D. JOHNSON,
H. S. PRIEST,
*Of Counsel.*

76 II.

And for further answer herein, if the Court shall refuse to strike out the plaintiff's petition and dismiss this suit, then defendant excepts to plaintiff's petition as a whole and says that the same is insufficient in law to require it to answer herein and shows no cause of action against defendant, and of this defendant prays judgment of the court.

And by way of special exception to plaintiff's petition this defendant says:

1. This defendant excepts to the plaintiff's petition in so far as it is thereby sought to rescind defendant's permit to do business in this State on account of alleged fraud in the procurement of such permit, and says that the same shows no cause of action for such rescision, and of this defendant prays judgment of the Court.

2. Defendant excepts to plaintiff's petition in so far as it is thereby sought to cancel defendant's permit to do business, in this State, independently of the provisions of the Acts of May 25th, 1899, and March 31st, 1903, on account of the alleged misuser of its corporate franchise, and says that the same shows no cause of action for such cancellation, and of this defendant prays judgment of the Court.

3. Defendant especially excepts to all allegations in plaintiff's petition whereby it is sought to rescind this defendant's permit to transact business within this State on account of alleged illegality in the dissolution of the first Waters Pierce Oil Company and on account of the alleged illegality in the incorporation of this defend-

ant on May 29th, 1900, and says that the same are insufficient to show any cause of action for such rescision for the reason that it
77 appears from plaintiff's petition that the dissolution of said old or first Waters Pierce Oil Company and the incorporation of this defendant, by the issuance of a proper certificate of incorporation by the Secretary of State of the State of Missouri were evidenced by properly certified copies under the hands and seal of the proper public officers of the State of Missouri, and under the great seal of said State, and filed in the office of the Secretary of State of the State of Texas, and by him accepted as such, when said permit was issued, and defendant says that the same became, were, and are conclusive upon the State of Texas and all of its officers and courts, under the provisions of Section 1, Article IV of the Constitution of the United States, which declares that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State," and this defendant further says that until its said articles of incorporation and the charter granted to it by the State of Missouri are set aside and cancelled in some proper proceedings in said State, its proper legal existence cannot be drawn in question as is here attempted, and it here invokes the above provision of the Constitution of the United States as a defense herein, and prays the Court to strike out all allegations in said petition with respect to the dissolution of said old or first Waters Pierce Oil Company, and as to the manner of organization and incorporation of the present or new Waters Pierce Oil Company, and particularly to strike from said petition all of subdivision five thereof, and, if the Court should refuse to strike out all of such allegations or refuse to strike out all of said subdivision five of plaintiff's petition, then to strike out all the allegations contained in plaintiff's petition, and all the allegations contained in said subdivision five of plaintiff's petition whereby plaintiff attempts to question or deny the validity of the dissolution of said old or first
78 Waters Pierce Oil Company or to question or deny the legality or validity of the organization and incorporation of this defendant, and of this defendant prays the judgment of the Court.

4. Defendant excepts to all the allegations contained in plaintiff's petition with reference to the affidavit of the President of this defendant alleged to have been made and filed with the Secretary of State of this State at the time of the application of this defendant for a permit to do business in this State on May 31st, 1900, and all allegations contained in the petition with reference to representations alleged to have been made by the President of this defendant to the Secretary of State of this State at the time of such application for such permit, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, for the reason that it affirmatively appears from plaintiff's petition that defendant was duly chartered as a corporation under the laws of the State of Missouri, and authorized by its charter to transact business in this State, and was such a corporation as was permitted by the laws of this State to transact business in this State,

and that it further appears from plaintiff's petition that defendant, at the time of filing its said application for such permit, filed with the Secretary of State of this State a duly certified copy of its articles of incorporation under the laws of the State of Missouri, and defendant says that under the provisions of Article 745, Revised Statutes of this State, and in force at said time, it thereupon became and was the duty of the Secretary of State of this State to issue to this defendant a permit to do business in this State, and that the Secretary of State had no discretion with reference to the issuance of such permit, and had no warrant or authority in law to make any inquiry of any character relative to this defendant as a condition precedent to the issuance of such permit, but that, upon the presentation
79 of said certified copy of its charter, defendant was entitled to a permit to do business in this State as a matter of right, and that, therefore, any inquiry as to the said alleged affidavit or any of the representations alleged to have been made by the president of this defendant to the Secretary of State becomes immaterial and irrelevant, and of this special exception defendant prays judgment of the court and moves the court to strike out all allegations contained in plaintiff's petition with reference to the said alleged affidavit and the said alleged representations and the alleged falsity thereof.

5. In the event that the immediately preceding special exception should be overruled, then defendant excepts to all allegations contained in plaintiff's petition with reference to the representations alleged to have been made by the President of this defendant to the Secretary of State of this State at the time of the application of defendant for a permit to do business in this State, other than the representations contained in said affidavit set out in plaintiff's petition, and defendant says that all such allegations are, for the reasons stated in the immediately preceding special exception, immaterial and irrelevant to any issue in this case and show no cause of action in favor of plaintiff, and of this special exception defendant prays judgment of the Court.

6. This defendant specially excepts to plaintiff's petition, and to all parts and paragraphs thereof, alleging acts and doings by this defendant, or other persons or corporations in alleged violation of the provisions of the Act of the Legislature of the State of Texas, approved May 25th, 1899, Chapter 146, of the General Laws of the State of Texas, passed at the regular session of the Twenty-sixth Legislature, for the reason that said Act was and is void and of no force as a law, because by its terms it was enacted as, and
80 made cumulative, of, and in continuance of the then existing Act of the Legislature of the State of Texas upon the same subject, approved April 30th, 1895, Chapter 83, of the General Laws of the State of Texas, passed at the regular session of the Twenty-fourth Legislature, in which said last named Act it was provided that said Act should not be held to apply to live stock and agricultural products in the hands of the producer or raiser, nor to be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages, and de-

fendant says that because of the said exceptions contained in said last named enactment and because said act of May 25th, 1899, was made cumulative of said then existing statute upon the same subject, the said exempted classes so exempted from the provisions of said Act of April 30th, 1895, were excepted from the provisions of said Act of May 25th, 1899, and for this reason said Act of May 25th, 1899, was and is violative of the Constitution of the United States, and particularly of the Fourteenth Amendment thereof, in that it seeks to deprive this defendant of its property without due process of law and seeks to deny to this defendant the equal protection of the laws, and of this special exception defendant prays judgment of the court.

7. This defendant further specially excepts to all parts and paragraphs of plaintiff's petition whereby it is sought to recover penalties or to forfeit defendant's permit to do business in this State, because of anything alleged to have been done by it in violation of said Act of May 25th, 1899, because said Act of May 25th, 1899, was and is void for the reason that at the same session of the Legislature of the State of Texas, at which said Act was passed, and by an Act approved May 27th, 1899, Chapter 153 of the General Laws of the State of Texas, passed at the said regular session of the Twenty-sixth Legislature, another act was passed upon the same subject, which provides that it shall be lawful for any and all
81 persons engaged in any kind of work, or labor, manual or mental, or both, to associate themselves together and form trade unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service in their respective pursuits and employments, and this defendant says that by said last mentioned Act the exceptions of said Act of April 30th, 1895, if not carried forward as part of said Act of May 25th, 1899, in terms, were enlarged and increased, and it thereby became lawful for all classes of persons including manufacturers, merchants, and dealers in coal oil and the products of petroleum and other commodities, who should in conducting their said businesses, give personal attention thereto and labor with hands or brain in the conduct of their said businesses, and for all persons engaged in the raising of agricultural products or live stock, and who, in conducting their said businesses, should give their personal attention thereto and labor with hands or brain in the conduct of such businesses, to enter into any kind of combination, association, pool of agreement with reference to their said businesses, and, wherefore, defendant says that said act of May 25th, 1899, because of the said act of May 27th, 1899, was and is a violation of the Constitution of the United States, and particularly of the Fourteenth Amendment thereto, in that it seeks to deprive this defendant of its property without due process of law and denies to this defendant the equal protection of the laws, and of this special exception this defendant prays judgment of the Court.

8. This defendant further excepts to plaintiff's petition and to all parts and paragraphs thereof setting up alleged acts and doings by this defendant and others in alleged violation of the provisions of

the act of the Legislature of the State of Texas approved March 31st, 1903, because said Act was and is unconstitutional and void, for the reason that said prior act of May 27th, 1899, exempting
82 all persons, who may labor with their hands or brain in conducting their businesses, from the operation of all laws upon the same subject, was not repealed by the said Act of March 31st, 1903, and must therefore, be taken as a part of said Act of March 31st, 1903, and because of such exemptions created by said Act of May 27th, 1899, said Act of March 31st, 1903, is violative of the Constitution of the United States, and particularly of the Fourteenth Amendment thereof, in that it seeks to deprive this defendant of its property without due process of law, and seeks to deny to defendant the equal protection of the laws, and of this special exception defendant prays judgment of the Court.

9. This defendant further excepts to plaintiff's said petition and to all parts and paragraphs thereof by which it is sought to hold this defendant subject to the provisions of the said act of March 31, 1903, and to cancel its permit to do business in this State and to recover penalties against it, on account of the alleged holding or ownership by the Standard Oil Company of New Jersey of a majority of its stock, because, according to the allegations in plaintiff's petition, said stock was so held and owned by said Standard Oil Company at and long prior to the passage of said Act of March 31, 1903, and its ownership of said stock, being a vested right, and not in violation of the laws of the State of Texas when defendant's permit to transact business in Texas was granted to it on May 31st, 1900, it was not competent or within the constitutional power of the Legislature of the State of Texas to interfere with such ownership, or divest said Standard Oil Company of its said property in said stock, or to make it an offense by this defendant subjecting it to penalties and to a forfeiture of its said permit, for such vested and prior ownership to continue, and that said Act of March 31st, 1903, is violative
83 of the Constitution of the United States, for the reason that it is both *ex post facto* and retroactive in its operation and for the additional reason that if given the effect of prohibiting the continuance of such ownership of said stock by said Standard Oil Company and of making it an offense on the part of this defendant for such holding to continue, it would deprive this defendant of its property without due process of law and deny to this defendant the equal protection of the laws and impair the obligations of a contract, contrary to paragraph 1, Section 10, Article I, of the Constitution of the United States, and contrary to the provisions of Section 1 of the Fourteenth Amendment thereto, and for these reasons this defendant says that it is apparent that all allegations in said petition with respect to the alleged ownership of defendant's stock by the Standard Oil Company should be stricken out, and of this special exception defendant prays judgment of the Court.

10. This defendant further excepts to plaintiff's petition, and to all parts and paragraphs thereof, which seek to hold this defendant liable to penalties and a forfeiture of its permit to do business in this State because of the alleged agreement or understanding by which,

it is alleged, that, in consideration of defendant purchasing all of its supplies from said Standard Oil Company, said Standard Oil Company agreed that defendant should be permitted to sell its products in Texas, without competition or interference by said Standard Oil Company, because it affirmatively appears from the petition that said Standard Oil Company was and is a citizen of the State of New Jersey, and that it has never obtained a permit to do business in the State of Texas, and it is not alleged that it ever contemplated entering the State of Texas to do business therein in competition with defendant, or that it could have obtained a permit so to do,
84 and therefore, it appears that an agreement such as alleged, if made, could not be construed as violating any laws of the State of Texas, without giving to such laws an extra-territorial effect and operation, binding upon the citizens of other States, and with respect to inter-state commerce, and in violation of the Constitution of the United States, and of this special exception defendant prays judgment of the Court and moves the Court to strike out all allegations in the petition with respect to said alleged agreement and understanding with said Standard Oil Company.

11. This defendant specially excepts to plaintiff's petition, and to all parts and paragraphs thereof, which seek to charge this defendant with having violated any law of the State of Texas, because of any or all of the alleged acts, agreements and understandings with said Standard Oil Company, or because of the alleged ownership of its stock by said Standard Oil Company, because it affirmatively appears from the petition that said Standard Oil Company was not such a corporation as could qualify and lawfully receive a permit to do business in this State, and, therefore, any such act, agreement or understanding so alleged to have been made by defendant with said Standard Oil Company could not, if made, affect trade or commerce in Texas or be held to be in restraint thereof or in any manner violative of the laws of the State of Texas, and of this special exception defendant prays judgment of the court, and moves the court to strike out all such allegations.

12. This defendant further excepts to plaintiff's petition, and to all parts and paragraphs thereof which seek to charge it to have been a violation of any of the anti-trust laws of the State of Texas for defendant, as a dealer in manufactured articles, to demand of the manufacturer of such articles, as a condition to the purchase thereof by defendant, that if, the manufacturer, should not engage in business in competition with defendant, as a dealer, and defendant
85 says that, if the statutes of the State of Texas are susceptible of the construction contended for by the State in this respect, that such statutes violate the fundamental and universal rules of commerce between two distinct classes of persons, viz: manufacturers and those who deal in the products of such manufacturers, and to so construe said statute would be to cause the same to contravene the Constitution of the United States and to deprive the citizen of his liberty and property without due process of law and would be an attempt upon the part of the State of Texas to deprive this defendant

of its liberty and property without due process of law, and of this special exception defendant prays judgment of the Court.

13. Defendant further excepts to plaintiff's petition and to all parts and paragraphs thereof wherein and whereby the plaintiff seeks to charge an offense or offenses against its laws against this defendant by reason of the alleged agreement on the part of defendant to buy all of its supplies from said Standard Oil Company and corporations controlled by it, and defendant says that all such allegations are insufficient, because it is not alleged where such contract or agreement was made, nor where nor how it was to be performed, and it does not sufficiently appear from the allegations of the petition that the said alleged contract and agreement was not made by this defendant in the State of Missouri with said Standard Oil Company in the State of New Jersey, and to be performed by delivery of the commodities from some other state in the unbroken packages in which they were to be shipped to defendant in Texas, and it does not appear but that said entire transaction and alleged series of transactions involved wholly and in every detail matters of inter-state commerce, to which the local statute of this state can have no application, and of this special exception defendant prays judgment
86 of the court and moves the court to strike out all allegations the petition with reference to the alleged purchase by defendant of its supplies and with respect to the said alleged agreement with said Standard Oil Company of New Jersey.

14. Defendant further excepts to so much of plaintiff's petition as prays for the recovery of penalties against this defendant on account of the alleged acts of fraud in obtaining its permit to do business in this State, and says that such acts, if committed, would give to plaintiff no right of recovery of penalties against this defendant, and of this special exception defendant prays judgment of the Court.

15. Defendant specially excepts to so much of plaintiff's petition as prays for the recovery of penalties against this defendant on account of alleged violations of the common law of this state, and the Constitution of this State, and says that said alleged violations of the common law of this State and of the Constitution of this State, if committed, would give to plaintiff no right of recovery of penalties against this defendant, and of this defendant prays judgment of the Court.

16. Defendant specially excepts to all of the allegations contained in plaintiff's petition whereby it is sought to recover penalties of this defendant, because of the alleged holding of its stock by any other person or corporation in alleged violation of the statutes of this state, and says that the same are insufficient for the reason that it is not made to appear that defendant, by the law of its domicile, had any control over its stock or right to prevent anyone from holding its stock, or that by any means it could have prevented any other person or corporation from holding such stock, and to hold this defendant liable for penalties on account of such alleged holdings by other corporations of its stock, and without showing that defendant had in its power the means of preventing such holding would be

violative of the Constitution of the United States in that it
87 would deprive defendant of its property without due process of law and deny to defendant the equal protection of the laws, and of this special exception defendant prays judgment of the Court.

17. This defendant specially excepts to all portions of plaintiff's petition whereby it is sought to recover penalties of this defendant on account of the alleged ownership by the said Standard Oil Company of shares of its stock, and says that the same are insufficient for the reason that it affirmatively appears from plaintiff's petition that the defendant is a corporation organized and incorporated under the laws of the State of Missouri, and that the matter of who shall own stock of this defendant, and who shall control the operations and business of this defendant, is one over which the State of Missouri has exclusive jurisdiction and control, and that it is not competent or within the constitutional powers of the State of Texas to inflict penalties upon this defendant because of the alleged ownership by said Standard Oil Company of its business as incidental to the alleged ownership of such stock, without showing that such ownership, and such control incidental to such ownership, was forbidden by the laws of the State of Missouri, and to so hold would be violative of the Constitution of the United States in that it would deprive defendant of its property without due process of law and deny to defendant the equal protection of the laws, and of this special exception defendant prays judgment of the Court.

18. Defendant specially excepts to so much of plaintiff's petition as seeks to recover of defendant penalties on account of alleged violations of the said Act of the Legislature of the State of Texas, approved May 25th, 1899, or to cancel its permit to do business in this
88 state, on account of alleged violations of said act, and says that the same are insufficient and show no cause of action against this defendant for the recovery of such penalties or for the cancellation of such permit for the reason that the said Act of May 25th, 1899, was repealed by the Act of March 31st, 1903, by the express terms thereof, and that the provisions contained in Section 17, of said Act of March 31st, 1903, whereby it was provided that "nothing in this Act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this Act takes effect," is unconstitutional and void, for the reason that the subject of such provisions was not embraced in the title of said Act, but, on the contrary, such provision was excluded by the title of said Act, and of this special exception defendant prays judgment of the Court.

19. If the immediately foregoing special exception should be overruled, then defendant specially expects to so much of plaintiff's petition as seeks to recover penalties of this defendant on account of alleged violations of the said Act of May 25th, 1899, and says that the same give rise to no cause of action against this defendant for the recovery of such penalties, for the reason that the said Act of

May 25th, 1899, was repealed by the said Act of March 31st, 1903, by the express terms thereof, and that no right in the State of Texas to recover penalties against this defendant, or any other foreign corporation doing business in this State, on account of violations of said Act of May 25th, 1899, was reserved to the State by said Act of March 31st, 1903, and of this defendant prays judgment of the Court.

20. If the Court should construe plaintiff's petition as alleging that this defendant is the same corporation—the same entity as the first Waters Pierce Oil Company, then defendant excepts to
89 all the allegations in plaintiff's petition whereby it is sought to recover penalties of this defendant under the provisions of said Act of May 25th, 1899, on account of the alleged ownership by said Standard Oil Company of the Stock of this defendant, or on account of the alleged agreement between this defendant and said Standard Oil Company, or on account of the alleged agreements between this defendant and the said Standard Oil Company and the other corporations and persons mentioned in plaintiff's petition, and says that the same are insufficient for the reason that, if the petition be so construed, it then affirmatively appears from plaintiff's petition that said alleged ownership of the stock of this defendant by said Standard Oil Company existed at the time of and prior to the taking effect of said Act of May 25th, 1899, and that all of said alleged agreements and understandings were made and entered into prior to the passage of said Act, and for the reason that said act was intended to act prospectively only, and if intended to apply to ownerships by one corporation of the stock of another corporation, or to apply to agreements of the character of said alleged agreement so set forth in plaintiff's petition, it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of said Act and to such agreements as should be made or entered into after the taking effect of said Act; and, if said Act should be construed as having been intended by the Legislature to authorize the recovery against this defendant of the penalties provided for in said Act, on account of the continuation of said alleged ownership of its stock by the said Standard Oil Company, or on account of the performance by this defendant of any of the alleged agreements so alleged to have been made prior to the taking effect of said Act, such Act, so construed, would be violative of the Constitution
90 of the United States in that it would be retroactive in its effect and impair the obligations of contracts and deny to this defendant the equal protection of the laws and would take the property of this defendant without due process of law, and of this defendant prays judgment of the Court.

21. Defendant excepts to all the allegations in plaintiff's petition whereby it is sought to recover penalties of this defendant under the provisions of said Act of March 31st, 1903, on account of the alleged ownership by the said Standard Oil Company of the stock of this defendant, or on account of the alleged agreements between this defendant and the said Standard Oil Company, or on account of the alleged agreements between this defendant and the said Standard Oil

Company and the other corporations and persons mentioned in plaintiff's petition, and says that the same are insufficient for the reason that it affirmatively appears from plaintiff's petition that said alleged ownership of the stock of this defendant by the Standard Oil Company of New Jersey existed at the time of and prior to the passage of the said Act of March 31st, 1903, and that all of said alleged agreements and understandings were made and entered into prior to the passage of said Act of March 31st, 1903, and for the reason that said Act was intended to act prospectively only, and if intended to apply to ownerships by one corporation of the stock of another corporation, or to apply to agreements of the character set forth in plaintiff's petition, it was only intended to apply to such ownership of stock as should be acquired after the taking effect of said Act and to such agreements as should be made or entered into after the taking effect of said Act, and if said Act should be construed as having been intended by the Legislature to authorize the recovery against this defendant or the penalties provided for in said Act on account of the continuance of said alleged ownership of the stock by the said Standard Oil Company or on account of the
91 performance by this defendant or any of the alleged agreements so alleged to have been made prior to the taking effect of said Act, such Act so construed, would be violative of the Constitution of the United States, in that it would be retroactive in its effect and impair the obligations of contracts and deny to this defendant the equal protection of the laws and would take the property of this defendant without due process of law, and this it prays judgment of the Court.

22. If the Court should construe plaintiff's petition as properly alleging this defendant to be the same corporation—the same entity—as the first Waters Pierce Oil Company, then this defendant excepts to all the allegations contained in plaintiff's petition whereby it is sought, under the provisions of said Act of May 25th, 1899, to cancel its permit to do business in this State on account of the alleged ownership of its stock by the said Standard Oil Company or on account of the alleged agreements between this defendant and the said Standard Oil Company and other corporations, for the reason that if the petition be so construed, then it affirmatively appears from the petition that the said Standard Oil Company of New Jersey acquired the said stock and acquired a vested right therein prior to the taking effect of said Act of May 25th, 1899, and if said petition be so construed it further affirmatively appears therefrom that all the alleged agreements so charged to have been made by this defendant with the said Standard Oil Company and said other persons and corporations were made and entered into prior to the taking effect of said Act, and, if the said Act of May 25th, 1899, was intended to apply to ownerships by one crrporations of the stock of another, such as it is alleged in plaintiff's petition, or to agreements of the character alleged in plaintiff's petition, said Act was intended to act prospectively only and could act prospectively only and applies only to such ownerships as have been acquired subsequent to the
92 taking effect of said act and to such agreements as have been entered into since the taking effect of said act, and the peti-

tion, therefore, shows no cause of action against this defendant, under said Act of May 25th, 1899, to cancel its said permit to do business in this State, and of this special exception defendant prays judgment of the Court.

23. Defendant specially excepts to all the allegations contained in plaintiff's petition whereby it is sought, under the provisions of said Act of March 31, 1903, to cancel defendant's permit to do business in this State on account of the said alleged ownership of its stock by the said Standard Oil Company, or on account of the said alleged agreements between this defendant and the said Standard Oil Company of New Jersey and other persons and corporations, for the reason that, if the petition be so construed, then it affirmatively appears from the petition that the said Standard Oil Company acquired the said stock and acquired a vested right therein prior to the taking effect of said Act of March 31st, 1903, and if said petition be so construed it further affirmatively appears therefrom that all the alleged agreements so charged to have been made by this defendant with the said Standard Oil Company and said other persons and corporations were made and entered into prior to the taking effect of said Act, and, if the said Act of March 31, 1903, was intended to apply to ownerships by one corporation of the stock of another, such as is alleged in plaintiff's petition said Act was intended to act prospectively only and could act prospectively only, and applies only to such ownerships as have been acquired subsequent to the taking effect of said Act and to such agreements as have been entered into since the taking effect of said Act, and the petition, therefore, shows no cause of action against this defendant, under said Act of March 31, 1903, to cancel its said permit to do business in this State, and
93 of this special exception defendant prays judgment of the Court.

24. Defendant specially excepts to all the allegations contained in plaintiff's petition whereby plaintiff seeks, under the provisions of said Act of May 25th, 1899, to recover penalties of this defendant or to cancel its permit to do business in this State, for the reason that said Act of May 25th, 1899, was repealed by the said Act of March 31st, 1903, and if the proviso contained in the last section of said Act of March 31st, 1903, could be held to preserve to the State any right of action against any person or corporation on account of violations of said Act of May 25th, 1899, it could have the effect only of preserving such right in cases where suits were actually pending at the time of the passage of said Act of March 31st, 1903, and this suit was not filed until September 22nd, 1906, long after the taking effect of said Act of March 31st, 1903, and of this special exception defendant prays the judgment of the Court.

25. Defendant further specially excepts to plaintiff's petition and says the same is insufficient in law to entitle plaintiff to recover herein and for grounds of exception defendant says, that the Act of the Legislature approved May 25th, 1899, and the Act of the Legislature approved March 31st, 1903, under which the State seeks to recover herein, are each null and void and of no force as a law, because each of said Acts is so indefinite, vague and uncertain

in its terms that it cannot be ascertained by the language used what particular acts fall with the prohibitions of said statutes and constitute an offense subjecting the offender to punishment as therein prescribed, and for that reason a person cannot know in advance of committing the act whether he is violating the law, and therefore to subject this defendant to heavy penalties and to a forfeiture of its permit to transact business in the State of Texas for an alleged
94 violation of either of said Acts of the Legislature will result in the taking of this defendant's property without due process of law and will deny to it the equal protection of the law in contravention of the provisions of the Constitution of the United States, and particularly in violation of Section One of the Fourteenth Amendment thereof, and this defendant here claims the protection of the Constitution of the United States, and particularly the said Section One of the Fourteenth Amendment thereof, as a defense to this suit, and of this defendant prays judgment of the court.

26. Defendant further specially excepts to plaintiff's petition in so far as it seeks to recover penalties for each and every day since the 31st day of May, A. D. 1900, up to the filing of this suit, a period of more than six years, and amounting in the aggregate to Five Million, Two Hundred and Twenty-eight Thousand and Four Hundred Dollars, because to so construe the law and enable the officers of the State charged with the enforcement thereof to delay bringing suit and challenge the right of the defendant to conduct its business in the manner it did, is to convert the law into an engine of oppression and make of a statute intended to prevent wrong-doings, a means of revenue to the State, and as against the right of State to claim and recover cumulative penalties, or any sum beyond a penalty for one day, this defendant says that to so construe the law and recover accumulated penalties will result in taking this defendant's property without due process of law and will deny to defendant the equal protection of the law, in violation of the Constitution of the United States, and particularly of Section One of the Fourteenth Amendment thereof, and this defendant here claims the protection of the said constitution, and particularly the said Section One of the
95 Fourteenth Amendment thereof, as a defense against the right of the State of Texas to recover any sum beyond the penalty of a single day, and of this exception this defendant prays the judgment of the Court.

27. Defendant for further special exception says that the plaintiff's said petition is defective in substance and in form in so far as it seeks to recover penalties in a single count for alleged violations of law charged to have been committed by defendant on each and every day from the 31st day of May, A. D. 1900, to the day of the filing of this suit, a period of six years, three months and twenty-one days, and by reason of said defective and insufficient pleading the State should not be permitted to recover penalties for more than one day, and of this special exception defendant prays the judgment of the Court.

28. Defendant specially excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties of this defendant by

reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25, 1899, for the reason that since the plaintiff's original petition was not filed herein until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had as to such fines or penalties, accrued more than two years before the filing of this suit, and is therefore barred by the Statute of limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant now here invokes by way of exception to defeat a recovery of such fines and penalties, and of this defendant prays the judgment of the Court.

29. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defend-
96 ant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25, 1899, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel defendant's permit to do business in Texas is barred by the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant here now invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

30. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitations of two years as prescribed in Article 219 of the Code of Criminal procedure of the State of Texas, the benefit of which this defendant invokes in special exceptions numbered 28 and 29, is not available to this defendant, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of May 25th, 1899, should be prosecuted by proceedings criminal in form for violating said Anti-Trust Act of May 25, 1899, or any of its provisions, which would be a proper form of proceeding, the prosecution against him would be barred by said Article 219, and of this the defendant prays the judgment of the Court.

97 31. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of Texas, the benefit of which this defendant invokes in special exceptions numbered 28 and 29, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties or suits to forfeit permits under said Act of May 25, 1899, this defendant will be denied the equal protection of the laws, and said Anti-Trust

Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States that provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since every cause of action or offense below the grade of felony, arising from the violation of every other penal or criminal statute of this State would be barred by said Article 219 as to all natural persons and corporations, and of this the defendant prays the judgment of the Court.

32. Defendant further specially excepts to plaintiff's petition in so far as it thereby sought to recover fines or penalties by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25, 1899, for the reason that since plaintiff's original petition was not filed herein until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had, as to such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years as prescribed in Article 2354, Revised Civil Statutes of the State of Texas, which this defendant now here invokes by way of
98 exception to defeat a recovery of such fines or penalties, and of this the defendant prays the judgment of the Court.

33. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25th, 1899, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel this defendant's permit to do business in Texas is barred by the Statute of Limitations of two years as prescribed in Article 3354 Revised Civil Statutes of Texas, which defendant now here invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

34. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 3354 Revised Civil Statutes of Texas, the benefit of which this defendant invokes in special exceptions numbered 32 and 33, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits under said Act of May 25, 1899, this defendant, if plaintiff's cause of action is — a civil nature, will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature,
99 the only class of actions of a civil nature for the recovery of a personal judgment except those governed by Articles

3353, 3356 and 3358, Revised Civil Statutes of Texas, in which the benefit of said Article 3354, Revised Civil Statutes of Texas, is denied to a defendant, is that class arising under said anti-trust act of May 25, 1899, and of this the defendant prays the judgment of the Court.

35. Defendant further excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties of this defendant by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1902, in alleged violation of the anti-trust Act of May 25, 1899, for the reason that since the plaintiff's original petition was not filed herein until the 22nd day of September, 1903, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, as to such fines or penalties accrued more than four years before the filing of this suit, and is therefore barred by the statute of limitation of four years as prescribed in Article 3358, Revised Civil Statutes of Texas, which this defendant now here invokes by way of exception to defeat a recovery of such fines or penalties, and of this the defendant prays the judgment of the court.

36. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1902, in alleged violation of the Anti-trust Act of May 25, 1899, for the reason that since this suit was not filed until the 22nd day of Septeber, 1903, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel defendant's permit to do business in Texas is barred by
100 the Statute of Limitation of four years prescribed in Article 3358 Revised Civil Statutes of Texas, which this defendant here now invokes by way exception to defeat the concellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

37. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of four years as prescribed in Article 3358, Revised Civil Statutes of Texas, the benefit of which this defendant invokes in special exceptions numbered 35 and 36, is not available to this defendant, and if no period of limitation bar suits to recover fines or penalties, or suits to forfeit permits under said Act of May 25, 1899, this defendant will be denied the equal protection of the laws, and said Anti-trust act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature for the recovery of a personal judgment, except those governed by Articles 3353, 3354, and 3356 Revised Civil Statutes of Texas, in which the benefit of said Articles 3358, Revised Civil Statutes of Texas, is denied to a defendant, is that class arising under said anti-trust act of

May 25, 1899, and of this the defendant prays the judgment of the Court.

38. Defendant specially excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties of this defendant by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the anti-trust act of March 31, 1903, for the reason that since the plaintiff's original petition was not filed herein until the
101 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had as to such fines or penalties, accrued more than two years before the filing of this suit, and is therefore barred by the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant now here invokes by way of exception to defeat a recovery of such fines and penalties, and of this defendant prays the judgment of the Court.

39. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel defendant's permit to do business in Texas is barred by the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant now here invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

40. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in special exceptions numbered 38 and 39, is not available to this defendant,
102 this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no State shall deny to any persons within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of March 31, 1903 should be prosecuted by proceedings, criminal in form, for violating said Anti-Trust Act of March 31, 1903, or any of its provisions, which would be a proper form of proceeding, the prosecution against him would be barred by said Article 219 and of this the defendant prays the judgment of the Court.

41. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of Texas, the benefit

of which this defendant invokes in special exceptions numbered 38 and 39, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties or suits to forfeit permits under said Act of March 31, 1903, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States that provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since every cause of action or offense below the grade of felony arising from the violation of every other penal or criminal statute of this State would be barred by said Article 219 as to all natural persons and corporations, and of this the defendant prays the judgment of the Court.

42. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that since plaintiff's original petition was not filed herein until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had, as to such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years as prescribed in Article 3354, Revised Civil Statutes of the State of Texas, which this defendant now here invokes by way of exception to defeat a recovery of such fines or penalties, and of this the defendant prays the judgment of the Court.

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43. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel this defendant's permit to do business in Texas is barred by the Statute of Limitation of two years as prescribed in Article 3354 Revised Civil Statutes of Texas, which defendant now here invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

44. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 3354, Revised Civil Statute of Texas, the benefit of which this defendant invokes in special exceptions numbered 42 and 43, is not available to this defendant, and if no period of limitation bears suits to recover fines or penalties, or suits to forfeit permits under said Act of March 31, 1903, this defendant, if this suit is of a civil nature, will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no

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state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature, for the recovery of a personal judgment except those governed by Articles 3353, 3356, and 3358, Revised Civil Statutes of Texas, in which the benefit of said Srticle 3354, Revised Civil Statutes of Texas, is denied to a defendant, is that class arising under said Anti-Trust Act of March 31, 1903, and of this the defendant prays the judgment of the Court.

45. Defendant specially excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties of this defendant by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1903, in alleged violation of said Anti-Trust Act of March 31, 1903, for the reason that since plaintiff's original petition was not filed herein until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, as to suche fines or penalties accrued more than three years before the filing of this suit and is therefore barred by the Statute of Limitation of three years as prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas, which defendant now here invokes by way of
105 exception to defeat a recovery of such fines and penalties, and of this the defendant prays the judgment of the Court.

46. Defendant further specially excepts to plaintiff's petition in so far as it thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1903, in alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had, to cancel defendant's permit to do business in this State is barred by the Statute of Limitation of three years as prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas, which this defendant now here invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in th*at* State of Texas, and of this the defendant prays the judgment of the Court.

47. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of three years as prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in special exceptions numbered 45 and 46, is not available to this defendant, this defendant will be denied the equal protection of the laws, and the said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of March 31, 1903, should be prosecuted foor a felony for violat-
106 ing said act as is authorized by Section 13 thereof, the prosecution against him would be barred in three years by said Article 218, and of this the defendant prays the judgment of the Court.

48. Further specially excepting to plaintiff's petition, this defendant says that so much thereof as seeks to recover penalties for an alleged violation of the Anti-Trust Law of the State of Texas, approved May 25, 1899, of the Acts of 1899, is insufficient in law, because:

*a.* The said act of May 25, 1899, does not, by the first section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said first section of said act, would be in viloation of Article 3, of the General Provisions of the Penal Code of the State of Texas, which declares that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State.

*b.* The said act of May 25, 1899, does not by the first section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said first section of said act, would be in violation of Article 6 of the general provisions of the Penal Code of the
107 State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly in-operative.

*c.* The said Act of May 25, 1899, does not, by the first section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas, in that no offense is designated by the plain import of the words of said first section, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said first section of said act, would be in violation of that part of Article 9, of the general provisions of the Penal Code of the State of Texas, which prescribes that no person shall be punished for an offense not made penal by the plain import of the words of the law.

*d.* The said Act of May 25, 1899, does not, by the second section thereof, or any part of said section, wherein it purports to define a monopoly and to render the same unlawful and against public policy, and to make persons and corporations engaged therein guilty of a conspiracy to defraud, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the second section of said act, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas, which declares that no person shall be punished for any act or omission unless the same is made a penal

offense and a penalty affixed thereto by the written law of this State.

*e.* The said Act of May 25, 1899, does not, by the second section thereof, or any part of said section, wherein it purports to
108 define a monopoly and to render the same unlawful and against public policy, and to make persons and corporations engaged therein guilty of a conspiracy to defraud, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of Article 6 of the general provisions of the Penal Code of the State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

*f.* The said Act of May 25, 1899, does not, by the second section thereof, or any part of said section, wherein it purports to define a monopoly and to render the same unlawful and against public policy, and to make persons and corporations engaged therein guilty of a conspiracy to defraud, define any offense against the laws of the State of Texas in that no offense is designated by the plain import of the words of said second section, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas which prescribes that no person shall be punished for an offense nor made penal by the plain import of the words of the law.

*g.* The said Act of May 25, 1899, does not, by the third section thereof, or any part of said section, wherein it purports to
109 define a conspiracy to form or secure a trust or monopoly in restraint of trade, nor by the fourth section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monopoly in restraint of trade, nor by the sixth section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third, fourth and sixth sections of said acts or any of them, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas which declares that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State.

*h.* The said act of May 25, 1899, does not, by the third section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monopoly in restraint of

trade, nor by the fourth section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monopoly in restraint of trade, nor by the sixth section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third, fourth and sixth sections of said act, would be in violation of Article 6 of the general provisions of the Penal Code of the State of
110 Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

*i.* The said Act of May 25, 1899, does not, by the third section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monop-ly in restraint of trade, nor by the fourth section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monop-ly in restraint of trade, nor by the sixth section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas in that no offense is designated by the plain import of the words of said third, fourth and sixth sections, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third, fourth and sixth sections of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas, which prescribes that no person shall be punished for an offense not made penal by the plain import of the words of the law.

And of all this the defendant prays the judgment of the Court.

49. Further specially excepting to plaintiff's petition, this defendant says that so much thereof as seeks to recover penalties for an alleged violation of the Anti-Trust Law of the State of Texas, approved March 31, 1903, is insufficient in law, because:

*a.* The said Act of March 31, 1903, does not, by the first section thereof, or any part of said section, wherein it purports to
111 define a trust, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of the first section of said act, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas, which declares that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State.

*b.* The said act of March 31, 1903, does not, by the first section thereof, wherein it purports to define a trust, define any offense against the laws of the State of Texas in that it is so indefinitely

framed and of such doubtful meaning that it can not be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon an alleged infraction of the provisions of said first section of said act, would be in violation of Article 6 of the General provisions of the Penal Code of the State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

*c.* The said Act of March 31, 1903, does not, by the first section thereof, or any part of said section, wherein it purports to define a trust, define any offense against the laws of the State of Texas in that no offense is designated by the plain import of its words, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions
112 of said first section of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas, which prescribes that no person shall be punished for an offense not made penal by the plain import of the words of the law.

*d.* The said act of March 31, 1903, does not, by the second section thereof, or any part of said section, wherein it purports to define a monopoly define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas, which declares that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State.

*e.* The said Act of March 31, 1903, does not by the second section thereof, or any part of said section, wherein it purports to define a monopoly, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of Article 6 of the Penal Code of the State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed, or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

113 *f.* The said Act of March 31, 1903, does not, by the second section thereof, or any part of said section, wherein it purports to define a monopoly, define any offense against the laws of the State of Texas in that no offense is designated by the plain im-

port of its words, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas, which prescribes that no person shall be punished for an offense not made penal by the plain import of the words of the law.

*g.* The said Act of March 31, 1903, does not, by the third section of said act, or any part thereof, wherein it purports to define a conspiracy in restraint of trade, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third section of said act, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas and a penalty is affixed thereto by the written law of this State.

*h.* The said act of March 31, 1903, does not, by the third section of said act, or any part thereof, wherein it purports to define a conspiracy in restraint of trade, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third section of said act, would be in violation of Article 6
114 of the Penal Code of the State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed, or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

*i.* The said act of March 31, 1903, does not, by the third section of said act, or any part thereof, wherein it purports to define a conspiracy in restraint of trade, define any offense against the laws of the State of Texas in that no offense is designated by the plain import of its words, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third section of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas, which prescribed that no person shall be punished for an offense not made penal by the plain import of the words of the law.

And of all this the defendant prays the judgment of the Court.

50. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel defendant's permit to do business in Texas by reason of any act or thing alleged to have been done or committed in alleged violation of the Anti-trust Act of May 25, 1899, since, under Section 7 of said act, the forfeiture of the right of a corporation, created and organized under the laws of any other State, to do business in Texas is made dependent upon its violation of some one or more of the preceding sections of said

act, and since, for the reasons set forth in the foregoing special exception, Nos. 48 and 49, said Act of May 25, 1899, does not, in the provisions thereof invoked by the plaintiff in this case, sufficiently define any offense against the laws of Texas to render
115 this defendant guilty of violating any of its provisions, and of this the defendant prays the judgment of the Court.

51. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel defendant's permit to do business in the State of Texas by reason of any act or thing alleged to have been done or committed in alleged violation of the Anti-trust act of March 31, 1903, since, under Sections 8 and 10 of said Act, the forfeiture of the right of a corporation, created and organized under the laws of any other state, to do business in Texas is made dependent upon its violation of some one or more *the* the provisions of the preceding sections of said act, and since, for the reasons set forth in the foregoing special exceptions, Nos. 48 and 49, said act of March 31, 1903, does not, in the provisions thereof invoked by the plaintiff in this case, sufficiently define any offense against the laws of Texas to render this defendant guilty of violating any of its provisions, and of this the defendant prays the judgment of the Court.

52. Further specially excepting to plaintiff's petition, this defendant says that the same is insufficient in law, in so far as it seeks to recover penalties for a violation of the provisions of the Anti-Trust Act of May 28, 1899, since by reason of the same's being so indefinitely framed and of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, and by reason of its failure to designate an offense by the plain import of its words, the infliction of the penalties prescribed by said act would be the taking of property without due process of law in contravention of Section 19, Article 1, of the Constitution of the State of Texas, which prescribes that no citizen of this State shall be de-
116 prived of property except by due course of the law of the land, and also in contravention of that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, and of this the defendant prays the judgment of the Court

53. Further specially excepting to plaintiff's petition, this defendant says that the same is insufficient in law, in so far as it seeks to recover penalties for a violation of the provisions of the Anti-trust Act of March 31, 1903, since by reason of the same's being so indefinitely framed and of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, and by reason of its failure to designate an offense by the plain import of its words, the infliction of the penalties prescribed by said act would be the taking of property without due process of law in contravention of Section 19, Article 1, of the Constitution of the State of Texas, which prescribes that no citizen of this State shall be deprived of property

except by the due course of the law of the land, and also in contravention of that part of Section 1, of the 14th Amendment of the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, and of this the defendant prays the judgment of the Court.

54. Further specially excepting to plaintiff's petition, this defendant says that same is insufficient in law, in so far as it seeks to recover penalties for an alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that said act is a criminal law and under its terms any person violating any one of its provisions may, for a single violation thereof, be twice tried and twice put in
117 jeopardy for the same act and be subject to two different and distinct penalties for the same act, in violation of Section 14 of Article 1 of the Constitution of Texas, which provides that no person, for the same offense shall be twice put in jeopardy of life or liberty, nor shall any person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction, and of this the defendant prays the judgment of the Court.

55. Further specially excepting to plaintiff's petition, this defendant says that the same is insufficient in law, in so far as it seeks to recover penalties by reason of the alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that said Act confers upon the Attorney General, or the District or County Attorney of Travis County, under his direction, power to discriminate between persons in the enforcement of its provisions, since they may, by their election, prevent the inflicting upon one person of a greater punishment for the violation of its provisions that a fine of $50.00 per day, while they may elect to have another person violating its provisions indicted and convicted of a felony and confined in the penitentiary in any term from one to ten years; therefore, said act does not guarantee to all persons within the State the equal protection of the law, nor does it secure the inflicting of the same character of punishment upon all persons within the jurisdiction of the State who are guilty of violating its provisions, but leaves it to the aforesaid officers to determine arbitrarily and capriciously the kind of offense, of which any person violating its provisions, is guilty, and the punishment that may be inflicted for such violation, is violation of Section 3, of Article 1 of the Constitution of Texas, which provides that all free men when they form a social compact have equal rights, and no man or set of men is entitled to exclusive separate public emoluments or privileges but in consideration of public services,
118 and of Section 19 of Article 1 of the Constitution of the State of Texas, which provides that no citizen of this State shall be deprived of life, liberty, property, privileges or immunities except by the due course of the law of the land, and of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, and of this the defendant prays the judgment of the Court.

56. Defendant excepts to Sub-division II of plaintiff's petition and all the allegations therein contained, for the reason that all such

allegations are immaterial and irrelevant to any issue in this case, and of this special exception defendant prays the judgment of the Court.

57. Defendant excepts to Sub-division III of plaintiff's petition and all the allegations therein contained, for the reason that all such allegations are immaterial and irrelevant to any issue in this case, and of this special exception defendant prays the judgment of the Court.

58. Defendant excepts to Sub-division IV of plaintiff's petition and all the allegations therein contained, for the reason that all such allegations are immaterial and irrelevant to any issue in this case, and of this special exception defendant prays the judgment of the Court.

59. Defendant excepts to the said alleged trust agreements marked Exhibit "A" and Exhibit "B," and set out in plaintiff's petition on pages 9 to 23, inclusive, thereof, for the reason that said alleged trust agreements are immaterial and irrelevant to any issue in this case, and for the additional reason that it appears from said alleged trust agreements that this defendant was not a party to said alleged agreements and did not join in the execution thereof,
119 and the allegations in plaintiff's petition to the effect that this defendant did join in the execution of said alleged trust agreements are contradicted by said alleged trust agreements so set up in plaintiff's petition, which show upon their face that this defendant did not join in said alleged trust agreements and was not a party to the execution thereof, and for the additional reason that it appears from plaintiff's petition that said alleged trust agreements were made and entered into more than eighteen years before the organization of this defendant, and of this defendant prays the judgment of the Court.

60. Defendant excepts to all the allegations contained in the fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of Sub-division III of plaintiff's petition, and says that all of such allegations are irrelevant and immaterial to any issue in this cause and show no cause of action against this defendant, and that if such allegations, or any of them, have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays judgment of the Court.

61. Defendant excepts to all the allegations contained in Sub-division V. of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and of this defendant prays judgment of the Court.

62. Defendant excepts to all the allegations contained in paragraph 9 of said Sub-division V of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this cause and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case, they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the
120 Court.

63. Defendant excepts to all the allegations contained in

paragraph 10 of said Sub-division V of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation in this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

64. Defendant excepts to all the allegations contained in paragraph 11 of said Sub-division V of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this cause, and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

65. Defendant excepts to all the allegations contained in paragraph 13 of said Sub-division V of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case, and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

66. Defendant specially excepts to the allegations contained in said paragraph 13 of Sub-division V of plaintiff's petition to the effect: "That in pursuance of this agreement and understanding, H. C. Pierce, acting for said Waters Pierce Oil Company and all the stockholders, directors and officers of the Waters-Pierce Oil Company, arranged with and employed attorneys, and with them went into the State of Texas, made an effort to dispose of the case
121 pending at Waco, and expended money therein and consulted with officers of the State with reference to the readmission of the Waters Pierce Oil Company into the State; that a course of procedure was determined upon which was carried out, as hereinbefore recited; that all sums of money paid and contracted to be paid by said Pierce were paid by the Waters Pierce Oil Company after the reputed reorganization and all the expenses incident to the said operations of Pierce and the attorneys aforesaid in Texas were so paid, and all of said expenses were thereafter audited and allowed by the Standard Oil Company," and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

67. Defendant specially excepts to all the allegations contained in Sub-division VI of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

68. Defendant specially excepts to all the allegations contained in Sub-division VII of plaintiff's petition, and says that the same are

immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

122 69. Defendant specially excepts to all the allegations contained in Sub-division VIII of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

70. Defendant specially excepts to the allegation contained in paragraph 2 of said Sub-division VIII of plaintiff's petition to the effect: "That this concern, to-wit, the Standard Oil Company, and its allied interests and subsidiary corporations, including defendant, in carrying out the conspiracies aforesaid, uses secret schemes and devious devices, conducting its business by codes unintelligible to ordinary persons, using stationery containing no information concerning its business other than "26 Broadway," sending out letters without address or signature to its component corporations," for the reason that said allegation is immaterial and irrelevant to any issue in this case and shows no cause of action against this defendant, and if the matters therein alleged have any relation to this cause they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

71. Defendant excepts to all the allegations contained in paragraph 3 of said Sub-division VIII of plaintiff's petition, and says that the same are irrelevant and immaterial to this case and show no cause of action against this defendant, and if the matters therein alleged have any relation to this case they are matters of evidence only and should not be incorporated in plaintiff's petition,

123 and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

72. Defendant excepts to all the allegations contained in paragraph 4 of said Sub-division VIII of plaintiff's petition, and says that the same are irrelevant and immaterial to any issue in this case and show no cause of action against this defendant, and if the matters therein alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

73. Defendant excepts to all the allegations contained in paragraph 5 of said Subdivision VIII of plaintiff's petition, and says that the same are irrelevant and immaterial to any issue in this case and show no cause of action against this defendant, and if the matters therein alleged have any relation to this case they are matters of evi-

dence only and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

74. Defendant excepts to all the allegations contained in paragraph 6 of said Sub-division VIII of plaintiff's petition, and says that the same are irrelevant and immaterial to any issues in this case and show no cause of action against this defendant, and if the matters therein alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

124 75. Defendant specially excepts to the allegation contained in plaintiff's petition to the effect: "That after May 31st, 1900, the Standard Oil Company placed upon the pay roll of Waters Pierce Oil Company one R. H. McNall under the designation of "Commercial Agent", and named his place of business as 75 New Street (which is the back door of the building known as 26 Broadway); that said McNall had been and thereafter continued to be a clerk in the office and under the control of H. M. Tilford. The duty performed by him with reference to the business of defendant was to permit the reports required by the Standard Oil Company of defendant to be addressed to him and to sign the letters of instructions as prepared by the officers of the Standard Oil Company and forward them to the Waters Pierce Oil Company, and the nominal change thus made in the business of the corporation was made for the purpose of rendereing more difficult a discovery of the falsity of the affidavit of said H. C. Pierce, and of more efficiently hiding the unlawful character of the business carried on by defendant and the Standard Oil Company and its allied interests, and carrying out the objects of the conspiracy herein set out," and says that all such allegations are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if such matters have any relation to this cause they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

76. Defendant excepts to all the allegations contained in paragraph 7 of said Sub-division VIII of plaintiff's petition, and says that all such allegations are immaterial and irrelevant to any issue in this case and show no cause of action against this defend-

125 ant, and if such matters have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

77. Defendant specially excepts to the allegation contained in paragraph 9 of Sub-division VIII of plaintiff's petition to the effect: "That since May 31st, 1900, as before, and continuously and each day since the Waters Pierce Oil Company, for the purpose of carrying out the objects of the conspiracies aforesaid and of securing a

monopoly of the Oil business in Texas and of destroying all competition therein and of exacting from the people of Texas unreasonable and unconscionable prices for oil and the products of petroleum, has, as set forth in the succeeding paragraphs, bought out competing businesses, has maintained at a number of points oil selling concerns apparently in opposition to it, has made exclusive contracts with merchants by which they were prevented from handling the products of other companies, have cut prices below the costs of oil until competition was destroyed and then recouped by extraordinary increase of prices, has given rebates, gratuities and bribes, has in connection with the Standard Oil Company, maintained a system of spies, has corrupted the employés of railroads and other concerns," for the reason that the said allegations are immaterial and irrelevant to any issue in this casee and are impertinent and scandalous in their nature and calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

78. Defendant specially excepts to all the allegations contained in plaintiff's petition, beginning on page 49, and beginning with the words, "That in further pursuance of the unlawful purposes
126 hereinbefore set forth, said Waters Pierce Oil Company," and ending with the words, "with reference to shipments into the Waters Pierce Oil Company territory," and says that all such allegations are immaterial and irrelevant to any issue in this case, and are scandalous and impertinent in their nature and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

79. Defendant excepts to the allegations contained in plaintiff's petition on pages 51 and 52 thereof, to the effect: "That by virtue of the facts hereinbefore set out, the following, among other unlawful results have been accomplished:

"1. The Waters Pierce Oil Company, which alone has been granted a permit to do business, is dominated and controlled and its business dictated by the Standard Oil Company of New Jersey, which has not been granted a permit to do business in Texas.

"2. A large number of individuals and corporations doing business in the sale of oil and petroleum products are excluded from doing business in the state, and competition is lessened.

"3. The price of oil has been maintained at an ex*h*orbitant figure, being from ten to twenty-five per cent. higher than that of oil sold in the territory not claimed by defendant.

"4. Competition has been suppressed and business destroyed in the state by unconscionable and unfair means.

"5. A substantially complete monopoly in petroleum products has been established, the defendant having sold during during the period of ten years at least ninety-five per cent. of all petroleum products sold," and says that said allegations are statements of legal conclusions and arguments only, and are inflammatory in their nature and calculated to prejudice the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

127 80. Defendant specially excepts to the allegation contained in plaintiff's petition, on pages 52 and 53, to the effect: "That said corporation in pursuance of its business immediately established stations and officers in the counties, cities, towns and villages of Texas for the transaction of its business and supplying to the people of Texas oils and the products of petroleum, this in abuse of its corporate rights, franchises and powers, it forthwith began and has since maintained a war of extermination of all competition within this State as hereinbefore set forth; that it formed alliances and conspiracies with divers other corporations within and without this State as hereinbefore set forth whereby it was enabled to establish and has established a monopoly of said oil business in this State; that it has by a system of unfair competition and by various devices hereinbefore set forth, destroyed the business of its competitors; that at points where no competition existed said Waters Pierce Oil Company arbitrarily and for the purpose of recouping its losses at competitive points sold oils and the products at extraordinary and exhorbitant prices far above the true market value thereof, and by reason of its monopoly of said business wrought great oppression upon the people of this State," and says that said allegations are but legal conclusions and arguments, and are impertinent, scandalous and inflammatory in their nature, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

81. Defendant excepts to the allegation contained on page 38 of plaintiff's petition to the effectL "That all of said representations made by H. C. Pierce in said affidavit were false and fraudulent and known by him to be fraudulent at the time they were made, and were made by him for the purpos of deceiving the officers of
128 the State, and avoiding the judgment aforesaid and in pursuance and furtherance of the conspiracy hereinbefore alleged," for the reason that said allegation is immaterial and irrelevant to any issue in this case and is calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

82. Defendant excepts to plaintiff's petition as a whole, and says that by reason of the matters complained of in the preceding special exceptions, Nos. 56 to 81, inclusive, plaintiff's petition, in its entirety, is in violation of Article 1183 of the Revised Statutes of the State of Texas, and is not a statement in logical and legal form of the facts constituting plaintiff's cause of action as required by said article, and is in violation of Rule 2 of the rules for District and County Courts of this state as prescribed by the Supreme Court of this State, and is not a statement of facts in contradistinction to a statement of legal conclusions and arguments as prescribed by said Rule, but, on the contrary, the petition is a statement of alleged facts so intermingled with irrelevant, impertinent, scandalous, and inflammatory matter, arguments and inconsistent averments as to produce confusion, uncertainty and unnecessary length in the petition, and on account of the arguments, legal conclusions, impertinent, scandalous and inflammatory matter therein set forth and excepted to in said special exceptions above named, is calculated to inflame the minds

of the jury trying this case against this defendant and to prevent justice being attained upon the trial of this case, and defendant says that said petition as a whole should be stricken out and plaintiff required to replead and to omit from its petition all such irrelevant, impertinent, scandalous and inflammatory matter and all such statements of evidence and legal conclusions and arguments, and of this defendant prays judgment of the court.

129 83. Defendant specially excepts to the allegation contained in page 54 of plaintiff's petition, and near the top of said page, to the effect: "And plaintiff says that defendant, a corporation transacting and conducting a business in this State, created, entered into and became a member of and a party to a pool, trust, agreement, combination, confederation, and understanding with another and other corporations and with individuals and persons to regulate and fix the price of an article of manufacture, merchandise and commodity," for the reason that said allegation is but a conclusion and is too general and uncertain to apprise this defendant of the facts thereby sought to be charged, and is further insufficient for the reason that it does not state when or with whom defendant so created, entered into and became a party to and a member of such pool, trust, agreement, combination, confederation and understanding, nor does it state with whom the same is charged to have been made, nor the article of manufacture, merchandise, or commodity the price of which is is alleged that it was thereby sought to regulate and fix, and of this defendant prays the judgment of the Court.

84. Defendant specially excepts to the allegation contained on page 54 of plaintiff's petition, to the effect: "And said defendant entered into and became a member of and a party to a pool, trust, agreement, combination, confederation and understanding with the Standard Oil Company, and its officers and agents, and many other corporations, the names of which plaintiff is unable to state, to regulate and fix the price of refined oils and the products of petroleum," for the reason that said allegation is but a conclusion and is too general and uncertain to apprise defendant of the facts thereby sought to be charged, and it does not state the facts constituting such alleged pool, trust, agreement, combination, confederation, or under-

130 standing, nor the time when the same is alleged to have been entered into, nor the agreement or understanding whereby it is alleged that it was sought to regulate the price of refined oil and the products of petroleum, and of this defendant prays the judgment of the Court.

85. Defendant specially excepts to the allegation on page 54 of plaintiff's petition, to the effect: "That defendant became, and was continuously from the 31st day of May, 1900, a monopoly," for the reason that such allegation is but a conclusion and the facts alleged to constitute defendant such a monopoly are not stated, and of this defendant prays judgment of the Court.

86. Defendant specially excepts to the allegation contained on page 54 of plaintiff's petition, to the effect: "That defendant * * * was a party to a union, combination, consolidation, and

affiliation of capital, property, assets, skill and acts by and between persons and corporations, to-wit: the Standard Oil Company, and its agents and employees, and other corporations aforesaid, and the defendant, and its agents and officers, to regulate and fix the price of an article of manufacture, merchandise, commodity and product of mining, to-wit, the price and the products of petroleum and to fix and limit the amount and quantity of such article, and to prevent competition in the sale and mining of said article," for the reason that said allegation is but a conclusion and is too general and uncertain to apprise defendant of the facts thereby sought to be charged, or of the facts which plaintiff will attempt to prove in support thereof, and for the further reason that the facts constituting such alleged union, combination, consolidation and affiliation of capital, credit, property, skill and acts are not stated, and of this defendant prays the judgment of the Court.

131 87. Defendant specially excepts to the allegation contained in plaintiff's petition and on page 54 thereof, to the effect: "The Standard Oil Company acquired and after the 31st day of May, 1900, retained with the consent of defendant company and its stockholders, the stock of said defendant," for the reason that said allegation is immaterial and irrelevant and shows no cause of action against this defendant, and of this defendant prays judgment of the Court.

88. Defendant specially excepts to the allegation in plaintiff's petition on pages 54 and 55 thereof: "And said defendant, being engaged in the buying and selling of the products of petroleum, entered into a pool, and trust, agreement, and combination, confederation, association and understanding by and with the Standard Oil Company of New Jersey and the corporations controlled by it to control and limit the trade in the products of petroleum and to limit competition in such trade," for the reason that said allegation is but a conclusion and is too general and uncertain to apprise defendant of the facts intended to be charged thereby, or of the facts which plaintiff will attempt to prove in support thereof, and for the further reason that the facts constituting such alleged pool trust, agreement and combination, confederation, association and understanding are not stated, and of this defendant prays judgment of the Court.

89. Defendant specially excepts to all the allegations in plaintiff's petition in the last paragraph thereof preceding the prayer for relief, wherein and whereby it is sought to charge this defendant with violations of the Act of March 31st, 1903, for the reason that said allegations are too vague, uncertain and indefinite in their nature to apprise this defendant of the facts sought to be charged as constituting such violations, in this, that the preceding portions

132 of plaintiff's petition are therein referred to as showing the acts constituting such alleged violations, and the preceding portions of plaintiff's petition so referred to are so confused, *duplicitious*, contradictory and voluminous that it is impossible to determine therefrom just what allegations contained therein, are, in said portion of the petition here excepted to, claimed by plaintiff to allege such violations, and of this defendant prays judgment of the Court.

This defendant denies all and singular the allegations in plaintiff's petition contained, and says that defendant is not guilty of the acts and wrong-doings in said petition charged against it or of any of them, and of this answer and plea it puts itself on the country.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. O'DELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

J. D. JOHNSON,
H. S. PRIEST,
*Of Counsel.*

1. Specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had,
133 for the recovery of such fines or penalties accrued more than two years before the filing of this suit, and is therefore barred by the Statute of Limitation of two years prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued two years before the institution of this suit, and this the defendant is ready to verify.

2. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than two years before the filing of this suit, and is therefore barred by the Statute of Limitation of two years prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and this the defendant is ready to verify.

3. Further specially answering herein, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust Act of May 25, 1899, for the reason if the statute of limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure
134 of the State of Texas, the benefit of which this defendant invokes in paragraphs 1 and 2 of this special answer, is not available to this defendant, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is

void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any persons within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of May 25, 1899, should be prosecuted by proceedings, criminal in form, for violating the said Anti-Trust Act of May 25, 1899, or any of its provisions, which would be a proper form of proceeding, the prosecution against him would be barred by said Article 219 of the Code of Criminal Procedure, and this the defendant is ready to verify.

4. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties or the cancellation of its permit to do business in the State of Texas under said Anti-Trust Act of May 25, 1899, for the reason that if the Statute of Limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure of Texas, the benefit of which this defendant invokes in Paragraphs 1 and 2 of this answer, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits under said Act of May 25, 1899, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since every
135 cause of action or offense below the grade of felony, arising from every other penal or criminal statute of this State would be barred by said Article 219 of the Code of Criminal Procedure of Texas as to all persons and corporations, and this the defendant is ready to verify.

5. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 3354, Revised Civil Statutes of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued two years before the institution of this suit, and this the defendant is ready to verify.

6. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1804, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than two years before the filing of this suit, and is therefore barred by the

Statute of Limitation of two years prescribed in Article 3354, Revised Civil Statutes of the State of Texas, which this de-
133 fendant here specially pleads in bar of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and this the defendant is ready to verify.

7. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-trust act of May 25, 1899, for the reason that if the Statute of Limitation of two years, as prescribed in Article 3354, Revised Civil Statutes of Texas, the benefit of which this defendant invokes in Paragraphs 5 and 6 of this answer is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits under said anti-trust act of May 25, 1899, this defendant, if plaintiff's cause of action is of a civil nature, will be denied the equal protection of the laws, and said anti-trust act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment of the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature for the recovery of a personal judgment, except those governed by Articles 3353, 3356 and 3358, Revised Civil Statutes of Texas in which the benefit of said Article 3354, Revised Civil Stat-es of Texas, is denied to a defendant, is that class arising under the said Anti-trust act of May 25, 1899, and this the defendant is ready to verify.

8. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done
137 or committed by this defendant prior to the 22nd day of September, 1902, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than four years before the filing of this suit and is therefore barred by the Statute of *Mi*nitation of four years prescribed in Article 3358, Revised Civil Statutes of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued four years before the institution of this suit, and this the defendant is ready to verify.

9. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas, because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1902, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than four years before the filing of this suit and is therefore barred by the Statute of Limitation of four years prescribed in Article 4458, Revised Civil Statutes of Texas, which this defendant here specially pleads in bar

of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and this defendant is ready to verify.

10. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas under the Anti-Trust
138 Act of May 25, 1899, for the reason that if the Statute of Limitation of four years, as prescribed in Article 3358, Revised Civil Statutes of Texas, the benefit of which this defendant invokes in paragraphs 8 and 9 of this answer, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits, under said Act of May 25, 1899, this defendant, if plaintiff's cause of action is of a civil nature, will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature for the recovery of a personal judgment, except those governed by Article- 3353, 3354, and 3356, Revised Civil Statutes of Texas, in which the benefit of said Article 3358, Revised Civil Statutes of Texas, is denied to a defendant, is that class arising under said Anti-Trust Act of May 25, 1899, and this the defendant is ready to verify.

11. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which
139 this defendant specially pleads in bar of the plaintiff's rights to recover such fines or penalties that accrued more than two years before the institution of this suit, and this the defendant is ready to verify.

12. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the cancellation of such permit to do business in the State of Texas, accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to cancel

said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and this the defendant is ready to verify.

13. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust Act of March 31, 1903, for the reason that if the Statute of Limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in Paragraphs 11 and 12 of this answer, is not available to this defendant, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is
140 void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of March 31, 1903, should be prosecuted by proceedings, criminal in form, for violating the said Anti-Trust Act of March 31, 1903, or any of its provisions, which would be a proper form of proceeding, the prosecution against him would be barred by said Article 219 of the Code of Criminal Procedure, and this the defendant is ready to verify.

14. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust Act of March 31, 1903, for the reason that if the Statute of Limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in paragraphs 11 and 12 of this answer, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits, under the said Act of March 31, 1903, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since every cause of action or offense below the grade of felony, arising from the violation of every other penal or criminal statute of this State would be barred by said Article 219 of the Code of Criminal Procedure of Texas as to all natural persons and corpo-
141 rations, and this the defendant is ready to verify.

15. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 3354,

Revised Civil Statutes of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued two years before the institution of this suit, and this the defendant is ready to verify.

16. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 3354, Revised Civil Statutes of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and
142 this the defendant is ready to verify.

17. Further specially answering said petition, this defendant says that the plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust act of March 31, 1903, for the reason that if the Statute of Limitation of two years, as prescribed in Article 3354, Revised Civil Statutes of Texas, the benefit of which this defendant invokes in Paragraphs 15 and 16 of this answer, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits, under said Anti-Trust Act of March 31, 1903, this defendant, if plaintiff's cause of action is of a civil nature, will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature for the recovery of a personal judgment, except those governed by Article 3353, 3356, and 3358, Revised Civil Statutes of Texas, in which the benefit of said Article 3354, Revised Civil Statutes of Texas is denied to a defendant, is that class arising under the said Anti-Trust Act of March 31, 1903, and this the defendant is ready to verify.

18. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties against this defendant because of any act or thing done or
143 committed by this defendant prior to the 22nd day of September, 1903, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than three years before the filing of this suit and is therefore barred by the Statute of Limitation of three years prescribed in Article 218 of the

Code of Criminal Procedure of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued three years before the institution of this suit, and this the defendant is ready to verify.

19. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment herein against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1903, by reason of its alleged violation of the Anti-trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than three years before the filing of this suit and is therefore barred by the Statute of Limitation of three years prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas which this defendant here specially pleads in bar of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring three years before the institution of this suit, and this the defendant is ready to verify.

20. Further specially answering said petition, this defendant says that plaintiffs ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust
144 Act of March 31, 1903, for the reason that if the Statute of Limitation of three years, as prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in Paragraphs 18 and 19 of this answer, is not available to this defendant, this defendant will be denied the equal protection of the laws, and the said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of March 31, 1903, should be prosecuted for a felony for violating said act as is authorized by Section 13 thereof, the prosecution against him would be barred in three years by said Article 218, and this the defendant is ready to verify.

21. And further specially answering herein, and for the purpose of supplementing its foregoing special pleas of limitation, Nos. 1 to 20, inclusive, and each of them, defendant says that though it is a foreign corporation, it has at all times since the 31st day of May A. D. 1900, maintained offices and local agents in this state, and particularly has at all times since said date maintained an office and local agent at Austin, Travis County, Texas, upon whom service of citation could have been had by plaintiff as to any of the various alleged causes of action set up in plaintiff's petition, at any time since said May 31st, 1900, and this the defendant stands ready to verify.

22. For further special answer herein this defendant says that the plaintiff herein, in so far as it seeks to question or review the action by which the Waters Pierce Oil Company, chartered May 7th, 1878,

was dissolved, is barred and precluded by the judgment ren-
145 dered on the 5th day of November, A. D. 1900, in the District Court of McLennan County, State of Texas, in a suit duly instituted in said Court on April 1st, 1895, and therein pending on said 5th day of November, A. D. 1900, wherein the plaintiff herein, the State of Texas, was plaintiff and wherein said old Waters Pierce Oil Company, so chartered on May 7th, 1878, was defendant, and wherein said State, by its proper petition and information filed in said Court against said defendant sought to recover against it a large sum of money, greatly in excess of Five Hundred Dollars and within the jurisdiction of said District Court, as penalties or fines, for acts done and committed by said defendant in violation of what is known as the "Anti-Trust Laws," of the State of Texas, being the acts of the Legislature of the State of Texas, approved March 30th, 1889, and in which suit at the trial after said act of dissolution had occurred, the issue was duly and legally presented to said District Court, that because of said dissolution, the said old Waters Pierce Oil Company was no longer in existence, and at said trial and at a hearing therein upon the merits by said Court after taking evidence as to the manner in which said Company had been dissolved, it was thereupon and by said Court duly adjudged and determined that said Waters Pierce Oil Company so chartered on May 7th, 1878, had been duly and legally dissolved, and judgment was in said suit duly entered of record so adjudicating and determining and because of said dissolution said District Court thereupon and in said cause duly adjudged that said suit should abate and be dismissed, and it thereupon entered its judgment so adjudicating and determining, and this defendant attached hereto a copy of said judgment and makes the same part of this plea, marked Exhibit A, and prays that the same be taken and considered as part hereof.

146 This defendant says that the plaintiff herein duly prosecuted an appeal from said judgment to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, and caused a transcript of the record in said cause to be duly filed in said appellate court in the manner and within the time required by law and that said appellate court by its proper judgment rendered of record on the 2nd day of April A. D. 1902, in said cause affirmed the said judgment of the District Court of McLennan County, and thereby caused the same to become final and conclusive in all respects, and this defendant here pleads and alleges that the said judgment of the District Court of McLennan County rendered in said cause against the plaintiff herein is now in full force and effect and has not been in any manner qualified, reversed or set aside and that by reason of said judgment so fixing the status of said old Waters Pierce Oil Company and adjudging that it had been theretofore dissolved and did not then have any legal existence, the State of Texas, the plaintiff herein, is barred and precluded from further denying or questioning the validity of the dissolution of said former Waters Pierce Oil Company, so chartered on the 7th day of May, A. D. 1878, and this defendant further avers that the said District Court of McLennan County, Texas, was a court of competent jurisdiction

and had full power to hear and determine the said suit and render the judgment therein which it did render as above set forth, and defendant here pleads its said judgment as *res adjudicata* finally settling as against the State of Texas, the fact that said old Waters Pierce Oil Company was dissolved in accordance with law, and this the defendant is ready to verify.

23. For further special answer herein, this defendant says that if it has incurred any penalty, or is liable to any fine, to the
147 State of Texas by reason of anything done or committed, or permitted or suffered to be done or committed, prior to the 31st day of March, A. D. 1903, which is not admitted but expressly denied, then it is not liable to the State of Texas in the penalties as prescribed in the Act of the Legislature of May 25, A. D. 1899, as claimed by the State in its petition or information herein filed, but is liable, if at all, to the penalties prescribed in said Act of March 31, 1903, under the provisions of Article Fifteen of the Penal Code of the State of Texas and under the general rules of law which prescribes that in cases where by subsequest law the penalty for the same offense is ameliorated, the offender shall upon conviction receive the punishment prescribed in the later law, and while this defendant denies that it is liable to the State of Texas in any sum as a fine or penalty for anything occurring prior to March 31st, 1903, or after that time, it here specially pleads its election to claim the benefit of the provisions of said later act, approved March 31, 1903, reducing the amount of penalties recoverable by the State for an infraction of said statute, and avers that both acts are upon the same subject, and if valid, undertake and seek to define the same offense and to impose punishment for the same kind of offense and for the same kind of acts and conduct on the part of persons and classes of persons therein specified, and this defendant further avers that unless the lower grade of punishment prescribed in said Act of March 31, 1903, is imposed and held applicable to said former Act of May 25, 1899, and as an amendment thereto, and this defendant shall be held liable under said former statute and to the punishment therein prescribed, that such holding will deprive this defendant of its property without due process of law, and will deny to it the equal protection of the law, in violation of the Constitution
of the United States, and particularly of Section 1 of the
148 Fourteenth Amendment thereof, and this the defendant is ready to verify.

24. For further special answer herein, this defendant says that if this defendant ever created, entered into and became a member of and a party to any pool, trust, agreement, combination, confederation, conspiracy, or understanding with another and other corporations, and with individuals and persons, or ever became a monopoly and was a party to a union, combination, consolidation and affiliation of capital, credit, property, assets, skill and acts by and between persons and corporations, and ever affiliated, amalgamated and consolidated with other persons and corporations for the purposes, or any of the purposes, denounced as illegal by said Anti-Trust Act of May 25, 1899, as alleged in plaintiff's petition, which is not admitted, but denied, and if this defendant ever became a party to a trust and to

a combination of capital, skill and acts by and between itself and other corporations and persons, and entered into a combination and consolidation and combined and united its interests with other corporations and persons for the purposes, or any of the purposes, denounced as illegal by the Anti-Trust Act of March 31, 1903, as alleged in plaintiff's petition, which is not admitted, but denied, this defendant avers that all such pools, trusts, agreements, combinations, confederations, conspiracies, understandings, unions, consolidations, affiliations and amalgamations, if made, which is not admitted, but denied, were made outside of the State of Texas and with reference to commerce in oils and the products of petroleum between states other than the State of Texas, and if the same contemplated or have affected such commodities in Texas in any respect, it has been in respect to commerce therein between the State of Texas and some other state, and defendant here specially pleads and avers that the laws of Texas relied upon as the basis of recovery herein, to-
149 wit, the Anti-Trust Act of May 25, 1899, and the Anti-Trust Act of March 31, 1903, have no application thereto, and that this Court is without jurisdiction of the subject matter of all such alleged pools, trusts, agreements, combinations, confederations, conspiracies, understandings, unions, affiliations and amalgamations, which, if made at all, were made outside of the State of Texas, for the reason that the laws of Texas have no extra territorial operation and effect; and this defendant avers that if said Acts of May 25, 1899, and March 31, 1903, or either of them apply to said pools, trusts, agreements, combinations, confederations, understandings, unions, consolidations, conspiracies, affiliations and amalgamations alleged in said petition, the same are in violation of Subdivision 3 of Section 8 of Article 1 of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the several states, and this the defendant is ready to verify.

25. For further answer herein, this defendant says it is a corporation duly chartered in the State of Missouri and under the laws of that State and under its charter has power to transact business in said State of Missouri, and in other States, including the State of Texas, and is and has at all times since its incorporation on the 29th day of May, A. D. 1900, been engaged in conducting an interstate business, and that being so incorporated under the laws of the State of Missouri, full faith and credit attached to the Act of Missouri in granting its charter to it, under the provisions of Section 1 of Article Four of the Constitution of the United States, which will be violated if the validity of said charter is not recognized by the courts of Texas in this case, and defendant says that it is not within the constitutional powers of the State of Texas to make it an offense against its laws by reason of ownership of stock in defendant corporation by
150 persons or corporations prohibited by the laws of Texas, and that to so construe the Acts of the Legislature of the State of Texas upon which the State relies as basis of recovery herein, will deprive this defendant of its property without due process of law and deny to it the equal protection of the laws, contrary to the provisions of the Constitution of the United States and particularly

of Section 1 of the Fourteenth Amendment thereof, and this the defendant is ready to verify.

26. For further special answer herein this defendant says that the subject of who shall be qualified to subscribe for, or after issuance to purchase and own stock in defendant corporation under its charter as a corporation created and duly incorporated under the laws of the State of Missouri, is a matter subject to the exclusive jurisdiction of the State of Missouri, and if it be a fact that the Standard Oil Company of New Jersey became at any time or is now the owner of stock of this defendant, which is not admitted, then this defendant avers that when such stock was so acquired it was under a contract valid in the State of Missouri, where it was made and where this defendant had its principal office and where said stock had its situs, and that it is not competent or within the constitutional powers of the State of Texas, by its laws, to make it an offense for said Standard Oil Company to so own stock in this defendant corporation, and that if either of the Acts of the Legislature of the State of Texas, to-wit, the Anti-Trust Act of May 25, 1899, and the Anti-Trust Act of March 31, 1903, relied upon by the State as basis of recovery in this suit are held to give the State the right to recover penalties against this defendant because of such holding of stock by said Standard Oil Company, then each of said Acts is unconstitutional, null and void because in violation of paragraph one of section ten of Article One of the Constitution of the United States which declares that
151 no state shall pass any law impairing the obligations of a contract and are further violative of section one of the 14th Amendment to the Constitution of the United States, in that said Acts would deprive this defendant of its property without due process of law and deny to this defendant the equal protection of the law, and this the defendant is ready to verify.

27. For further answer herein this defendant says that if it shall be held that the Waters Pierce Oil Company, chartered May 7th, 1878, was not legally dissolved and that this defendant is in legal effect the same corporation and required to answer for the doings of said old company, which is not admitted, but expressly denied, then this defendant says that said former corporation was also created under the laws of the State of Missouri and received its charter from said State long prior to the passage of each of the acts of the Legislature of the State of Texas upon which said State relies as basis of recovery herein, and that the ownership of stock in said company by the Standard Oil Company as alleged in plaintiff's petition, was based upon the acquisition of such stock by said Company upon contracts ante-dating the passage of either of said Acts of the Texas Legislature of May 25, 1899, and March 31, 1903, which contracts under which said stock was held, were valid when made and where said stock had its situs, and that both of said Acts of the Legislature of the State of Texas in so far as the same can be held as making this defendant liable to penalties in this suit for said reason, are violative of the Constitution of the United States and of the particular provisions set out in the preceding special answer and of the further provision in said paragraph one of Section Ten of Article 1 which forbids any state to pass *ex post facto* law, and while denying its liability

for anything connected with said former Waters Pierce Oil
152 Company, this defendant, if held thereto, here pleads the invalidity of both of said Acts of the Legislature of the State of Texas relied on as the basis of recovery herein because of their contravention of the Constitution of the United States in the particulars herein set forth, and this the defendant is ready to verify.

28. For further special answer herein, defendant says that if it be true that the Standard Oil Company of New Jersey, held, owned or controlled any of its stock on March 31, 1903, which it not admitted, but expressly denied, and it be further held that the Act of the Legislature of the State of Texas approved on that day, and which is relied upon by the State as basis of recovery herein, can have legal application to such holding and render this defendant liable to penalties by reason thereof, then this defendant says that said Act is unconstitutional, null and void and cannot be held to include or in any manner affect such holding of stock in this defendant by said Standard Oil Company on or prior to that day, or the continued holding thereof after that date, because if said stock was so held, it was under contracts made prior thereto which were valid when made and with respect to said stock the said Standard Oil Company owned the same under valid contracts and under vested rights, and to attempt to hold this defendant liable to penalties because of such holding of its stock, would deprive defendant of its property without due process of law and deny to it the equal protection of the law in violation of the Constitution of the United States, and particularly of Section 1 of the Fourteenth Amendment thereof, and would impair the obligations of the contract under which said stock was so acquired and held, and would likewise render this defendant, liable because of something occurring prior to the passage of said Act, in violation of paragraph one of Section 10 of Article One of the Constitution of the United States, and this the defendant is ready to verify.

153 29. For further special answer herein, defendants says that the Act of the Legislature of the State of Texas, approved May 25, 1899, and which is relied upon as the sum of recovery against this defendant of penalties in the sum of Five Thousand Dollars for each and every day from the 31st day of May, A. D. 1900, to the 31st day of March A. D. 1903, was and is unconstitutional, null and void, because of its terms and in the construction of its language as applied to the facts alleged in plaintiff's petition, it is so vague, indefinite and uncertain of meaning, that it was and is impossible for defendant in advance of its construction and application to any state of facts by the verdict of a jury and the ruling of the court, to understand its meaning and legal effect, or to know what was lawful and permissible to be done and what was unlawful — prohibited, and therefore said Act is in violation of the Constitution of the United States in that it would, if defendant is convicted of violating it, deprive defendant of its property without due process of law and deny to it the equal protection of the law in contravention of Sec-

tion 1 of the 14th Amendment to the Constitution of the United States. And this the defendant is ready to verify.

30. For further special answer herein, defendant says that the said Act of the Legislature of the State of Texas, approved May 25, 1899, was and is unconstitutional, null and void, and violative of the Constitution of the United States, and particularly of said Section 1 of the 14th Amendment thereof, because at the same session of said Legislature by another Act, approved May 27, 1899, it was provided that it should be lawful for any and all persons engaged in any kind of work of labor, manual, mental, or both, to associate themselves together and form trade unions and other organizations for the purpose of protecting themselves in their personal work, personal
154 labor and personal service in their respective employments, which said last enactment this defendant avers was in legal effect an amendment of said Act of May 25, 1899, and entitled the persons and classes of persons therein designated to form pools, trusts and combinations and thereby created and caused such persons so designated in said later Act an exempt class not bound by the terms of said first Act under which the State seeks to punish defendant in this case, and defendant therefore says because of said exemptions and discriminations, the said Act of the Legislature approved May 25, 1899, if otherwise valid, became null and void and that to hold this defendant amenable to its provisions and subject it to the penalties therein denounced and herein sought to be recovered, would deprive it of its property without due process of law and deny to it the equal protection of the law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, and this the defendant is ready to verify.

31. For further special answer herein, defendant says that said Act of the Legislature of the State of Texas, approved May 25, 1899, was and is unconstitutional, null and void because by its terms it was enacted as cumulative of and in continuation of the prior Act of the Legislature of the State of Texas, upon the same subject, approved April 30, 1895, in which said former act it was expressly provided that the terms of said Act should not apply to live stock and agricultural products, in the hands of the producer or raiser, nor to be held or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages, and defendant therefore says by reason of said exemptions and discriminations so made in said Act of April 30, 1895, and continued in force by said Act of May 25, 1899, said last mentioned Act was unconstitutional, null and void and the State of Texas cannot recover penalties
155 against defendant herein, because to so hold and subject this defendant to penalties by reason of said Act, would result in the taking of this defendant's property without due process of law and deny to it the equal protection of the law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, and this the defendant is ready to verify.

32. For further special answer herein, defendant says that the Act of the Legislature of the State of Texas, approved March 31, 1903, and which is relied upon as the basis of recovery against this defend-

ant, of penalties in the sum of Fifty Dollars for each and every day from the 31st day of March, A. D. 1903, up to the filing of this suit, was and is unconstitutional, null and void, because by its terms and in the construction of its language as applied to the facts alleged in plaintiff's petition it is so vague, indefinite and uncertain of meaning that it was and is impossible for defendant, in advance of its construction and application to any state of facts by the verdict of a jury and the ruling of a court, to understand its meaning and legal effect, or to know what was lawful and permissible to be done, and what was unlawful and prohibited, and therefore said Act is in violation of the Constitution of the United States, in that it would, if defendant is convicted of violating it, deprive defendant of its property without due process of law, and deny to it the equal protection of the law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, and this the defendant is ready to verify.

33. For further special answer herein, this defendant says that the said Act of the Legislature of the State of Texas, approved March 31, 1903, was and is unconstitutional, null and void and violative of the Constitution of the United States, and particularly of said Section 1 of said 14th Amendment thereof, because by the terms
156 of said Act all other laws theretofore passed by the Legislature of the State of Texas, upon the same subject were particularly and specifically repealed, except the Act of the Legislature of the State of Texas, approved May 27, 1899, in which said last mentioned Act it was provided that it should be lawful for any and all persons engaged in any kind of work or labor, manual, mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor and personal service in their respective employments. Defendant here avers that said Act, approved May 27, 1899, was not repealed by said Act of March 31, 1903, and was not intended by the Legislature passing the same, or by the Governor, approving the same, to be so repealed.

34. For further answer herein this defendant says with respect to said Act approved May 27, 1899, that continuously since the passage of said Act approved March 31, 1903, it has been uniformly held and construed by the governor of the State of Texas charged with the enforcement of the laws, and by the Attorney General of said State, charged particularly in said Act of March 31, 1903, with the enforcement thereof, that said Act of May 27, 1899, was not repealed or in any manner affected by said Act of March 31, 1903, and that it was lawful for the persons and classes of persons mentioned in said Act to form pools, trusts, combinations and associations for the purpose of protecting themselves in their personal work, personal labor and personal service, by which contemporaneous and continuous construction it has been held lawful for all classes of persons in the State of Texas, engaged in any kind of employment wherein they perform labor, manual, mental, or both, to form associations and to unite and agree among themselves upon a standard

of wages for their personal service and to fix a standard of
157 price for the sale of their commodities, wherefore, defendant says that such contemporaneous, uniform and continuous construction of said Act, approved March 31, 1903, must be taken and held as conclusive upon the State of Texas as the true construction and meaning of said Act.

Defendant therefore says that the said Act approved May 27, 1899, is in full force and effect in the State of Texas, and that by its terms and meaning, as above construed and held, it creates an exemption of a large class of persons in the State of Texas, in fact, as defendant here avers, constitutes the great majority of the people of the State of Texas into a class exempt from the provisions of said Act of March 31, 1903 and that by reason thereof said Act of March 31, 1903, is violative of the Constitution of the United States, and particularly of Section 1 of the 14th Amendment thereof, and that to hold defendant liable for the penalties denounced in said Act would deprive it of its property without due process of law, and deny to it the equal protection of the law, and this the defendant is ready to verify.

35. For further special plea, defendant says that the State of Texas ought not to recover against it in this cause because of anything done in alleged violation of either the act approved May 25, 1899, or the act approved March 31, 1903, because of the attempt in each of said Acts to make the penalty for the violation thereof cumulative with a separate penalty for each and every violation thereof on each and every day, because the enforcement of these statutes against this defendant for the things charged in plaintiff's petition would be confiscatory and would result in the infliction of unusual and excessive punishment for the violation of statutes of doubtful meaning, the validity, import and scope of which had not been the subject of judicial construction, and could not be as-
158 certained by this defendant or any other person without being subjected to the practical confiscation of its property, while the meaning and scope of such statutes is being judicially ascertained, and defendant therefore says that to uphold said Acts and subject it to penalties as claimed by the State in this cause will result in the infliction upon it of unusual and excessive fines and penalties in violation of Section 13 of Article 1 of the Constitution of the State of Texas, and deprive it of its property without due process of law, and deny to it the equal protection of the law, in violation of the Constitution of the United States, and particularly of Section 1 of the 14th Amendment thereof, and this the defendant is ready to verify.

36. For further special answer herein defendant says that it is true as alleged in plaintiff's petition that on the 31st day of May, A. D. 1900, the State of Texas, acting by its Secretary of State who had full authority so to do, issued and granted to defendant a permit to transact its business in said State of Texas for the period of ten years from that date, which said permit was then and there so issued in consideration of the sum of One Hundred and Eighty Dollars then paid to the State of Texas by this defendant, the same being the amount of the fees and the amount of the franchise tax

properly chargeable against defendant under the laws of said State and due to be paid at the time of the issuance of said permit.

Defendant avers that under and by virtue of the laws of the State of Texas in force at the time that it paid its money to said State as the consideration for said permit, it was provided that defendant should be entitled to conduct its business within the State of Texas for the period of ten years from that date, that is to say, until the 30th day of May, A. D. 1910, the only condition attached and forming part of said permit was that defendant should annually
159 thereafter pay the sum fixed by the laws of said State as an annual franchise tax, and defendant here avers that it has so paid annually and within the time allowed by the laws of the State of Texas for payment, the full sum charged and fixed in said laws as the annual franchise tax due by this defendant upon its said permit. Defendant therefore pleads that by the issuance of said permit and in consideration of the sum then paid to it by this defendant, as above set out, and since paid to it by this defendant as an annual franchise tax, as above alleged, the State of Texas entered into a valid contract with this defendant entitling defendant to conduct its said business within said State of Texas for a period of ten years and until the 30th day of May, A. D. 1910, which said contract is now in full force and effect and obligatory upon the part of the State according to its terms, as herein pleaded.

Defendant further avers that the Act of the Legislature of the State of Texas, approved March 31, 1903, and relied upon by the State as a basis of recovery against this defendant in this cause was passed after the State of Texas entered into said contract and issued its said permit to defendant, and that said act was and is unconstitutional, null and void in all respects wherein it undertakes to limit or restrict the holding and ownership of stock in this defendant, and wherein it undertakes to make the existence and performance of contracts theretofore legal a violation of its terms, and defendant says that the said act has no force as a law in so far as it may be held as affording to the State grounds for the cancellation of its said contract with this defendant, as evidenced by its said permit so issued to defendant, and to allow the State of Texas to cancel said permit upon the grounds or any of the grounds alleged in plaintiff's petition and arising under said Anti-Trust Act of March 31, 1903,
would violate the obligation of the contract between the State
160 of Texas and this defendant created by said permit in contravention of paragraph 1, Section 10 of Article 1 of the Constitution of the United States, and this the defendant is ready to verify.

37. Further specially answering herein, this defendant says that if it be true, as alleged in plaintiff's petition, that the statutes of the State of Missouri by Sections 977, 978, 979, 980 and 981 provide for the dissolution of corporations as therein prescribed, the method therein prescribed is not applicable to the dissolution of a private trading corporation by the unanimous consent of all the stockholders, or if applicable, it is not exclusive of the common law method of dissolving a private trading corporation by the unanimous consent of all the stockholders; that in the State of Missouri on the 28th day

of May, 1900, the common law prevailed and was the rule of action and decision when not repugnant to or inconsistent with the Constitution of the United States, the Constitution of the State of Missouri, or the statute law in force in that state for the time being, by virtue of the adoption of the common law by the State of Missouri by Section 4151 of the Revised Statutes of Missouri of 1899, the same being a reproduction and continuation of Section 6161a of the Revised Statutes of Missouri of 1889; that there was nothing on said 28th day of May, 1900, in the Constitution of the United States, the Constitution of the State of Missouri, or the Statute laws of Missouri, then in force, to which the common law rule permitting the dissolution of private trading corporations by the unanimous consent of all the stockholders was repugnant or with which it was inconsistent, but that on the contrary, by Section 1018 of the Revised Statutes of Missouri, in force on said 28th day of May, 1900, there was a distinct recognition and adoption of the common law rule on the subject by prescribing that the president or secretary of every incorporated company in that State, when it shall dis-
161 solve, is required to file with the Secretary of State an affidavit to that effect, and by prescribing certain consequences for the failure to comply with the provisions of said section; that on said 28th day of May, 1900, the Waters-Pierce Oil Co., created and organized on May 7th, 1878, under the laws of the State of Missouri, was a private trading domestic corporation *corporation* of the State of Missouri, and on that day all of its stockholders, by unanimous vote, determined to dissolve and did dissolve that corporation; that on the 29th day of May, 1900, Andrew M. Finlay, who, until said dissolution, was the president of said Waters Pierce Oil Company of May 7, 1878, filed an affidavit, in compliance with Section 1018 showing in due form the dissolution of said Waters Pierce Oil Company of May 7, 1878, pursuant to the action of all of its stockholders taken on said 28th day of May, 1900, with the Secretary of State of the State of Missouri, and that said affidavit was then and there accepted by that officer, who, by the laws of Missouri, was authorized in the exercise of discretion vested in him to accept said affidavit, and that thereby such dissolution was accepted and ratified by the State of Missouri, as a valid dissolution of said Waters Pierce Oil Company of May 7, 1878; that under the common law rule in force in Missouri such acceptance was not necessary when the dissolution was accomplished by the unanimous vote of all the stockholders, but if defendant is mistaken and such acceptance was necessary, the State of Missouri did accept such dissolution as aforesaid; that having accepted said dissolution of the Waters Pierce Oil Company of May 7, 1878, the State of Missouri, by and through its Secretary of State vested with discretion in respect thereto, issued to this defendant a proper certificate of incorporation under the great seal of that state, showing the incorporation of this defendant by virtue of its
162 charter filed with the Secretary of State of the State of Missouri on May 29, 1900; that the name of this defendant being the same as that of the Waters Pierce Oil Co. of May 7, 1878, the Secretary of State of the State of Missouri was prohibited, by Section 959 of the Revised Statutes of Missouri, from issuing to it a

certificate of incorporation under the same name and style as that already assumed by the Waters Pierce Oil Co. of May 7, 1878, it is was still an existing corporation, and that the Secretary of State of the State of Missouri was clothed with the discretion to determine whether the proposed new corporation was within the prohibition of said Section 959, and he decided that it was not.

That on said 28th day of May, 1900, there existed another statute of the State of Missouri whereby the common law mode of dissolving a private trading corporation by the unanimous consent of its stockholders was recognized and adopted, to-wit: Section 976 of the Revised Statutes of Missouri of 1899 which was a reproduction and continuation in force of Section 2513g of the Revised Statutes of Missouri of 1889, whereby it was provided that upon the dissolution of a corporation its president and directors or managers of its affairs should be trustees with power to settle its affairs, collect its outstanding debts and divide its moneys and other property among its stockholders after paying its debts, and as such trustees they were authorized to sue and be sued; that said Article 976 of the Revised Statutes of Missouri of 1899 existed for ten years before the revision of 1899 as Section 2513g of the Revised Statutes of Missouri of 1889 and for ten years before the incorporation in said Revised Statutes of Missouri of 1899 of Sections 977, 978, 979, 980, and 981, relied upon in plaintiff's petition and existed when the only method of dissolving a corporation in Missouri was the common law
163 mode, and that said Section 976 applied prior to the enactment of said Sections 977, 978, 979, 980 and 981 to the dissolutions accomplished under the common law said Section 1018, and since the enactment of said Sections 977, 978, 979, 980 and 981 it applies to dissolutions accomplished by the one method as well as the other, authorized under the laws of Missouri, and this the defendant is ready to verify.

Wherefore, relying upon each and all of the defenses presented in this answer, this defendant prays that plaintiff take nothing by this suit and that this defendant go hence without day.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

J. D. JOHNSON,
H. S. PRIEST,
*Of Counsel.*

164 EXHIBIT A.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

NOVEMBER 5TH, 1900.

This day this cause was called for trial; and thereupon came the plaintiff, the State of Texas, by her County Attorney, and also came

Andrew M. Finlaw, the intervenor, but the defendant, the Waters-Pierce Oil Company, came not; and it appearing to the Court that on, to-wit, the 30th day of October, 1900, Andrew M. Finlay, as intervenor, did file his plea of intervention in this cause, wherein as former president of the defendant company he did advise the Court of the dissolution of said defendant corporation and did attach to his plea of intervention certain exhibits, which plea of intervention is supported by the affidavit of said Andrew M. Finlay; and thereupon the plaintiff, through her County Attorney, did file its application for a continuance of said cause, same being a first application, which application was resisted by the intervenor for insufficiency upon its face; and it appearing to the Court after hearing objections to said application for continuance and being duly advised in the premises, that said application was insufficient in law, the same was overruled; to which action of the Court the plaintiff then and there excepted.

Thereupon came on to be heard the plea of intervenor suggesting the dissolution of defendant company, together with the plaintiff's first supplemental petition in reply thereto, and the exceptions of said intervenor to said first supplemental petition, and the Court after hearing the pleadings, evidence and argument of counsel, is of opinion that the law is with the intervenor.

165 It is therefore ordered, adjudged and decreed by the Court that plaintiff's exceptions contained in its first supplemental petition to intervenor's plea of intervention, as well as intervenor's exceptions to plaintiff's first supplemental petition, be and the same are hereby overruled; and the Court having heard testimony and being advised in the premises, does consider, order, adjudge and decree that the plea of intervention, filed herein by Andrew M. Finlay be and the same is hereby sustained. And by reason of the dissolution of defendant, the Waters Pierce Oil Company, duly shown in the premises, it is further ordered, adjudged and decreed that this suit be and the same is hereby abated and dismissed; to which ruling of the Court the plaintiff, by its County Attorney, did then and there except, and at the same time gave notice of appeal in open Court to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Defendant's 3rd Amended Original Answer. Filed May 8th, 1907, D. J. Pickle, Clerk.

166 *Order of Exceptions.*

MAY 10TH, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

And now on this the 10th day of May, A. D. 1907, came the parties by their respective attorneys, and thereupon came on to be

heard the defendant's exceptions to plaintiff's amended original petition, and same having been argued and submitted and being fully understood the court is of the opinion that same should all be overruled except special exception number 70, which should be sustained;

It is therefore ordered that all of said defendant's exceptions be and are overruled except special exception number 70 which is by the Court sustained.

To which action and ruling of the Court the said defendant except in so far as such ruling is against it.

167 *Application for Change of Venue.*

Filed May 13th, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Now comes the Waters Pierce Oil Company, the defendant in the above entitled and numbered cause, by its attorneys, and moves the court to grant to it a change of venue in this case, and for reason therefor shows to the court:

That there exists in Travis County, where this suit is pending, so great a prejudice against this defendant that it cannot obtain a fair and impartial trial in this county.

As a part of this motion and in support thereof defendant attaches hereto, and asks to be considered as a part hereof the affidavit of Sam Harlan, an agent of the defendant residing in Travis County, and the affidavits of C. H. Allen, Gus Felder, Jas. E. Lucy and J. C. Adrian, four credible persons residing in Travis County, and each showing that there exists in this county so great a prejudice against this defendant that it cannot obtain a fair and impartial trial of this cause in this county.

Defendant further shows to the court that the venue of this cause should not be changed to Williamson County, the court house of which is nearest to the court house of Travis County, for the reason that said Williamson County is subject to an objection sufficient to authorize a change of venue of this cause from said county in the first instance, in this: That there exists in Williamson County so great a prejudice against this defendant that it could not
168 obtain a fair and impartial trial in said county; defendant attaches hereto, and in support hereof the affidavit of R. E. Lauck, its local agent at Taylor, in Williamson County, Texas, and the affidavits of James A. Thompson, Howard Bland and S. G. Yakey, three credible persons and residents of Williamson County, each showing that there exists in said Williamson County so great a

prejudice against this defendant that it could not obtain a fair and impartial trial of this cause in said county.

Wherefore, this defendant moves the court to change the venue of this cause from this county to some county other than Williamson County.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEADMAN,
*Attorneys for Defendant.*

J. D. JOHNSON,
H. S. PRIEST,
*Of Counsel.*

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned officer, on this day personally appeared Sam Harlan, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of
169 Travis County Texas, and that he is an agent of the Waters Pierce Oil Company, the defendant in the above entitled and numbered cause, and that there exists in Travis County so great a prejudice against said Waters Pierce Oil Company that it cannot obtain a fair and impartial trial of said cause in said county.

SAM HARLAN.

Subscribed and sworn to before me by Sam Harlan this the 11th day of May, A. D. 1907.

[SEAL.]

E. CARTLEDGE,
*Notary Public, Travis County, Texas.*

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared C. H. Allen, a credible person, who, being by me first duly

sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

C. H. ALLEN.

Subscribed and sworn to before me by C. H. Allen this the 11th day of May, A. D. 1907.

[SEAL.]

E. CARTLEDGE,
*Notary Public, Travis County, Texas.*

170 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Gus Felder, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

GUS FELDER.

Subscribed and sworn to before me by Gus Felder this the 11th day of May, A. D. 1907.

[SEAL.]

E. CARTLEDGE,
*Notary Public, Travis County, Texas.*

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas, 26th Judicial District.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned officer, on this day personally appeared Jas. E. Lucy, a credible person, who, being by me first duly sworn, on oath deposes and says: that he is a resident of
171 Travis County, Texas, and that there exists in said Travis County so great a prejudice against the Waters-Pierce Oil

Company that the said Waters-Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

JAS. E. LUCY.

Subscribed and sworn to before me by Jas. E. Lucy this 11th day of May, A. D. 1907.

[SEAL.] E. CARTLEDGE,
*Notary Public, Travis County, Texas.*

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared J. C. Adrian, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

J. C. ADRIAN.

Subscribed and sworn to before me by J. C. Adrian this the 11th day of May, A. D. 1907.

[SEAL.] E. CARTLEDGE,
*Notary Public, Travis Co., Texas.*

172 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared R. E. Lauck, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and is the agent of the Waters-Pierce Oil Company at Taylor in said county, and that there exists in said Williamson County so great a prejudice against said Waters-Pierce Oil Company that said Waters-Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters-Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties against said Waters-Pierce Oil Company for alleged violations of the anti-trust laws of this State.

R. E. LAUCK,

Subscribed and sworn to before me by R. E. Lauck this 9th day of May, A. D. 1907.

[SEAL.] R. C. BRIGGS,
*Notary Public, Williamson County, Texas.*

THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared Howard Bland, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and that there exists in said county so great a prejudice against the Waters-Pierce Oil Company that said Waters-Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County,
173 Texas, 26th Judicial District, wherein the State of Texas is suing said Waters-Pierce Oil Company for a cancellation of its permit to do business in this State, and for the recovery of penalties against said Waters-Pierce Oil Company for alleged violations of the anti-trust laws of this State.

HOWARD BLAND.

Subscribed and sworn to before me by Howard Bland this 9th day of May, A. D. 1907.

[SEAL.] H. C. MANTOR,
*Notary Public, Williamson County, Texas.*

THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared S. G. Yakey, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and that there exists in said Williamson County so great a prejudice against the Waters-Pierce Oil Company that said Waters-Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters-Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties against said Waters-Pierce Oil Company for alleged violations of the anti-trust laws of this State.

S. G. YAKEY.

Subscribed and sworn to before me by S. G. Yakey this 9th day of May, A. D. 1907.

[SEAL.] H. C. MANTOR,
*Notary Public, Williamson County, Texas.*

174 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared Jas. A. Thompson, a credible person, who, being by me first duly sworn, on oath deposes and says: that he is a resident of Wil-

liamson County, Texas, and that there exists in said county so great a prejudice against the Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties for alleged violations of the anti-trust laws of this State.

JAMES A. THOMPSON.

Subscribed and sworn to before me by James A. Thompson this 9th day of May, A. D. 1907.

[SEAL.] R. C. BRIGGS,
*Notary Public, Williamson County, Texas.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Application for Change of Venue. Filed May 13th, 1907. D. J. Pickle, Clerk.

175 *Plaintiff's Answer to Application for Change of Venue.*

Filed May 13th, 1907.

In the District Court of Travis Co., Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

Now comes the State of Texas, plaintiff in the above entitled and numbered cause, and in answer to the application of defendant for a change of venue, and says:

That there does not exist in Travis County so great a prejudice against this defendant that it cannot obtain a fair and impartial trial in this county, and plaintiff says defendant can obtain a fair and impartial trial in this county; and the plaintiff appends hereto affidavits of creditable persons residing in said county in support of this statement.

Plaintiff asks in case the Court holds that the facts stated in defendant's application with reference to Travis Co. be held to exist that it be given additional time to controvert said affidavit in so far as it applies to Williamson Co.

R. V. DAVIDSON,
*Att'y Gen.*
J. P. LIGHTFOOT,
*Assistant.*
JNO. W. BRADY,
G. W. ALLEN,
GREGORY & BATTS,
*Att'ys for Plaintiff.*

176 No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Bob Wolf, Nelson Houser, R. E. Lee, Jno. B. Patterson, C. C. Baker, S. T. Carpenter, J. Gregg Hill, all credible persons, and each of them says that he is a resident of Travis Co., Texas, and says that defendant in this cause can secure in this County a fair and impartial trial, and that there does not exist in Travis Co. so great a prejudice against said defendant that it cannot obtain a fair and impartial trial of this cause in this County.

BOB WOLF.
NELSON HOUSER.
R. E. LEE.
JOHN B. PATTERSON.
C. C. BAKER.
S. T. CARPENTER.
J. GREGG HILL.

Subscribed and sworn to before me this 13th day of May, A. D. 1907, by above named parties.

[SEAL.] D. J. PICKLE,
*Clerk Dist. Court, Travis Co., Texas.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Plaintiff's Answer to Application for Change of Venue. Filed May 13, 1907. D. J. Pickle, Clerk.

177 *Order Overruling Application for Change of Venue.*

MAY 17TH, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

And now on this the 13th day of May, A. D. 1907, came the parties by their respective attorneys and the defendants presented their application for a change of venue of this cause to some other County than Travis and Williamson, and the hearing of said application continued from day to day until this the 17th day of May, A. D. 1907, when the Court rules that the said application is not well taken and should be overruled;

It is therefore ordered by the Court that the said application of the defendant for a change of venue of this cause be and is hereby now overruled and a change of venue is refused.

To which ruling of the Court the defendant in open Court excepts.

178 *Defendant's Bill of Exceptions No. 5.*

Filed June 29th, 1907.

In the District Court of Travis County, Texas, 26th District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Be it remembered that on the hearing of the defendant's application for a change of venue in this case, on to-wit: the 14th day of May, A. D. 1907, C. J. Johnson, being sworn as a witness on the hearing of said application for change of venue, testified that he was the foreman of the grand jury of the District Court of Travis County, Texas, at the September Term, A. D. 1906, in and for the Fifty-third Judicial District, being the grand jury which returned the indictment against H. C. Pierce charging him with the offense of false swearing;

And be it further remembered that thereupon the defendant offered to prove by said witness, C. J. Johnson, that said grand jury which returned said indictment had no evidence before it before returning said indictment other than the original affidavit upon which the said indictment was predicated, and heard no testimony showing or tending to show that the statement contained in said affidavit, or any of them, were false.

And be it further remembered that to the introduction of said evidence the State objected on the ground that to permit the said witness to so testify would violate the secrecy of the proceedings of the grand jury, and would violate the oath of said witness as
179 a grand juror and which objections were sustained by the Court and the Court refused to permit defendant to prove said facts by said witness, and to which action and ruling of the Court the defendant then and there excepted, and here now tenders this its bill of exception to said action of the Court, and asks that the same be allowed and ordered filed and made a part of the record of this cause.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

Examined and allowed this 29th day of June, 1907, with the following explanation, the evidence mentioned in the bill was excluded because the undersigned thought it contrary to public policy to go into an inquiry involving a disclosure of the proceedings by which the Grand Jury had found an indictment. I do not know whether, if the ruling had been otherwise, the defendant could have shown what it offered to show or not. But in passing upon the motion for

a change of venue I assumed that it could have done so and that what it offered to prove concerning the matter mentioned in the bill was a fact.

V. L. BROOKS,
*Judge 26th Judicial District of Texas.*

(Endorsed:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Defendant's Bill of Exceptions No. 5. Filed June 29, 1907. D. J. Pickle, Clerk.

180 *Defendant's Bill of Exceptions No. 6.*

Filed June 29th, 1907.

In the District Court of Travis County, Texas, 26th District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Be it remembered that on the hearing of the defendant's application for a change of venue in this case, on, to-wit: the 14th day of May, A. D. 1907, H. M. Metz, being sworn as a witness on the hearing of said application for change of venue, testified that he was a member of the grand jury of the District Court of Travis County, Texas, at the September Term, A. D. 1906, in and for the Fifty-third Judicial District, being the grand jury which returned the indictment against H. C. Pierce charging him with the offense of false swearing.

And be it further remembered that thereupon the defendant offered to prove by said witness, H. M. Metz, that said grand jury which returned said indictment had no evidence before it before returning said indictment other than the original affidavit upon which the said indictment was predicated, and heard no testimony showing or tending to show that the statements contained in said affidavit, or any of them, were false.

And be it further remembered that to the introduction of said evidence the State objected on the ground that to permit the said witness to so testify would violate the secrecy of the proceed-
181 ings of the grand jury, and would violate the oath of said witness as a grand juror, and which objections were sustained by the Court and the Court refused to permit defendant to prove said facts by said witness ,and to which action and ruling of the Court the defendant then and there excepted, and here now tenders this its bill of exception to said action of the Court, and asks that the same be allowed and ordered filed and made a part of the record of this cause.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

The foregoing bill of exceptions was presented to me the 29th day of June, 1907, and is hereby allowed and ordered filed, with the explanation that the evidence mentioned in the bill was excluded for the reasons and to the extent shown in the qualification to defendant's bill of exceptions No. 5, relating to evidence of witness Johnson on same subject.

V. L. BROOKS,
*Judge 26th Judicial District.*

(Endorsed:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Defendant's Bill of Exceptions No. 6. Filed June 29, 1907. D. J. Pickle, Clerk.

182 *Defendant's Bill of Exceptions No. 7.*

Filed June 29, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Be it remembered that on May 13th, A. D. 1907, and before either party to the above entitled and numbered cause had announced ready for trial, the defendant, the Waters-Pierce Oil Company, filed in said cause and duly presented to the Court its application for a change of venue in said cause, which said application for change of venue, together with the endorsements thereon, is in words and figures as follows, to-wit:

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

Now comes, the Waters-Pierce Oil Company, the defendant in the above entitled and numbered cause, by its attorneys, and moves the Court to grant to it a change of venue in this case, and for reason therefor shows to the Court:

That there exists in Travis County, where this suit is pending, so great a prejudice against this defendant that it cannot obtain a fair and impartial trial in this county.

As a part of this motion and in support thereof defendant attaches

hereto, and asks to be considered as a part hereof the affi-
183 davit of Sam Harlan, an agent of the defendant residing in Travis County, and the affidavits of C. H. Allen, Gus Felder, Jas. E. Lucy and J. C. Adrian, four credible persons residing in Travis County, and each showing that there exists in this County so great a prejudice against this defendant that it cannot obtain a fair and impartial trial of this cause in this County.

Defendant further shows to the Court that the venue of this cause should not be changed to Williamson County, the Court House of which is nearest to the Court House of Travis County, for the reason that said Williamson County is subject to an objection sufficient to authorize a change of venue of this cause from said county in the first instance, in this: That there exists in Williamson County so great a prejudice against this defendant that it could not obtain a fair and impartial trial in said county; defendant attaches hereto, and in support hereof the affidavit of R. E. Lauck, its local agent at Taylor, in Williamson County, Texas, and the affidavits of James A. Thompson, Howard Bland and S. G. Yakey, three credible persons, and residents of Williamson County, each showing that there exists in said Williamson County so great a prejudice against this defendant that it could not obtain a fair and impartial trial of this cause in said County.

Wherefore, this defendant moves the Court to change the venue of this cause from this County to some County other than Williamson County.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

J. D. JOHNSON,
H. S. PRIEST,
*Of Counsel.*

184 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned officer, on this day personally appeared Sam Harlan, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, Texas, and that he is an agent of the Waters-Pierce Oil Company, the defendant in the above entitled and numbered cause, and that there exists in Travis County so great a prejudice against

said Waters Pierce Oil Company that it cannot obtain a fair and impartial trial of said cause in said County.

SAM HARLAN.

Subscribed and sworn to before me by Sam Harlan this the 11th day of May, A. D. 1907.

E. CARTLEDGE,

[L. S.] *Notary Public, Travis County, Texas.*

185 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared C. H. Allen, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters-Pierce Oil Company that the said Waters-Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said County.

C. H. ALLEN,

Subscribed and sworn to before me by C. H. Allen this the 11th day of May, A. D. 1907.

E. CARTLEDGE,

[L. S.] *Notary Public, Travis County, Texas.*

186 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Gus Felder, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the

said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

GUS FELDER.

Subscribed and sworn to before me by Gus Felder this the 11th day of May, A. D. 1907.

E. CARTLEDGE,

[L. S.] *Notary Public, Travis County, Texas.*

187 No. 24551.

THE STATE OF TEXAS

*vs.*

WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas, 26th Judicial District.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned officer, on this day personally appeared Jas. E. Lucy, a credible person, who, being by me first duly sworn, on oath deposes and says: that he is a resident of Travis County, Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said County.

JAS. E. LUCY.

Subscribed and sworn to before me by Jas. E. Lucy, this 11th day of May, A. D. 1907.

E. CARTLEDGE,

[L. S.] *Notary Public, Travis County, Texas.*

188 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS

*vs.*

WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared J. C. Adrian, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

J. C. ADRIAN.

Subscribed and sworn to before me by J. C. Adrian this 11th day of May, A. D. 1907.

E. CARTLEDGE,
[L. S.] *Notary Public, Travis County, Texas.*

189 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared R. E. Lauck, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and is the agent of the Waters Pierce Oil Company at Taylor in said County, and that there exists in said Williamson County so great a prejudice against said Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said County a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties against said Waters Pierce Oil Company for alleged violations of the Anti-Trust Laws of this State.

R. E. LAUCK.

Subscribed and sworn to before me by R. E. Lauck this 9th day of May, A. D. 1907.

[L. S.] R. C. BRIGGS,
*Notary Public, Williamson County, Texas.*

190 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared Howard Bland, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and that there exists in said County so great a prejudice against the Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in this state, and for the recovery of penalties against said Waters Pierce Oil Company for alleged violations of the Anti-Trust Laws of this State.

HOWARD BLAND.

Subscribed and sworn to before me by Howard Bland this 9th day of May, A. D. 1907.

[L. S.] H. C. MANTOR,
*Notary Public, Williamson County, Texas.*

191 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared S. G. Yakey, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson

County, Texas, and that there exists in said Williamson County, so great a prejudice against the Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said County a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties against said Waters Pierce Oil Company for alleged violations of the Anti-Trust Laws of this State.

S. G. YAKEY.

Subscribed and sworn to before me by S. G. Yakey this 9th day of May, A. D. 1907.

[L. S.] H. C. MANTOR,
*Notary Public, Williamson County, Texas.*

192 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared Jas. A. Thompson, a credible person, who, being by me first duly sworn, on oath deposes and says: that he is a resident of Williamson County, and that there exists in said County so great a prejudice against the Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said County a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties for alleged violations of the Anti-Trust Laws of this State.

JAMES A. THOMPSON.

Subscribed and sworn to before me by James A. Thompson this 9th day of May, A. D. 1907.

[L. S.] R. C. BRIGGS,
*Notary Public, Williamson County, Texas.*"

(Endorsed:) "No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Application for Change of Venue. Filed May 13th, 1907. D. J. Pickle, Clerk."

193 And be it further remembered that, upon the presentation to the Court by defendant of the said application for change of venue, the plaintiff, the State of Texas filed and presented to the Court its answer to said application for a change of venue as follows:—

In the District Court of Travis Co., Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Now comes the State of Texas, plaintiff in the above entitled and numbered cause, and in answer to the application of defendant for a change of venue, and says:

That there does not exist in Travis County so great a prejudice against this defendant that it cannot obtain a fair and impartial trial in this county, and plaintiff says defendant can obtain a fair and impartial trial in this county, and the plaintiff appends hereto affidavits of credible persons, residing in said county, in support of this statement.

Plaintiff asks in case the court holds that the facts stated in defendant's application with reference to Travis Co. be held to exist that it be given additional time to controvert said affidavit so far as it applies to Williamson Co.

R. V. DAVIDSON, *Att'y Gen.*
J. P. LIGHTFOOT, *Assistant.*
JNO. W. BRADY,
G. W. ALLEN,
GREGORY & BATTS,
*Att'ys for Plaintiff.*

194 No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Bob Wolf, Nelson Houser, R. E. Lee, Jno. B. Patterson, C. C. Baker, S. T. Carpenter, J. Gregg Hill, all credible persons, and each of them says that he is a resident of Travis County, Texas, and says that defendant in this cause can secure in this County a fair and impartial trial, and that there does not exist in Travis County so great a prejudice against said defendant that it cannot obtain a fair and impartial trial of this cause in this County.

BOB WOLF.
R. E. LEE.
S. T. CARPENTER.
JOHN B. PATTERSON.
J. GREGG HILL.
NELSON HOUSER.
C. C. BAKER.

Subscribed and sworn to before me this 13th day of May, A. D. 1907, by above named parties.

D. J. PICKLE,
*Clerk District Court, Travis Co., Texas.*"

(Endorsed:) "No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Plaintiff's Answer to Application for Change of Venue. Filed May 13th, 1907. D. J. Pickle, Clerk."

195 And be it further remembered that said application for change of venue thereupon came on to be heard by the Court, upon the issues joined by said application and plaintiff's said answer thereto, and that upon the hearing of said application, beginning May 13th, 1907, and concluding May 17th, 1907, evidence was introduced and heard by the Court, and that the following is a true and correct statement of all of the material evidence introduced and heard by the Court upon the hearing of said application for change of venue, to-wit:—

JOHN E. SHELTON, a witness for the Defendant, being duly sworn, testified as follows:

My name is John E. Shelton. I have lived in Travis County, about twenty-five years, and am now engaged in the practice of law, and am also Chairman of the Democratic Executive Committee of Travis County, having occupied this position now for a little more than three years. I attended the meeting of the last Democratic Convention of the State of Texas, and was present when nominations were made by that convention for United States Senator, which resulted in the nomination of Mr. Bailey. Opposition arose to Mr. Bailey which resulted in the holding of primary elections in Travis County to instruct our Representatives to vote for or against Mr. Bailey; but how much of this opposition arose subsequent to the State Democratic Convention and the nomination of Mr. Bailey by that convention, I do not know. Personally, I was opposed to Mr. Bailey all the time. The result of the primary elections held in Travis County was that our Representatives were instructed to vote against Mr. Bailey. I do not know by what majority, but it was a substantial majority, and I did all in my power to get a majority against Mr. Bailey. I do not know the number of votes polled in the primary elections, and could not at this time even approximate the number. I do not know the basis of the
196 opposition to Mr. Bailey, generally, but I was opposed to him because I didn't think he was an honest man. The principal public objection to Mailey, in my opinion, was what cropped out as to his connection with the Waters Pierce Oil Company, and among the people I have heard express themselves, this objection involved the opinion that the Waters Pierce Oil Company was a trust or a monopoly, and that it was re-admitted to the State by fraud. The campaign prior to the elections held in this County for the purpose of instructing our Representatives, became rather warm, and the opponents of Mr. Bailey were vigorous in their oppo-

sition to him; and it developed that the substantial portion of the opposition to Mr. Bailey was due to his alleged connection with the Waters Pierce Oil Company and the belief that the Waters Pierce Oil Company was a trust or a monopoly and was re-admitted into the State by fraud; some of the opposition, however, was on account of the fact that he was not thought to be honest. I do not know for certain the relative strength of the Democratic party in Texas, with reference to the total voting population, but since the Terrell Election Law has gone into effect I think the average is about three to one; before that it was sometimes the other way. In the campaign that took place prior to the election held early in January last I heard a good many persons express themselves with reference to whether or not the Waters Pierce Oil Company was a trust or monopoly and that its re-admission into the State was a fraud, but I must admit that most of my discussions were either Bailey or anti-Bailey. As to the concensus of opinion among the people I talked to about that matter at that time, it was generally believed that it was a trust; I can't call to mind any who didn't think it was a trust. Since last Monday or possibly Friday a week ago, I have discussed the question with possibly three hundred and twenty people;
197 they were people from all over the county, we having had a special venire here and I talked with as many as I could from different portions of the County. With almost every man I talked I asked the direct question with reference to the Waters Pierce Oil Company, and the great majority thought it was a trust. In a general way, from what I read in the local newspapers, which published daily reports of the testimony and other proceedings in the Bailey Investigation, I was familiar with the Investigation which was had in the Legislature concerning Mr. Bailey. The greater portion of the excitement over the matter, terminated with the Primary Election, that is the people quit talking about it so much. I quit talking about it myself, and people quit coming to me to talk about it.

The way I came to talk about the matter with a number of people a week or ten days ago, was at the request of Judge Penn. He came to see me, I think it was a week ago Wednesday, and asked me for a list of the members of the Anti-Bailey Club and also a poll list. He then wanted to know if I could take the time to talk to some of the people and see what I could find out, but I said I couldn't, as I would be busy in the Richards case. He said that that would be about the best opportunity I could get, and asked me to interview as many people as I could, which I did. I also spent one day in Manor for the special purpose of finding out what opinion the people in that section held on the question. There was no agreement entered into between us as to the compensation I was to get for this work, but I expected then, and now expect, to get paid for the work.

I do not remember the length of time the campaign was on, but we cut it as short as we could. *I* number of speeches were made here in Austin. Judge Terrell spoke against Mr. Bailey, as did Mr. Taylor Moore, and I also made a speech one night at the Court

House. I heard part of Mr. Moore's speech, but didn't
198 lis en closely and do not remember the arguments he advanced. Mr. Moore at one time was District Attorney for this District, and also represented Travis County in the Legislature for a number of years; he is the father-in-law of Mr. Cullen Thomas, of Waco. I did not hear Judge Terrell's speech. I advanced the argument in my speech, that Senator Bailey was dishonest, and that I thought he was connected with the re-admission of the trust. We divided our argument, and I presume that Mr. Moore took the part that the re-admission of the Waters Pierce Oil Company into the Texas was a fraud. We had a good crowd at the Court House that night, the speeches were well received and with much applause. I believe that speech at the Court House was the only one I made, and I attended no speaking at any other portion of the county. Mr. Cocke, the gentleman who later preferred charges against Mr. Bailey in the Legislature, was sent by us to Pflugerville and Dessau to make speeches, and Mr. Cocke also spoke here in Austin. I am not certain whether or not Mr. Cocke spoke at Manor; there were so many appointments, I didn't keep them all in mind.

The call for a Primary Election in Travis County to instruct the Representatives to vote for or against Mr. Bailey was brought about by the sending of a postal card, which was printed at my suggestion, to each of the 46 or 47 members of the Executive Committee of Travis County. The Postal card stated that if the members of the Committee wanted the Primary Election to sign the card and return it. I do not remember now how many joined in the request, but a large majority of them did so. I have the cards, but am not sure.

In my investigation made during the last week or ten days I heard about two hundred or two hundred and fifty men express themselves with reference to the question as to whether or not such
prejudice existed in Travis County against the Waters Pierce
199 Oil Company that it could not get a fair trial, to the effect that individually they had their minds made up; at least this was the expression of a great majority of them. I went to the best men I knew because I wanted to find out just what the sentiment was, and these men were from all over the county. My advice was that it was not necessary to make this investigation but that the desired information could be had by taking the poll list and selecting a number of men indiscriminately and examining them in regard to the matter.

From my knowledge of conditions in this county during the campaign, and from what I have heard since and from my general knowledge, I believe it would be possible to secure a jury of unprejudiced men in Travis County for the trial of this case, but I don't see how it could be done in the way juries are ordinarily selected. Now, I found this, that among the Swedish people, a number of them said in their discussions with me, that they hadn't read enough on the question to form an opinion; but they were about the only

people I spoke to who hadn't read about it and discussed it, and had made up their minds.

I was not present in the House of Representatives and did not hear Representative Duncan make a speech in the Legislature against Mr. Bailey.

Cross-examination:

I consider myself in the employ of the Waters Pierce Oil Company. I think there are about six thousand voters in Travis County, counting all who have paid their poll taxes and all who are exempt from the payment of a poll tax. As to whether or not they are qualified voters, I can not say, but I suppose there isn't much difference, that is, that there are about as many qualified voters as there are qualified jurors. Out of the 6,000 I think at least 5,900 are honest men, but I don't see how you could get twelve jurors
200 who hadn't made up their minds and formed opinions on the subject. I talked to about three hundred people within the last week or ten days, that is, about five per cent. of the whole number.

From my discussions with parties at Manor, I do not think you could find twelve men there who hadn't made up their minds. I spoke to about forty or fifty men, among them being Mr. Wolf, Justice of the Peace, Mr. W. B. Raney, Mr. J. H. Allison, I am not sure, but I think I talked the question over with Mr. A. K. Anderson; also Dr. Hill, Mr. Wentland, and the other young man in the drug store; I talked to a young doctor who has recently come there from Bell County,—I can't think of his name; I talked to Mr. Jack Follmer and Mr. Victor Anderson, and many others whose names I can't recall at this time. I estimate that there — about 200 voters at the Manor box; possibly a few more. I now recall talking also to Mr. C. C. Kuempel, Mr. Nelson Houser, Theodore Westbrook, C. C. Baker and Mr. Shuberg, but I don't remember whether I mentioned this question to Mr. Shuberg or not. It is too hard to recall any other names, unless some one should suggest them to me; there were about fifty in all. I do not remember the substance of my conversation with Mr. Wolf; just remember that I asked him the general question. I would bring it up in this way: I asked him if the matter had been discussed, and he said it had; and I asked then if from his discussions he didn't think practically the whole community had its mind made up as to whether the Waters Pierce Oil Company was a trust or not, and he said he was of the opinion that such was the case. He said he didn't think there could be a trial without a change of venue. I had practically the same conversation with Mr. Follmer, Mr. Raney, Dr. Hill, and all of the others I spoke to about it. I overlooked one other person I talked to, namely, Buck
201 Christian. To a certain extent my questions were leading, but I didn't ask them direct if they thought the Waters Pierce Oil Company is a trust. I just asked their general opinion from what they read and heard, whether they thought it was a trust, and nearly every one said it was not only a trust, but frankly stated that they would not believe Mr. Pierce and his associates on oath.

In my conversation with these men I would ask if in their opinion it wouldn't be a little difficult to get a fair trial or in this county, and some said it would be, while a few said it would not be,—Mr. Christian and Mr. Allison being of the latter opinion. Mr. Baker said he thought it was a trust, and that he didn't think a jury could be gotten. Mr. Houser's conversation I can only recall generally, and I think he said that they could not secure a jury. I am not quite sure as to what every one said, but most of them I can remember. I kept a memorandum of the names of all the persons I spoke to about this matter, but indicated in this memorandum no more than whether they were favorable or unfavorable. This memorandum I turned over to Judge Penn.

Mr. Kuempel stated that in his community at Germania Hall, he had heard the question discussed a good deal, and in substance said he didn't think they could get a jury that would not be prejudiced one way or the other, that is, if a man had been a rank Bailey man, he would be in his favor, and if he were an anti-Bailey man he would be unfavorable.

I do not know how many people voted in the Bailey election. It was a comparatively small vote; nothing like the full strength of the county. I do not think there was fifty per cent. of the Democratic vote of the county polled, in spite of a rather warm campaign; and I was surprised that the Bailey people turned out so strong, and that the anti-Bailey people did not. At the Manor box, which was carried by Mr. Bailey by a large majority, the vote was less than
202 fifty per cent. of the total vote. The vote in the county at large was smaller than the vote in town, and at some of the boxes, three or four, for instance, Carl, Garfield, and Bee Cave, no election at all was held.

From Bee Cave, I talked to two people,—Mr. Bohls and Mr. Eugene Harrison. At Del Valle I talked to J. B. Norwood, George Ecklund, J. B. Smith and Dr. Shapard. All except Dr. Shapard told me they didn't thing a fair trial could be had in this county; Dr. Shapard would not express an opinion because his brother-in-law was in the case.

At Webberville I remember talking only to Mr. Manor; I think I spoke to Mr. Ingram at Garfield, but am not sure. If I did his name is on the list which I prepared for the purpose of issuing subpœnas.

Taking the other part of the county—at Pflugerville I spoke to Mr. Henry Bohls, Mr. Crowley, Mr. Blackman, and I believe to Mr. Ernest Pfluger, but as to the latter I am not certain. Mr. Crowley said positively he didn't think they could get a fair trial. I don't remember what Mr. Blackman said.

At Merrilltown I talked to Mr. C. S. True; and he said the people's minds were made up, to the effect that the Waters Pierce Oil Company is a trust, and that a jury could not be secured. He said they based their opinion on what they heard and read. I do not believe there is a man in the county who has read the papers and has discussed the matter, who doesn't think the Waters Pierce Oil Company is a trust, just as it is generally believed that the Standard Oil Com-

pany is a trust. I would ask this question: Now if in the trial of this case you were taken on the jury, do you believe that you could give as much credence to the people testifying in favor of the Waters Pierce Oil Company as to the others, and almost all inhesitatingly they would not. I do not believe from the way I look at the
203 matter, that substantially all the intelligent people of Travis County believe that the Standard Oil Company and the Waters Pierce Oil Company are a trust, but I believe a good many people think that, and I think a similar belief exists in every other county in the State. Any number of the people I talked to said that if they came here and took the oath as jurors, they would refuse to give justice to the Waters Pierce Oil Company, and many said they would not believe the bunch on oath.

In my own box, I think we vote about seventy-five, and I do not thing you could get twelve jurors from my box who would not come with the expectation of a conviction and intending to convict, unless there was strong proof to the contrary. This belief I predicate on the conversations I had with those people during the Bailey controversy and since. I will give the names of the following of my neighbors who I have no doubt are disqualified as jurors: W. D. Miller, W. C. Redd, E. P. Albrecht, H. Maud, Mr. Huebsch, I have forgotten his first name; he runs a confectionery store in South Austin; Bob Weyerman; John Wende, J. W. Templar, Will Paggi, and J. W. Blattner. My opinion that these men are disqualified as jurors is based on the idea that every intelligent person who has read the papers and discussed this matter, believes that the Waters Pierce Oil Company is a trust, and has his mind made up and could not be fair towards the company in a trial, even if he should try to be. I am of the opinion that if you took the poll list of the county and examined men indiscriminately, you would arrive at the same conclusion with regard to the whole county. Taking this view of the matter, I admit I haven't any idea as to how the State is going to get a trial in this case, as practically the same condition exists in other parts of the State. In some, take Hays County, for instant, it is even worse then in Travis County.

204 I do not believe there are two hundred jurors in this county who have never heard of the Waters Pierce Oil Company. I do not know that I have qualified as an expert witness in this case, but I do not think that out of the witnesses who have been summoned in this matter, that there are at least twelve who would qualify as jurors in this case, although there are a number of those witnesses I have never seen about the matter or spoken to about it. I did not hear the controverting affidavit read in this matter. I do not believe that it is possible that I came to a wrong conclusion about what Mr. Houser, Mr. Bob Wolf, Mr. Baker and the other parties from Manor said about this matter; and if they should swear here in court that they could give the defendant a fair trial, I would believe they had changed their minds since they spoke to me. I am not mistaken as to what Mr. Wolf and Mr. Baker said, because I talked to them too long, and remember it all very well.

My purpose in making the investigation was to find out if there

was a prejudgment in this case. My questions were not so shaped that it would be easy for them to acquiesce in what I asked; I wanted to honestly find a man who, if he made a statement to me, would make the same statement to any one else. I asked the people from both sides, Bailey and anti-Bailey, and not only those who I thought were going to be favorable to us. I wanted to talk to as many as I could find who would say the Waters Pierce Oil Company couldn't get a fair trial, but not as many as three or four hundred, and if I saw a man across the street whom I did not think would make a reply favorable to my client, I would let him alone and not ask him his opinion; I also wanted to know this for my own satisfaction, as well as to give service to my client. I was not interested in the least in their getting the case continued indefinitely.

I do not say that the campaign was a campaign against the
205 Waters Pierce Oil Company, but against Mr. Bailey. His connection with the Waters Pierce Oil Company was the cause of part of the opposition to him; but with me, I was opposed to him because I didn't think he was honest in general. I do not know that a great many other people voted against him for the same reason, and without reference to the Waters Pierce Oil Company. The only one I am certain about in this regard is myself.

From the Summit community I think I talked to Mr. Peyton and I remember talking to a man by the name of Parmer, and my conclusion as to that community is based on my conversation with those two men. I think there are about 24 votes at Summit.

From Dessau I spoke to Will Nehring. He said he was chairman of the box in the Bailey campaign, and he thought the people had their minds made up. My conclusions as to Dessau are based on what he told me.

I do not remember seeing anybody from Sprinkle. I spoke to Judge Penn about who lived there, and mentioned some he could have summoned. If one of those people were to say that they could get twelve good men for the case from there, I should think he had better knowledge of his community than I have, or he ought to have. Taking it generally, Mr. Houser at Manor ought to have better information about that than I have, but if he hasn't talked to any more there than I have, he couldn't have a better opinion than I have. This same statement applies to Mr. Kuempel and Mr. Baker.

From Manchaca, I spoke to Mr. Carpenter, who runs a gin out there, and is well known in that section, and is an intelligent man.

I don't remember talking to any body from Carl, but I don't think
there are twelve men there who could qualify as jurors in this
206 case. I know Bob Lee, and if he said he could qualify, I believe he could. Knowing him as well as I do, if he said you could get a certain number of honest jurors at Carl, I would be inclined to think that you could.

From Oakhill I saw the two Pattons and Mr. Dave Beckett. The substance of my conversation with them was that they didn't think there was any chance to get a fair and impartial trial.

From Pecan Springs, I talked to Mr. Cagle. I thought Mr. Cloud was from there, but he told me afterwards he lived in the city.

I don't remember talking to anybody from the Fourth Ward here

in the City. It is an extra large ward, having something like 600 voters. I will state that I made it a point to speak to people from the country, and talked to very few of the city people. I remember talking to Mr. R. C. Burleson of the third ward. I don't remember talking to anybody from the second ward. Mr. Burleson didn't attempt to express any opinion about his ward. I live in the First Ward, but outside of Mr. Capron, I don't remember talking to any one about this matter lately. I don't know if I talked to anybody in the 5th ward. I didn't talk to any one in the Sixth Ward. Abe Frank talked to me. From the seventh ward, the old tenth ward, I spoke to Mr. John Durst. I remember he and I were discussing the matter, probably he brought it up, but outside of him I don't remember any other person, that is, since I have been making this investigation.

There are more than three thousand voters here in the city, nearly four thousand according to the last poll list. I have talked to about 300 people, not only since I have started making this investigation, but during the Bailey campaign. I talked to them with reference to the Bailey opposition and taking the whole thing in connection.

I do not remember haw many of the people in the city voted
207 in the Bailey election, but there was a greater per cent. than in the county. The campaign was more hotly contested in the city than in the country. The Bailey people were more active than I wanted to see them. Senator Bailey himself was here and made several speeches. Senator Barret spoke for him in the county. I don't remember whether any local people spoke for Mr. Bailey, except that Mr. Francis spoke for him; I had forgot-en about that. Mr. Wynne of Fort Worth, spoke for Mr. Bailey at the Court House. But notwithstanding all that, less than 50% of all the voters in the county turned out at the election.

Redirect examination:

The opinion already expressed by me to the Court that a jury of fair and impartial men could not be gotten in this county, was entertained by me before I made this recent investigation, but this investigation has strengthened that opinion considerably.

I was not present in other counties of the State, but I read some of the press reports last fall and winter with reference to the Bailey matter. I remember that Comanche County held an election to instruct its representatives to vote for or against Mr. Bailey. Outside of Travis and Comanche Counties, no other counties in the State held such elections. There was some talk of one at Waco, but no election was held there.

I think it would be possible to get honest men to sit on the jury in this case, as I told Mr. Batts, who would try to give the Waters Pierce Oil Company a fair and impartial trial, but from my conversations with the people and what I know of my own knowledge, I believe they would be so prejudiced that they could not in fact give the company a fair trial.

208 Recross examination:

Personally I could not and would not take the oath as a juror in this case, because my convctions are so firm they could not be changed; and it would be impossible for me to attempt to decide the case on the facts. I am of the idea that most of the people of the county are so shaped up mentally as to take the same attitude I do; that when they once set their heads, they are set. It is my opinion that from the many people in this Court room now, it would be impossible to get a fair and impartial jury for this case. I do not think they would be able to do that which the law requires them to do, that is, to disregard any previous notions and decide the case on the evidence adduced before them.

D. J. PICKLE, a witness for the defendant, being duly sworn, testified as follows:

I am District Clerk of Travis County. I have with me an indictment returned by the Grand Jury of the 53rd Judicial District at the September Term, 1906, against H. C. Pierce, charging him with false swearing.

(The defendant here introduced in evidence the said indictment, being an indictment charging H. C. Pierce with false swearing for making the affidavit set out in the plaintiff's petition in this case, alleged to have been made at the time the Waters Pierce Oil Company obtained its permit to do business in Texas, on May 31, 1900.

The State objected to the introduction in evidence of said indictment, as immaterial. The Court overruled said objection, and admitted said indictment in evidence, but stated that it could not permit the indictment to be filed in this case).

209 JEFFERSON JOHNSON, a witness for the defendant, being duly sworn, testified as follows:

My name is Jefferson Johnson. I live in Austin. Have lived in the town about seventeen years. I was foreman of the Grand Jury of the 53rd Judicial District at the September Term, 1906, which returned an indictment against H. C. Pierce, charging him with false swearing. I do not remember the names of the other Grand Jurors. I remember the finding of that indictment against H. C. Pierce.

J. B. NORWOOD, a witness for the defendant, being duly sworn, testified as follows:

My name is J. B. Norwood. I live at Del Valle, in this County, about six miles from Austin, on the south side of the river. I have lived there twenty years. I am pretty well acquainted with the people in that community. I have always heard the Waters Pierce Oil Company spoken of as a trust by the people in my community; but I don't know that I have heard it spoken of as operating in the State in violation of the law. I mean that the people generally regard it as being a trust. I can't say how often I have heard the people in that community express themselves with reference to it; I don't think I ever heard it spoken of in any other way but as a trust.

I am acquainted in other portions of the county. I can't be positive that I have heard people in other portions of the county discuss the matter as to how they regard it. I may have done so, but don't remember now. I have never heard anybody anywhere say that it was not a trust.

210 Cross-examination:

I can't say that the matter has excited a great deal of attention in my neighborhood recently. I can't tell how many people I have heard discuss it within the last few weeks. I can't say that I heard any. At the time of the Bailey trial it was discussed often. I cannot be positive that there has been no discussion since that time. I cannot mention any persons I have heard speak of it as a trust. I don't recall any particular individual I have heard speak of it as a trust. I don't think I have heard anybody in my neighborhood say that the defendant cannot get a fair trial in this county. I don't think I have. I don't know that there is any such feeling in my neighborhood as would prevent them from getting a fair and impartial trial. I don't know how the people feel about it. So far as I know, the defendant could get a fair and impartial trial. I have heard them speak of it as a trust, and expressing their opinion. As to whether or not they could get a fair trial, being spoken of by them, I can't say. I have heard them speak of it this morning as a trust. I don't recall any instances where I heard any one in my neighborhood say anything about their not getting a fair and impartial trial. I can't say that in my judgment they can get a fair and impartial trial. I can't say that I know of anything to indicate that they could not get a fair and impartial trial in this county.

Redirect examination:

I understand that jurors are selected first by a Jury Commission. I understand that the parties to the case have the right to examine them with reference to *this* qualification; that each party to a civil case is entitled to six challenges, peremptory, without assigning any cause; that if a jury is not selected out of a regular panel,
211 then the sheriff is sent out to summon talesmen to complete the jury; that each party is entitled to have on the jury men who have no bias in their favor or prejudice against them. With the preliminary statements made to me that the word prejudice, as defined by our courts, means a prejudgment of a case or of the issues of a case; and that one of the issues in this case is as to whether or not the Waters Pierce Oil Company is a trust, taking into consideration the way juries are impaneled, and what the parties are entitled to, together with the statement I have made that the people have expressed themselves that it is a trust, I think it would be difficult to get a jury for this case, if the question of the Waters Pierce Oil Company's being a trust is involved as one of the issues. As to whether the people generally have prejudged this question as to its being a trust, I believe most of them in my community have the opinion that it is a trust. I say most of them; there is quite a number.

I believe my box voted anti-Bailey in the Primary election held about the first of January. The basis of the opposition to Senator Bailey was his connection with this oil business; I mean the Waters Pierce Oil Company matter.

Recross examination:

I don't know how many people vote at my box. I think there are from 150 to 200. I cannot indicate the number of persons I have heard speak of the Waters Pierce Oil Company as a trust. I can't say positively that I have heard ten. It is just the impression left on my mind. We have frequently talked it over at the mail box and other places, but I can't say definitely how many have spoken to me about it. I can't say whether it was more or less than
212 fifty. I could not call a single name.

I think the people in my community, or a majority of them, assume the Waters Pierce Oil Company is a trust; that is their opinion. I do not recall hearing any one suggest or say that he could not return an impartial verdict in this case. I do not think that in my conversation with these people, any one has undertaken to define what a trust is; they just speak of it in a general was as the Oil Trust, just as they speak of the Sugar Trust or Steel Trust, and without undertaking to pass on the specific facts in this matter. As to whether or not they regard the Waters Pierce Oil Company as operating in violation of law, they generally regard it as violating the law. They think any trust is in violation of law, especially the Oil Trust, because they do business with that. Hardly a week passes that they don't buy oil. They do not differentiate between a trust that violates the laws of Texas and a trust that violates the laws of some other State or of the United States.

Redirect examination:

The general impression with reference to any trust is that it is in violation of law. That is the impression and my recollection.

D. B. MATTHEWS, a witness for the defendant, being duly sworn, testified as follows:

I am living here in the city. I have lived in Travis County 47 years; I was born here. I am well acquainted in the eastern portion of the county, from here going down the river, through Hornsby and Webberville. I am somewhat acquainted through the Del Valle and Garfield communities. Among my associates the general sentiment is that the Waters Pierce Oil Co. is a trust and operating
213 in Texas in violation of law. Some of my associates are here in town and some are up and down the river, that is between here and Webberville. The general concensus of opinion is that is is a trust; they recognize it in their minds as being a trust. I do not believe I have ever heard any one express a contrary opinion. I have, in a general way, heard the matter discussed frequently.

I was in the county during the campaign preliminary to the primary election held about the first of January of this year, to instruct the Representatives from this county to vote for or against Mr. Bailey for United States Senator. Judging from the result of

the primary, the sentiment was against Mr. Bailey. So far as I know, the basis of the opposition against Mr. Bailey was that he had been instrumental in the re-admission of the Waters Pierce Oil Company into the State of Texas.

I have acted on Jury Commissions. Taking into consideration the way juries are selcted, that is, that a jury is primarily summoned by a jury commission; the men are selected for a week; that usually a number are excused, and others are disqualified; that the parties to the suit are entitled to examine them with reference to their bias or prejudice, one way or another; that the parties to a civil suit are entitled to six peremptory challenges each; and taking into consideration that prejudice within the meaning of the law means prejudgment of a case, or prejudgment of any of the material issues in a case—I say, taking all this into consideration, so far as my judgment is concerned, I think it would be a rather hard matter to get a jury that would give the Waters Pierce Oil Company a fair and impartial trial. I mean by that a jury that would not have prejudiced the case.

I have lived in Travis County 47 years, with the exception of two years, namely, 1891 and 1892. I cannot recall a single case
214 during my residence in Travis County, pending in the courts here, which had been the subject of as much general discussion as this case. I cannot recall any case that approached it with reference to the amount of general discussion.

Cross-examination:

I have talked to and heard the conversations of a few men living on the other side of the river. Where I heard the discussions was probably in public gatherings, and heard the matter discussed generally, and arrived at an opinion from what I heard the people say. I do not recall anything in particular.

I don't think that most of the people took much stock in the election held with reference to Mr. Bailey; at least, a good many people did not. I suppose the principal objection to Mr. Bailey was that many people considered him dishonest in his connection with the Waters Pierce Oil Company. I never heard any one say he was dishonest outside of that. It might have been that a good many of the laboring people voted against him because of his opposition to the eight-hour law; it might have been that a good man- voted against him in an ignorant way. I consider it a very hard task to get a jury. I would not like to consider it as an improbability to secure a jury. It would be probale that a court could get a jury out of the jurors of Travis County.

Redirect examination:

I could not say for certain whether I read in the Austin Statesman, about December 1st, an open letter addressed by Attorney General Davidson to Senator Bailey, beginning about as follows: "For more than six years the people of Texas have lived under the shadow of the wrongs perpetrated," etc.

215 ED. TAYLOR, a witness for the defendant, testified as follows:

I live near Webberville. I have lived in Travis County about thirty-nine years. I have lived from Austin down to Webberville, on this side of the river, that is, by way of Hornsby's Bend. I have lived half way between here and Webberville, and back at Webberville, and I am pretty well acquainted between Webberville and Austin.

I think I have heard within the last six months some discussions of this Waters Pierce case, or of the Waters Pierce Oil Company in connection with Senator's Bailey's race for the United States Senate. A good many people have the opinion that the Waters Pierce Oil Company is a trust. I don't know that I have ever heard any one express a contrary opinion. During the Bailey investigation I heard a good deal said about its operating in Texas in violation of law. I believe it was generally believed that the Waters Pierce Oil Company got back into Texas six years ago under false pretenses. I think that is the opinion of the people generally. I mean of the people between Austin and Webberville that I have heard express themselves. I have not heard people from other portions of the county express themselves. I hardly ever cross the river, and from here to Webberville is about the only portion of the county in which I have discussed the matter. I have no interest whatever in this case.

Cross-examination:

As to whether or not the defendant could get a fair trial in this county ,would depend a good deal on the jury. There are plenty of men in the county that could try the case fairly, if you got the right men. And there are a good many that wouldn't. It would
216 be a hard matter to get a jury where there is such a great prejudice. I think there is a very strong prejudice against the Waters Pierce Oil Company. I don't pretend to say there are not plenty of honest men in the county that wouldn't try any case fairly, but I must say there is a very strong prejudice in the county against the Waters Pierce Oil Company.

I can't say how many of the six thousand jurors in the County I have talked with about this matter. I am right smart of a politician when I get out. I was a Bailey man and consequently I had a good deal to say about it in Austin and down the river, and I have heard a good many expressions. I couldn't begin to say how many people I talked to about it. I couldn't say whether or not it was a hundred. For a good while it was a general talk here. While the Bailey investigation was going on, there was a great deal said by different parties. I could recall a good many parties with whom I talked. I heard several at Webberville who voted for Mr. Bailey because they thought Mr. Bailey was the candidate of the Democratic party, and had been endorsed by the convention. I don't know that I could recall very many names. I don't care to mention any names. I could give the defendant a fair trial myself. The prejudice which exists is not with the Bailey people as much as with the

anti-Bailey people. The Bailey people are freer from prejudice than the other side. I could fairly try the case, and I could select twelve men I could try this case or any other case with. Even among those I have heard express themselves, I could find twelve men who could fairly try this case.

VICTOR ANDERSON, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

I live in Manor; I have lived there twenty-six years. I am engaged in farming. I live a little piece from Manor, about
217 two miles, and during the past six months I have been in Manor almost every week. I live northwest of Manor. Occasionally I have heard the people in my community discuss this Waters Pierce Oil Case and Mr. Bailey's connection with it, but not much. Occasionally some of the people expressed themselves as believing the Waters Pierce Oil Company is a trust, but not that it is violating the law. I understand a trust to be a combination in violation of law, but I never heard the people in my section use that expression. They just refer to it as a trust. I have never heard any one say it is not a trust.

Cross-examination:

I should think the defendant could get a fair and impartial trial in this county.

Redirect examination:

I cannot tell how the people think about this matter in any other community than my own. I believe they are a trust. I couldn't tell whether a fair and impartial trial would mean a conviction of them, until I heard the evidence. There is very little said about this matter among the Swedish people. They don't think much of Mr. Bailey himself. I have no particular reason for opposing Mr. Bailey. I expect the reason for opposing him is because they charge him with working for the Waters Pierce Oil Company.

J. W. RUTLEDGE, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

I live in Hyde Park. I have lived in Travis County for forty years. I am best acquainted in the western, northwestern
218 part of the county. I lived in that portion of the county before coming to Austin. I have been living in the city about fifteen years. Within the last six months I have heard discussions of the Waters Pierce Oil Company with reference to this case and to Senator Bailey's race for the United States Senate. I have heard expressions of opinion among the people of this county with reference to the Waters Pierce Oil Company's being a trust. I think it is generally understood with most every one that it is a trust. I have

never heard any one deny it. I see people from all over the county; in fact, I see them from all over the State. I have heard people in the city express that opinion; also people from the Northwestern portion of the county, as well as from the Southern portion. My business is that of running a woodyard, and I also have a hotel at the Insane Asylum, that is, at Hyde Park. The people who stay at my hotel are mostly those Pasteur patients from all over the State; some country people, but mostly people from all over the State. At my woodyard I see people from all over the county; I am in town every day. From what I have read in the papers, I suppose the Waters Pierce Oil Company is a trust. Other people seem to think the same thing.

I know how juries are impaneled. I have served on juries, but never on a jury commission. Having in mind the way juries are impaneled, namely, that a jury commission is appointed by the Court to select so many jurors for each week, and is instructed with reference to the qualifications, and is directed to secure jurors scattered all over the county, thirty-six for each week of the term, out of which number a few are usually excused and some disqualify themselves; also that each party to a case has six challenges; and having in mind that if a jury is not selected from this panel of thirty-six men that is originally summoned, that the sheriff
219 is sent out to summon additional talesmen; and that each party to the case is entitled to a jury that has no bias in favor of or prejudice against either side; and that the word prejudice as used in this connection means to prejudge the case or the merits of the case or any issue in the case, I say, having all this in mind, I do not believe I would want to be tried by a jury in this county if I were the Waters Pierce Oil Company. My reason for saying this is because it is generally supposed they are guilty with what they are charged, and I would not want to be tried by a jury that believed I was guilty before I went into the trial.

Cross-examination:

I do not know whether or not the Waters Pierce Oil Company is guilty, and therefore cannot say whether or not I would want to be tried at all, if I were they. I have spoken of it as a trust, but if I were taken on the jury I would pay attention to the evidence and bring in a verdict in accordance with the facts, notwithstanding the fact that from what I have heard and read my present notion is that it is a trust. This is the state of mind of most of the people, that is, they believe it is a trust. It would take better evidence to convince me and the people generally of the fact that they are not a trust, than if it were just brought up and I didn't know anything about them.

I would decide the case according to the evidence. None of the persons with whom I have talked and with reference to whom I have been testifying, has made a statement to me that they would not decide the case in accordance with the evidence. So far as I know, I couldn't say that every person I know would not decide this case according to the evidence. So far as I know, they would decide it according to the evidence.

220 Redirect examination:

If you connect Senator Bailey with this case, there is no case whatever in my recollection which has during my residence in Travis County been pending in the courts here, about which there has been as much general discussion as about this case. The opposition to Senator Bailey arose simply on account of his re-establishing the Waters Pierce Oil Company in the State of Texas to do business. This is what the people believe generally.

Recross examination:

That was not the only charge against Senator Bailey, but it was the main charge; the one everybody harped on. I am not able to say that a good many laboring people were opposed to Senator Bailey on account of his attitude against labor. There were lots of charges against him. I have seen lots of them. The charge I heard most discussed was the Waters Pierce Oil Company matter. That was what they used generally as argument against Bailey, that is, his connection with the Waters Pierce Oil Company.

W. K. BECKETT, a witness for the defendant, testified as follows:

My name is W. K. Beckett. I reside over across here about four or five miles, in Travis County. I have lived here nearly forty years. My acquaintance in Travis County is about like that of any other farmer; only I am close to town. I come to town pretty often. In my visits to town I occasionally meet people from various parts of Travis County. I know people all over the county pretty
221 well. I don't know that within the last six months I have heard the Waters Pierce Oil Company particularly discussed. We hear it talked about We, as just used by me, of course, includes myself. I could scarcely approximate to what extent I have heard the Waters Pierce Oil Company discussed within the last few months. I should say a small number on that subject. I could not say how many, but not a great many. I heard discussions of Senate- Bailey during the contest in this county just antecedent to the primaries. I read some of his speeches, but I do not remember my hearing him discussed. I was anti-Bailey and talked about the matter occasionally. I think the people generally look upon the Waters Pierce Oil Company as a trust. As to whether it was a lawful or unlawful trust, I will say that it was expelled or whatever you call it, and then re-introduced; when it was re-introduced in the State I don't know whether it would be lawful or not. I think I would regard it as unlawful when it was expelled. There was considerable discussion as to Senator Bailey's connection or instrumentality in the re-admission into the State. The attitude of the people was that he was instrumental in re-introducing the Waters Pierce Oil Company into Texas. We have regarded it as coming back into the State under false pretenses, a false affidavit having been made to get it back into the State. Senator Bailey has been connected with that matter in the discussions had, and to my mind it was discussed a good deal. The opinion prevailed that the Waters Pierce Oil Company got back into Texas under false pretenses.

Cross examination:

I am of the opinion that the Waters Pierce Oil Company could get a fair trial in this county.

222 DAVE BECKETT, a witness for the defendant, being duly sworn, testified as follows:

I live out about eight miles northwest of town. My voting box is Oak Hill. I voted there at the last primary election when Senator Bailey was being voted on. I don't remember the vote at that box. I remember he got one vote. The basis of the opposition to Senator Bailey in that box was his general rascality and his being connected with the Waters Pierce Oil Company. A majority of the people in that section of the county with whom I have talked about the matter, express themselves as regarding the Waters Pierce Oil Company as a trust. I do not know what the one man who voted for Bailey thought about it. I do not think he was ostrasized. I think we let him live. A majority of the people regard as a fraud the re-admission that happened about six years ago, when Mr. Pierce made the affidavit. I have heard a few people from other sections of the State express themselves in regard to the Waters Pierce Oil Company, and they think it is a trust. I do not believe I ever heard any many express a contrary opinion. I didn't ask that Bailey man as to whether or not he thought it was a trust. I didn't know who it was that voted for Bailey in that box.

Cross-examination:

Perhaps the Waters Oil Company could get a fair trial in this county, but it would be a little hard to get a jury. As to whether or not I could serve on the jury, I will say that they would have to bring right smart evidence. I have made up my mind and a good deal of evidence would have to be there to change it. I have never served on a jury, and don't know exactly what constitutes the duties of a juror. It is probable that my judgment of the conditions in the whole country *are* based on my box,
223 but I am not sure as to this. In saying that I would find difficulty in giving the defendant a fair trial, I don't mean that I would not try to decide the case according to the evidence, because I would; but it would take a great deal of evidence to convince me. I do not say that I know the state of mind outside of my own box. My box is rather a small box, having something like eighteen or twenty votes. I was rather an unusually strong anti-Bailey man, and took a big interest in the election.

Redirect examination:

As to my sympathies in this case, with regard to being for or against the Waters Pierce Oil Company, are that I believe them guilty. I rather think it would be hard to get a jury from my neighborhood who could fairly try this case. A majority have expressed themselves as its being a trust. Some of them express themselves rather violently in regard to this matter.

R. L. PATTON, a witness for the defendant, being duly sworn, testified as follows:

I live at Oak Hill. I was mighty near raised there; have been there thirty odd years. Within the last six months I have heard some little talk among the people of my community with reference to the Waters Pierce Oil Company, and its being engaged in business in violation of the laws of Texas. All that talk about it say it is a trust, and is in business in violation of law. I did not vote in the last primary election. I think there were nineteen votes polled there in the Bailey election. I consider that the Waters Pierce Oil Company is a trust. That is my opinion, of course. I am pretty well acquainted all over the county. I have not been around Manchaca, and therefore have not heard any expres-
224 sions from the people in that neighborhood. I have heard people between Oak Hill and Austin express themselves, as I met them coming to town, and they were all of the opinion that it is a trust. I have never heard any one express a contrary opinion.

Cross-examination:

If I were on the jury and should take the oath according to law, I could give the defendant a fair trial and decide the case on the law and evidence. I suppose a fair trial could be had in this county.

Redirect examination:

If I were on the jury I doubt if I could give the same degree of credence to the testimony of Mr. Pearce and other witnesses for the defendant, as I would give to others. What I meant was that I would try to give them a fair trial, but I would probably find some difficulty in weighing their testimony the same as I would weigh the testimony of other witnesses; it is just like always when a man has his mind made up, that is, it takes more evidence than otherwise. I would want them to prove themselves innocent.

Recross-examination:

I could go and qualify as a juror and decide the case according to the evidence, and if they proved themselves not a trust, I could give such a verdict. If there were no evidence of a trust, my verdict would be to that effect.

JAKE SMITH, a witness for the defendant, being duly sworn, testified as follows:

I live at Del Valle. I am Justice of the Peace of that precinct. I am pretty well acquainted in the city; through to Del
225 Valle and on the south side of the river. It seems to me that until the Prohibition election came up, all I heard in the way of discussions among my people was this case and Senator Bailey's connection with the Waters Pierce Oil Company. I mean by that that I have heard many expressions with reference to the matter. It was very generally talked about. It seems to me that they all believe the Waters Pierce Oil Company is a trust; all that I heard express an opinion, thought so. I have heard these dis-

cussions in Austin, at Del Valle, and other portions of the county, including Creedmoor, Elroy and Garfield. I have never heard a single person express a contrary opinion. I believe that the Bailey people themselves, that is a majority of them, believe that the re-admission into Texas of the Waters Pierce Oil Company after its expulsion in 1900, was fraudulent. While they side with Bailey, they believe that the Waters Pierce Oil Company was a trust, and that it was so generally considered. I think the people all believed that Bailey re-instated the Waters Pierce Oil Company. I could not say as to whether or not they believed Bailey had been imposed on by the Waters Pierce Oil Company at the time they got back into Texas. I know how juries are impaneled in a case; and having in mind the preliminary statement that each party to a case is entitled to a jury of unprejudiced men, that is, men who have not prejudged the case, and go into the box and decide the case according to law and the testimony introduced, I say, having all this in mind, I doubt if it would be possible to secure a jury of fair and impartial and unprejudiced men in this county to try this case, that is from among the people that have read and kept up with this matter. From among the people I have heard express themselves, I do not think such a jury could be secured.

If I remember right, the vote in my box was in favor of Senator Bailey. My idea as to the basis of the opposition of those
226 who were against Senator Bailey was the same as that I have stated before, namely, that he re-instated the Waters Pierce Oil Company here, and that it is a trust.

Cross-examination:

I have not talked to all the people in my precinct. I don't think I could point to a single man that has taken some interest in the matter. I couldn't tell you how many votes were cast either at Del Valle or in my precinct. I know the vote was more than twenty-five; it was as many as forty. I could not give the Waters Pierce Oil Company a fair trial, for the reason that I believe it is a trust. As to whether or not I would decide the case according to the evidence brought before me, I have to say that I would be biased; I don't think I would be a good juryman. I have tried to keep up with everything connected with the case since the investigation started, but I have read a good deal about the Waters Pierce Oil Company. I have heard none of the evidence in this case. If the proper people were to testify that it is not a trust, I might change my mind, but it would have to be people I knew something about. I could not name all the people I have heard state that the Waters Pierce Oil Company is a trust. I might be able to name a few. I do not know that I could name two hundred in my box. I believe I can point out a couple of men right here in the court room that said they believe it is a trust. They didn't say they couldn't give them a fair trial but said they would like to send *him* to the penitentiary. I could not say how many other people I have heard say that, and would not attempt to name them; but I have heard a great many hard expressions about the Waters Pierce Oil Company. I

could name others beside the two here in the court room, who
227 said the Waters Pierce Oil Company is a trust, but not that they couldn't give them a fair trial. I think we have just as honest men in my precinct as there are any where else in Travis County, but from what I have heard among my people, they would be biased, because they believe it is a trust; I- is my opinion that they couldn't qualify as jurors.

T. J. ROWZEE, a witness for the defendant, being duly sworn, testified as follows:

I live at Sprinkle; have lived there about thirty years. I am pretty well acquainted in that community, and also know quite a number of people in Austin. I have a general acquaintance scattered around all over the county. I have not heard discussions to any extent within the last six months with reference to the merits of this case, that is, as to whether or not the Waters Pierce Oil Company should be convicted in this case. I have heard discussions with reference to whether or not the Waters Pierce Oil Company was fraudulently admitted to do business in Texas. These discussions I have heard generally around the stores and at gatherings of different people. I have heard the matter discussed at Sprinkle and at Austin. I have been to Manor, but I don't reme-ber whether I heard it discussed there. I have not heard a great many people discuss this matter—more of them while the Bailey Investigation was going on. It was discussed most particularly during December, January and February last—I have not heard much lately. Those who discussed that question believed it was a trust. I don't think I heard a single man express himself otherwise. By trust, I mean an unlawful combination. The matter of the re-admission of the Waters Pierce Oil Company was discussed in connection with Senator Bailey,—the two matters were always discussed together. The
228 people believed the re-admission of the company into Texas was a fraud. As to that being the unanimous sentiment of those I heard discuss the matter, I will say that I never heard anybody express themselves otherwise. That is what I believed about it myself. I know how jurors are summoned, and know how a jury is impaneled, and taking those facts into consideration and having in mind the further facts that each party to a case is entitled on the trial to a jury of impartial men, a jury who are not prejudiced against, him, that is, a jury, who have not prejudged his case or its case, or any of the issues in it, I say, considering all these matters, I do not believe that a fair and impartial trial could be had in this county. I might be mistaken in that. It is a hard matter to answer just that question, because a man's knowledge of those things is limited, but that is my opinion. I believe if a vote were taken, nine-tenths would vote them guilty. Now that is what I think about it from the general conversations heard over the county.

Cross-examination:

I don't believe I have read any of the evidence which shows that the Waters Pierce Oil Company is a trust. It seems to be an ad-

mitted fact that it is a trust. The people discuss it just as if it were a fact. If I would be taken on the jury in this case and the evidence failed to show that it is a trust, I don't think I would hold it to be a trust. I am not sure that I could decide the case without being influenced by preconceived notions I have. I might be able to do so, but I would not make a really good juror. I would not want to be put to a test in this matter. I would prefer not to have the matter placed upon me. I have never seen any testimony to the effect that the Waters Pierce Oil Company is a trust; it is just an admitted fact; something assumed to be true. If I were
229 taken as a juror and the evidence failed to show that it is a trust, I think I could say so by my verdict. I don't think I have heard anybody say they would not decide the question according to the law and the evidence. I can't say that everybody is like I am on the matter. I think it is, in a general way, a mere admission that the thing is true. The Bailey matter has a good deal to do with the matter in this County. I do not think there would be so much prejudice if the Bailey matter were eliminated. Even if the Bailey matter should be eliminated from this case, I don't believe a fair trial could be had. I don't believe you could change the people at all, because I base my judgment on the Investigation. The Investigation never has changed a single mind in this County. I think the anti-Bailey people are still anti-Bailey. I don't know whether or not the question of this company's being a trust was brought up in the Investigation. As to what I have heard about the people having made up their minds, I will say that I haven't heard but very little. I think we have something like sixty voters in our box. I don't think more than fifteen or twenty per cent. of the people up there voted on this issue. The balance didn't go to the polls or didn't know there was an election. They thought the calling of the election was a farce. I don't think the matter was discussed with reference to this company being a trust. I couldn't say how many of the people in my voting box I have heard state this company is a trust. I think I have heard as many express such an opinion as voted in the election. They were gather- around the store, and I never charged my memory. I would not undertake to name any I have heard give an expression to this matter. I couldn't take up any particular individual, because I never thought of it as ever being wanted in this way. I could not take up a single man who said he ...ld not qualify as a jury, but of the sixty men at
230 my box, ...me are not qualified jurors. There may be forty there. Out of that forty I couldn't name any who said they couldn't qualify as jurors, because I never heard them express themselves on that question. I would not undertake to say that I think they could qualify, and I am not in a position to say that any of them are disqualified.

E. D. CAMPBELL, a witness for the defendant, being duly sworn, testified as follows:

My name is E. D. Campbell. I live at Hornsby's Bend. I have lived there about thirty-eight or forty years. I am well acquainted around Hornsby's Bend, Webberville and up the river to Austin.

During the last few months, particularly December, January, and February I have heard discussions among the people of my community with reference to this case. I have heard expressions that the Waters Pierce Oil Company is guilty, that is, is operating in Texas in violation of law. I couldn't say to what extent I have heard people in my community express themselves in this matter; I have heard a few. I don't know that I have heard it discussed at Webberville. Here in Austin I have heard it discussed. At Hornsby's Bend I think a majority of the people think the Waters Pierce Oil Company is a trust.

Cross-examination:

I think the Waters Pierce Oil Company could get a fair trial in Travis County.

J. A. McWILLIAMS, a witness for the defendant, being duly sworn, testified as follows:

I live at Sprinkle; have lived there about seven years. I am engaged in merchandising and farming. I keep a general store. I have been engaged in the store something like twelve or four-
231 teen months. During the last three or four months I have heard discussions with reference to the Waters Pierce Oil Company in connection with the Bailey matters, and the readmission of the company into Texas, but I haven't heard any opinions. I have never heard any opinion as to whether it is guilty or innocent.

Cross-examination:

I have heard nothing there to indicate that the Waters Pierce Oil Company could not secure a fair trial in this county.

J. A. HEWETT, a witness for the defendant, being duly sworn, testified as follows:

My name is J. A. Hewett. I live at Manchaca; have lived there about twenty years. I am tolerably well acquainted in that community, and also in Austin. I can't say that I am well acquainted at Oak Hill. During the last three or four months I have to some extent heard this Waters Pierce suit discussed. It is generally believed to be a combination, that is, that the Waters Pierce Oil Company and the Standard Oil Company are one and the same. I don't know to what extent I have heard this matter discussed. I can't say that I have heard it discussed sufficiently to be able to say what the general opinion in my community is with reference to it. A majority of those I have heard discuss the matter, believe the Waters Pierce Oil Company is a trust. I hardly know what the people believe with reference to its re-admission or admission into Texas the last time. I will state that I have had a great deal of sickness in my family and some deaths, and I have paid little attention to the matter.

I believe I have have heard one or two probably, who thought the Waters Pierce Oil Company is not a trust.

Our box went anti-Bailey in the primary election. I do
232 not know what was the basis of the opposition to Senator Bailey among those who opposed him.

Cross-examination:

I should think the Waters Pierce Oil Company could get a fair trial in this county. I would hate to think we didn't have men enough in Travis County to give them a fair trial, but I don't know anything about that. I don't know whether or not almost a jury could be secured at Manchaca to give the defendant a fair trial; the box went against Bailey; by what vote I don't remember, but I think it was tolerably close. I can't say that half a dozen men could be secured at that box that would make good jurors in this case. I might think I could give them a fair trial, but the other side might not think so. I don't know about that; I am like the nigger,—"if a man bites me, I will bite him." I don't believe I have heard anything to indicate that the defendant could not get a fair and impartial trial in this county.

Redirect examination:

I have heard the matter discussed only in my community; that's all. I am doubtful if a full jury could be secured in that community. I don't think it could.

Recross examination:

I don't know that you could get half a jury in my precinct. I will say that there are a good many antis there, and if I were on trial myself I wouldn't want a man on the jury that had the least thing against me. There are quite a number of Bailey men there, too, I was one myself. The question as to how many men could be gotten at Manchaca that would be fair and impartial
233 jurors in this case, is an unfair question. I don't know how many.

Redirect examination:

As to getting any jurors from Manchaca who had not formed an opinion in regard to the merits of this case, I will say that two or three might be gotten.

W. H. PRICE, a witness for the defendant, being duly sworn, testified as follows:

My name is W. H. Price. I live out between Creedmoor and Carl; have lived there between thirty-five and thirty-seven years. I believe I am generally acquainted in that community. I have heard some discussions within the last three or four months in regard to the Waters Pierce Oil Company. I can't say that I have heard the matter discussed enough to know what the general opinion in that community is. I haven't heard it discussed very much; I have been out but very little. The opinion expressed is that they believe it is a trust, and is wrong and in violation of law.

Cross-examination:

I have not heard anything to indicate that the defendant could not get a fair and impartial trial in this county. I think it could get a fair trial.

Redirect examination:

I do not know anything about the sentiment, except in my own community. I have not heard any one express any other opinion except that it is a trust and operating in violation of law. As to my being in a position to say whether or not they could get a fair trial, it is my opinion that they could; but I don't know the sentiment in other communities.

234 ERNEST PFLUGER, a witness for the defendant, being duly sworn, testified as follows:

I live at Pflugerville. I was born in that neighborhood. I am forty-six years old. At the time of the Bailey election there was right smart talk about the connection of the Waters Pierce Oil Company and Senator Bailey. I think that was about the first of January. I think my box went anti-Bailey by two majority. Among the people I heard express themselves as being against Senator Bailey, the reason assigned was his connection with this oil business, this trust business. I mean the Standard Oil Company or whatever it is called. Some call it the Standard Oil and others the Waters Pierce. The people in my community talked like it is a trust, but I am not convinced that it is a trust. I don't know exactly what a trust is. I never heard anybody say it is not a trust. I think it is violating the trust law. I couldn't speak for the majority, and don't know how they think about that. I never heard anybody say it was not a trust.

Cross-examination:

I have not heard anything to indicate that the defendant could not get a fair trial in this county. I think it could get a fair trial. We have about 160 poll tax receipts at our box. I don't know how many took part in that election. I believe there were 32 votes cast. 32 votes out of 160.

F. G. REYNOLDS, a witness for the defendant, being duly sworn, testified as follows:

I live three miles east of Austin. I have lived there for twenty-five years. I am engaged in the business of market gard-ner. I am tolerably well acquainted in the Govalle community and have quite an extensive acquaintance in Austin. During the last three
235 or four months I have heard this case and the Waters Pierce Oil Company discussed. At the time of the Investigation in the Legislature there was considerable discussion in our neighborhood; that was during January and February. There was some expression in my community to the effect that the Waters Pierce Oil Company is operating in Texas in violation of law. That was the general opinion in my neighborhood. I have not heard it discussed

much lately. In February that is January and February, the discussion in Austin just about the same as out there, wherever the matter would come up. That's about all we had to talk about. The same opinion would be expressed here in Austin as out in my neighborhood. On the day of the election I believe I heard three men express a contrary opinion. Those were the only ones I heard express a contrary opinion.

Cross-examination:

Neither in my discussions at that time, nor since, have I heard anything to indicate that the defendant could not get a fair trial in this county. From what I have heard, it is my opinion that the defendant could get a fair trial here. The vote at my box this year is only sixty-five. I don't recollect the vote at my box, but I don't think more than 25% voted. I know the Bailey vote; only three men voted for Bailey. They were the three I spoke of a while ago as expressing the contrary opinion. So far as I know they have not changed their opinion on the subject.

Redirect examination:

I was anti-Bailey in the primary election. My reason for opposing him was on account of the fact I didn't think he
236 was honest. I believe that he was the cause of the Waters Pierce Oil Company coming back into Texas, which was a dishonest transaction. I think the Waters Pierce Oil Company is a trust at this time and was before. Even supposing that the rest of the county the sentiment is an unanimous as in my community, that the Waters Pierce Oil Company is a trust, I believe they could get a fair trial, for the reason that many men are indifferent; they don't read the papers; don't read the magazines; don't do anything, and the might be in a position to be qualified jurors. As to whether or not they are the men ordinarily selected for jury service, I think it is the custom to summon men indiscriminately, and you are liable to get them and liable not to get them. I don't know anything about whether or not a trial of the defendant would necessarily result in a conviction. Most of the people in Texas think so; particularly most of them in Travis County.

Gus Cezeaux, a witness for the defendant, being duly sworn, testified as follows:

I live at Cedar Valley. This last time I have lived there about four months. I lived there about twenty years and then I moved up on the river to Teck, and lived there five years, and moved back to Cedar Valley. I was Justice of the Peace up there, but didn't do anything but work for the people; there was no money in it. Cedar Valley is about sixteen miles from Teck. Within the last few months I have heard people in my community express themselves with reference to the Waters Pierce Oil Company, in regard to its being a trust and having been fraudulently admitted to do business in Texas after the old company was excluded. I have heard it discussed for six years; I was on the jury before that

convicted it, and I have heard it ever since. The general sentiment is to the effect that the Waters Pierce Oil Company is a trust.
237 That is the general opinion in my present neighborhood, and also at Teck. In the last few months I have also heard people from other portions of the county express themselves on this matter. People from all over the county, I mean. I have a pretty extensive acquaintance in the county. From those I have heard express themselves, the general opinion is that it is a trust, and that it is here in violation of law; that it has always violated the law; that it is the same old concern, only with another coat of paint on. I have not heard any public speeches on the subject. I got enough of that six years ago. They punched law points into us until I thought all of the jury was dead. Judge Clark and Mr. Johnson were here then and are here now. I have heard the people who are residents of Austin express the same opinion—that it is a trust. I won't say that I have heard a considerable number, but a good number. I have not heard them express themselves otherwise, but that it is a trust and should not have been re-admitted.

Cross-examination:

I could not decide this case on the evidence; I wouldn't qualify as a jury. I couldn't even if I hadn't been on the former jury. If a man would come up and say they are thieves and rascals and ought to be run out, I don't think he could qualify as a juror. I have heard a great many make that kind of a remark. Have heard it for five or six years; ever since the other trial. These expressions not only cover an earlier period; I have heard such expressions recently. I couldn't give the names of the people I have heard speak of the matter here in town; but I heard Francis Fischer, and I heard Jake Schneider and Al Schneider talking about it. I heard that since this case was instituted they couldn't get gasoline
238 that would burn; that something was the matter. The man that minds the saw at the lumber company said the gasoline won't burn. Those people I have just named are not the only people I have heard express themselves. I have heard others, but I don't remember their names. I have not heard any say they couldn't qualify as jurors. The people I have heard talk about it constitute a very small number, compared to the six or seven thousand voters. I have, however, heard more than twenty or thirty. Three or four hundred people come up on the river fishing and I heard a good many talk. People from away down at Elgin and around. They express themselves pretty freely. I go around a good deal and take interest in politics. I haven't heard anybody suggest that they couldn't serve on the jury. I haven't spoken to anybody about that.

Redirect examination:

Not to be misunderstood, I will say that I have heard those discussions to a great extent within the last three or four months. I didn't go to our box on election day; I had enough of it. I know how a jury is impaneled; I have been on a jury and on a jury

commission. I know that a man is entitled to a jury of unprejudiced men; men who have not made up their minds in advance. As to whether or not a fair and impartial jury could be secured in this county, taking all these matters into consideration, I will say if you could pick out from all the men in the county you could; but where you take just a few each week, you could not. I do not think you could get a jury in the ordinary way.

239 Recross-examination:

They had an election in my community, but I didn't go. I live within two hundred yards, but didn't go. I think they had an election at Cedar Valley and at Teck. The people get disgusted about such things; politics are so dirty, they don't take any interest. I know that people who have the same kind of feeling about this matter that I have, would be disqualified and would be put off entirely, but you would have to get five or six thousand people in order to get a jury. I don't think you could get them out of what the court would allow. I have been here to-day, and I have heard some of the testimony. I have heard some of the people say they could be fair jurors. I know some of those men, and they are good men. As to whether or not they could tell the truth, that is a matter with their conscience. I believe ten or twelve men have already said that they could fairly and impartially try the case.

CALVIN HUGHES, a witness for defendant, being duly sworn, testified as follows:

I live out south of here about six miles; at St. Elmo. I have lived there about five months. Before that I lived at Creedmoor. I am pretty well acquainted in Travis County. I am very well acquainted in the southern part of the county. I am not very well acquainted in Austin. Within the last few months I have heard discussions with reference to the Waters Pierce Oil Company at Creedmoor, but not at St. Elmo. I think I have heard it sufficiently discussed to be able to state the general opinion of the people in that community with reference to the Waters Pierce Oil Company. Almost everybody thinks it is a trust and was fraudulently admitted into the State. That is the sentiment around Creedmoor. Creedmoor is about sixteen miles south of here.

240 Cross-examination:

Judging from my own opinion and from what I have heard, I do not think the defendant could get a fair trial. I have not seen any evidence against the Waters Pierce Oil Company. The information I have is the result of general talk and newspaper reports and articles. I don't think I could qualify as a juror and fairly and impartially try the case. I don't think I could hear the evidence on the defense's side sufficiently fairly to make a juror. I have never heard anybody express himself to the extent of being able to lay aside any prejudice he had and decide the matter on the evidence introduced. All the people I have talked to are of the opinion that it is a trust, without knowing what the evidence is

against the company. As to whether or not a jury could be secured from the Creedmoor community, I will say I think not; if I were in the other man's place I wouldn't want to risk it. I have heard men at Creedmoor say they should be sent to Huntsville. I know it is a corporation that is being tried, and nobody can be put into the penitentiary in connection with this case, but these remarks have been made against Pierce. It might be that there are people in the Creedmoor community who really don't know anything about this case and haven't discussed it. I haven't talked with all of them. I have discussed it with more than ten, as far as that is concerned. A good many people didn't go to vote. Something like fifty per cent. didn't vote. I don't know the voting strength of the box there since the Terrell Election Law has gone into effect. I suppose there are a hundred qualified voters out there, but not over that. I don't know about there being any qualified to sit as jurors over and above those who are qualified to vote. I don't know that it is a fact that less then twenty-five per cent. took interest enough to come to the polls and vote. I don't know that a number
241 indicated by their vote that they had not prejudice; all I heard discuss the matter were prejudiced. The box went for Bailey; I am a strong Bailey man, but I am prejudiced against the Waters Pierce Oil Company. I couldn't give them a fair and impartial trial, and was as strong a Bailey man as anybody. From the way I heard some men talk I don't think they could make good jurors. I don't want to call any names, but there are a great many around there who have expressed themselves as strongly as I have. I have heard as many as ten persons express themselves in that way. I have heard more than that. I was around the store and we hurrahed about going in-to the Republican party. It was something like half the voters that participated. The other half I don't know about; don't know how they felt or what sort of jurors they would make in this case.

Redirect examination:

With reference to the question of evidence, I will say I read only a part of the evidence adduced in the investigation here in Austin, as reported in the newspapers. I think it was read a good deal in the community around Creedmoor. I don't recollect reading anything in the papers about valuable evidence secured by Mr. Lightfoot in New York and up there. I read something purporting to come from Attorney General Davidson, denunciatory of the Waters Pierce Oil Company, but I don't recollect; the papers were full. I just read it and passed it on by. The people generally believe the Waters Pierce Oil Company is a trust, yes, sir. Some of the Bailey men, as well as the anti-Bailey men believe that: I, for one, do, and there are others beside me. The denunciation of the Waters Pierce Oil Company was not confined to the anti-Bailey men, but was indulged in by both; they were pretty much mixed
242 up. I had never heard any argument to the effect that Mr. Pierce had taken advantage of Mr. Bailey, and secured his assistance by misrepresentation.

GEORGE E. EKLUND, a witness for the defendant, being duly sworn, testified as follows:

I live at Montopolis, and am engaged there in the ginning business. I am of the Swedish nationality. I have lived at Montopolis for eight years. Within the last three or four months I have to some extent heard the people in my neighborhood discuss the Waters Pierce case and Senator's Bailey's connection with the Waters Pierce Oil Company, but I have not heard it sufficiently discussed to be able to state what the opinion of the people generally is with reference to this matter. Those that I have heard express an opinion, believe it is acting in violation of law. I have also heard some people here in town discuss the matter, and they seem to be of about the same opinion. I have never heard anybody express a contrary opinion. Montopolis is about three miles east of here.

Cross-examination:

I have not heard anybody express himself to the effect that the defendant could not get a fair trial in this county. I have heard nothing that would lead me to believe the defendant could not get a fair trial, except that those who took a great deal of interest would be prejudiced to some extent. A good many people haven't taken any interest; in fact, a very limited number, compared with all I come in contact with. I am of Swedish extraction, and in talking with people of — nationality, I have heard only one that said he could give the Waters Pierce Oil Company a fair trial in this
243 case. There are something like 1500 Swedish people in the county, that is, 1500 poll tax receipts have been issued to Swedish people. I do not come in contact very much with the Swedes, as only a few live in my neighborhood. The greater portion of the Swedes live out around Manor. I don't remember hearing such an expression from any other nationality. I wouldn't care to say, from what I know, whether or not the defendant could get a fair trial. I only know as regards myself.

J. W. PEYTON, a witness for the defendant, being duly sworn, testified as follows:

My name is J. W. Peyton. I live eight miles north of town. My voting box is Summit. I have lived there about thirty years. Am engaged in the business of farming.

Within the last three or four months I have heard some little discussion of the Waters Pierce Oil Company, in my community, both in connection with the Bailey matter and aside from it. We held the primary election at Summit, but I don't remember how many votes were polled. I voted in that election, and voted against Senator Bailey. Our box voted against Senator Bailey, but I do not remember to what extent. The basis of the objection to Senator Bailey, in my community, was because the people thought that he was in with this Waters Pierce Oil Company. The objection to the Waters Pierce Oil Company was because they consider that it is a trust. I couldn't say that I have heard enough expressions in my community to now what is the general concensus of opinion as to

whether or not the Waters Pierce Oil Company is a trust. I myself think it is a trust. Those that I have heard express themselves think it is a trust, but I have heard only a few express themselves. I have never heard anybody express a contrary opinion I have heard the matter discussed several times here in Austin, in passing up and down the street. The majority of these also thought it was a trust.

244 Cross-examination:

I have not heard anything up there to indicate that the defendant couldn't get a fair trial in this county. I should think the defendant could get a fair trial in this county; I don't see why it shouldn't.

Redirect examination:

I think there are enough people who could set aside this prejudice in regard to the Waters Pierce Oil Company being a trust, to give them a fair trial. There are a great many people who do not read and do not know about the matter, and therefore, are probably not prejudiced against the company. Whether or not they are the kind of people that are put on juries, but you get them once in a while.

LEON PUCKETT, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is Leon Puckett. I live down at Hornsby's Bend. I have lived there about thirty-two years; I was raised there. I have heard some duscussion of the Waters Pierce Oil Company in Hornsby's Bend during the last few months. The discussion was in connection with the Bailey Investigation. Well, in the general opinion of the people in that community, it is a trust. I have heard opinion expressed while here in Austin, by people from other portions of the county. I come to Austin most the times once a week. The people I have heard here in Austin seem to think it is a trust.

Cross-examination:

I have not heard anything to indicate that the defendant
245 could not get a fair trial in this county. From what I have heard in my own precinct, as well as here in town, I believe the defendant could get a fair trial.

Redirect examination:

I understand that the defendant in this case is entitled to a jury of unprejudiced men. All we know is newspaper talk. Some of the people read the testimony in the Bailey Investigation, and some argued it; some didn't care about it at all. I hardly know whether the defendant could get a fair and impartial trial in this county, but I believe though you could get a jury.

I don't know of any other case that was as generally discussed as this one has been. None to which as many references have been made.

Recross examination:

I said I didn't recall any case as generally talked about as this one. Calling to mind the Warren Moore case, I suppose they talked more about it. The same is true about the Burt case tried here a few years ago. Most of the discussion of this case has been with reference to Mr. Bailey, and at the time they were trying him. I don't think there has been any general discussion of the facts of this case.

HAM METZ, a witness for the defendant, being duly sworn, testified as follows:

My name is H. M. Metz. I now live in the city, and have lived here for sixty-three years. I have held several official positions, the last being County Assessor of Travis County. I held that position twenty-two years. Among other official positions I have held, are Alderman, School Trustee, and various other little offices.
246 I was a member of the Grand Jury at the September Term, 1906, of the 53rd Judicial District. I was a member of the Grand Jury that returned an indictment against H. Clay Pierce, charging him with false swearing.

ELI MILLER, a witness for the defendant, being duly sworn, testified as follows:

My name is Eli Miller. I live at Creedmoor, in this county. Creedmoor is fifteen miles south of Austin. I have lived there about fourteen years. I know almost every one in the community; in fact, every one. Within the last few months I have not heard much discussion in my community about the Waters Pierce Oil Company; I might have heard it discussed some. I heard it discussed some during the Bailey campaign about the first of January, but not extensively. I heard it discussed as the Waters Pierce Oil Company being a trust. I heard only a few persons discuss it in that way; the people I heard speak of it, were representative citizens. From the way I heard the matter discussed, I judge that the Waters Pierce Oil Company was re-admitted into the State fraudulently. That was the opinion I heard discussed. I never heard any one say anything to the contrary. The expression was all one way. I have never know- a civil case in Travis County to excite as much attention as this case has.

Cross-examination:

I don't believe I have known of any criminal case to excite as much attention. In saying this, I am talking about the Bailey controversy and this case connected together. I couldn't say that whatever of interest there has been in reference to this matter has been in regard to Senator Bailey, rather than this defendant. I have not heard any discussion recently. I couldn't say positively

that it has been two months since this matter came up for
247 trial, but it has not been discussed since the Bailey controversy. From what I understood of the conversations at that time, the only discussion was with reference to Senator Bailey. I have never heard anybody discuss the facts of this case. I suppose any notion I may have about this defendant being a trust or people talking about its being a trust, was based on newspaper reports, etc. I can't say that I have ever heard the facts of this case discussed. I have never heard the issues involved in this case discussed, but I think I have heard what I supposed to be some of the facts in it. The facts from what I judge of the case is whether the Waters Pierce Oil Company was brought back into Texas through fraud, and through the efforts of Bailey, and whether Mr. H. C. Pierce perjured himself in his statement. Since the admission of the concern into the State in 1900, the charges I have heard in connection with it are the indictment by the Grand Jury. I know Mr. Pierce is not being tried in this case, but that the Waters Pierce Oil Company is. I know that the State in this case is asserting against the Waters Pierce Oil Company the violation by it of the anti-trust laws. I couldn't say just in what respect, but in several respects, I think. I have not read the petition in this case, and don't know anybody who has. I do not know the character of evidence that the case bears on, and do not know anybody who does. I can't say I have heard the facts of the case now on trial before the court discussed in my community. I think that any facts I might have heard were based simply on general rumors, newspaper reports, and that sort of thing. I do not think there was any showing of prejudice or feeling against the Waters Pierce Oil Company itself as distinguished from the action of Mr. Pierce or the position of
Mr. Bailey, in the discussions I have heard. I think I talked
248 to some three or four people about this matter. I hardly know whether or not, judging from my knowledge of the conditions as they exist in my community, the defendant could get a fair trial in this county. Of course, from what I gathered from those I talked to, I should think not. The three or four I talked to are of the same opinion I am. I do not think I would make a good juror in this case. I am a qualified juror. I have never read any of the evidence in this case, except what was in the papers. I am not always in the habit of relying on what I read in the newspapers. I do not think the newspapers have undertaken to give the evidence that is to be given in this case. I hardly think I could go into the jury box and say to the Court that I could decide the case on the evidence introduced before me. I have my mind made up. I hardly think I would be able to decide the case on the evidence introduced before me and the charge of the court. Two of the men I mentioned as having talked with, are the same as I am about this matter; they have expressed themselves as being prejudiced, and disqualified as jurors. I don't know about the other one or two; I heard no expressions from them. I did not go into as full a discussion with them about the matter as you have about the qualifications of a juror. Those two I have mentioned are Mr. Hughes,

who was on the stand here yesterday, and Mr. Evans. Those are the only people I know at Creedmoor who I have reason to believe are disqualified as jurors. There are one hundred and fifty voters in the Creedmoor box. I suppose there are several people in that box who have never heard of the Waters Pierce Oil Company, because there are lots of people that don't take newspapers, and I think therefore that there are more than two that have never heard of the Waters Pierce Oil Company.

249 Redirect examination:

I hardly think that people who never read newspapers get on juries often. The matter I heard discussed was with reference to Senator Bailey's connection with the Waters Pierce Oil Company after its expulsion from Texas, and its re-entry into Texas by fraud. The objection to the Waters Pierce Oil Company was the general opinion that it is a trust, and we had anti-trust laws; and he tried ta get back into the State the trust, and people look with holy horror upon trusts. In my opinion a man who has his mind made up about a case is not a fit juror. I have looked upon the Waters Pierce Oil Company as a trust ever since it has been here. Nobody seems to think anything else about it. When a general opinion prevails that way, a majority of the people would be of the same opinion.

Recross examination:

I have not just merely assumed that it is a trust, and have not assumed that everybody else thinks the same thing. I have heard it talked *af* a great deal and have heard people discussing it among themselves. To some extent I judge that notion is predicated on the fact that it was once convicted here as being a trust and run out of the State. I do not know of anything since that time which would be accepted as an indication that it was a trust. I guess my notion must be based upon this former action of the court here in holding it a trust. I think I would say the defendant is not a trust if I were on the jury and it was shown that the defendant on trial is a different concern from that which was adjudged to be a trust and if the evidence failed to show that since that time the defendant had done anything that would make it a trust. I could
250 not say that the opinions of the people I have talked with are predicated upon the fact that the Waters Pierce Oil Company was once adjudged to be a trust here in this county, and not upon something that has occurred since that time. I have formed no opinion based on facts that have arisen since the time that the Waters Pierce Oil Company was excluded from the State, and I have never heard any such facts discussed by the people I have talked to about this matter.

Redirect examination:

I think this is the same concern that was convicted here before, and that it has just played with the law and got back under false

pretenses. That is what I blame Bailey for. I can't say whether the people I have talked with are of the same opinion; I would judge so, however.

Recross-examination:

I have not heard discussed any facts arising since 1900, that would show that this is the same concern that was in here before. I know of no facts myself. I will say as I did before, that if the evidence were to show that this was not the same concern and should further fail to show that this concern had done nothing since 1900 to make it a trust, I could, if I were on the jury, be able to say that a case had not been made out against the Waters Pierce Oil Company.

Redirect examination:

I would go into the jury box prejudiced.

Recross-examination:

I would have a prejudice against the Waters Pierce Oil Company if I were to go into the jury box. I would go into the box with a prejudice against them, not a conclusion. I base my preju-
251 dice on several reasons; the judgment of the court in 1900 was one reason.

W. L. DODGEN, a witness for the defendant, being duly sworn, testified as follows:

My home is five miles north of town. My voting box is at Summit. I have lived at the present place about two years; and I have lived in Travis County about seventeen years. Prior to that I lived south of town. My acquaintance in the community in which I now live is not very great. I have only lived there a little over two years. I am acquainted with most of the people by sight. My occupation is that of farmer. I do not belong to any church or lodge out there. I am Superintendent of the County Farm of this County. I meet a good many people out there. I have heard some discussion of the Waters Pierce Oil Company within the last few months, that is to say, since the first of last January. There was considerable discussion about the Waters Pierce Oil Company about the time we held an election to say whether or not we should instruct our Representatives to vote for Bailey or not. The general opinion among the people, expressed by the people of my community during that time, was to the effect that the Waters Pierce Oil Company is a trust, and that it was re-admitted into the State by fraud. There is some prejudice in my community on account of this belief. I think there are some that would make good jurors in this case, but I believe the majority would be against the Waters Pierce Oil Company. They have not all made up their minds, but the majority are against the Waters Pierce Oil Company.

Cross-examination:

I think may be four, five or six jurors could be secured there; I couldn't say exactly. I do not know exactly how many
252 people vote at that box; I think forty or fifty. I think five or six good jurors could be secured from out there; that is my opinion. But a majority believe the Waters Pierce Oil Company is a trust; a majority are against the Waters Pierce Oil Company. It is my judgment that five or six qualified jurors could be secured from out there. I suppose there are some people out there who have never taken any interest in this matter; perhaps there are some that hardly know there is a Waters Pierce Oil Company. In my judgment, twelve good jurors could be secured in this county to try this case. It is my opinion that several hundred could be gotten. I have taken some interest in the matter myself, and I think I could qualify as a juror.

Redirect examination:

I am familiar with the method of summoning and impaneling a jury in this country. I think there would be some trouble to secure a jury, considering the method of securing a jury, and considering that every person is entitled to a fair jury. It might be possible that a good many people with a violent prejudice think they could qualify as jurors when in fact they can't. It is pretty hard, I think, for them to law aside their opinions.

GEO. S. WALTON, a witness for the defendant, being duly sworn, testified as follows:

I have resided in Travis County since the 12th of November, 1883, nearly twenty-four years. I have a pretty general acquaintance throughout the county—both in the city and outside the city. For quite a while I have heard hardly anything else but discussions of the Waters Pierce Oil Company among the people of this county. Judging from the expressions that I have heard all over the county, I think it is all but universally considered that the Waters
253 Pierce Oil Company is a trust and that it was fraudulently re-admitted into Texas; that is the general impression throughout the county, as far as I have heard. As to the Waters Pierce Oil Company's securing unprejudiced jurors in this county, from a pretty general talk among the citizenship as a body, that is, the intelligent citizenship, of Travis County, my idea is that the matter has been prejudged, and the people have made up their minds that the Company is guilty, and that it ought to have its permit to do business in Texas revoked, and that penalties ought also to be assessed. They disagree as to the amount of those penalties. I have heard some of them say they ought to stick them to the limit. I think a jury might be secured in this county, that is, a jury that would come in here and qualify; but I don't think that the class of men that would do that would be capable of analyzing and understanding a case of this magnitude. I am familiar with the method of organizing and selecting juries.

Cross-examination:

I was not one of Mr. Bailey's managers in the recent campaign. I took a great deal of interest in behalf of Senator Bailey. I think Senator Bailey is all right in every way. I never made any speeches for Mr. Bailey. My name was signed to some campaign documents and literature. I didn't sign it myself, but I acquiesced in the signing. Since the Bailey business is off, I still hear this case discussed nearly all the time. I have heard it frequently discussed within the last two months. I have never heard the facts of this case discussed in detail. Further than hearing simply an acquiescence, by the people with whom I have talked, in the idea that the Company is a trust—I have heard the testimony of Mr. Gruet and the various witnesses connected with the case, discussed
254 by quite a number of people. I don't know to what extent they are familiar with it, but they pretend to be quite cognizant of quite a number of things. They talked about the contract between the State and Mr. Gruet, and they have talked about the new law that was passed by the Legislature, authorizing the State to get this testimony, and I have heard it discussed from every standpoint. In regard to indicating some of the matters I have heard discussed which have a bearing on the issues in this case, I will say that I have heard them say that the affidavit of Mr. Pearce, to the effect that the Standard Oil Company, I mean the Waters Pierce Oil Company, is not a part of the trust, was perjury, and they discussed about the number of shares that the Standard Oil Company owned in this company from the time of its inception down to the present day, and they discussed it largely with Mr. Bailey's connection with the matter. Bailey's connection with this matter was very largely discussed. I can't say that I can say positively that any particular man has discussed this matter with me; it has been discussed in my presence, and in that way I have heard Mr. John W. Brady, Mr. Henry Faulk, Judge Cochran, Judge Penn, Ed Anderson, Mr. Haigler, and Mr. Batts discuss it; I have also heard parties from the Attorney General's Department discussing it. I have heard Ben Marshall; Major Walton, Gregg Hill, Mr. Luedeck, at Manor; Mr. Taylor, at Webberville; Mr. George Gilbert; Mr. Francis. I could name a great many, but the names have slipped me right now. Those people are not the only ones I have discussed this matter with, and I do not predicate my statements upon the discussions I have had with them. I made a political campaign in this county, in my race for Representative in the Legislature, and I have talked with people all over this county, from one end to the other. I made that campaign last summer, before
255 the institution of this suit, but it was generally understood around and talked about, and Mr. Bailey's connection with it was discussed even at that time. I heard it frequently mentioned then, and since that time they had a political campaign in this county, involving the instruction of the members of the Legislature from this county to vote for or against Mr. Bailey on the matter, and I took an active interest in that. I went among the people of Manor, Webberville, Del Valle, at Fiskville, and here in Austin;

I did everything I could to get the people to instruct our representatives to vote in favor of Mr. Bailey, and I discussed the matter with hundreds of them, but I don't recall the names. I know their faces but I can't recall their names. I do not base my opinion on what the few men whose names I have mentioned, some of whom are practicing attorneys and disqualified to act as jurors, have said. In regard to my statement that it is almost universally believed that the Waters Pierce Oil Company is a trust, I will say that even among Mr. Bailey's friends a large number think it is a trust—a part of the Standard Oil Company. I have never heard any one say he believed the contrary—that it is not a trust. I have never discussed the case with Judge Penn or Judge Cochran. I have heard them discuss it but not to me. I have been permitted in giving this testimony to name those that I heard discuss the matter in my presence and while I can't remember, for instance, you (Mr. Batts), or Judge Cochran or Judge Penn, talking to me, I have heard you in conversation with other people discuss it. I have not heard anybody go into any detailed discussion of facts that have arisen since 1900 with reference to this present defendant, but I have heard them make certain expressions. For instance, a great many said that they thought the affidavit which was the basis of the re-
admission of the Waters Pierce Oil Company was a lie.
256 Taking up the different parts of the County, with regard to naming the people I have heard discuss any facts of this case, I can't recall any particular person at Summit. From Merrillton I have heard Mr. Parker and Mr. Kemp, the latter was at one time Commissioner here. I have heard Mr. Edgar, and an Irishman at McNeil, by the name of Cahill. As I said before very few discussed the real facts of the case, but nearly everybody gave some particular reason why they thought the Waters Pierce Oil Company was a trust and had been fraudulently re-admitted. It is not my opinion that except for the four men I have just mentioned everybody else at Merrillton is a qualified voter. My opinion is based on the fact that those people are well posted as a rule, and I believe they all voted in this last election, and they all expressed an opinion by means of their ballots. I don't remember the number of votes cast at that box. I don't think more than half voted. I don't think there are twelve men at McNeil that are qualified voters that don't know anything about this case. My opinion as to who is a qualified voter is this: I don't think simply because a man can say that he don't know anything about a case, and simply beca-se he has paid his poll tax or that he is a property-holder or house-holder, and has not been to the penitentiary, that he is a qualified juror. The Court might hold such a man a qualified juror, but still we have a right to set him aside. We have the right to set six aside in a civil case. It was indicated to me only in a general way that any number of jurors at McNeil would be unable to give the defendant a fair and impartial trial. The people that discussed it with me, seemed to think that everybody else was largely of the same opinion.

At Pflugerville I remember discussing the matter with George

Pfluger and Gus Bohles, but there were at the time quite a
257 number of people present. I know their names and know them to speak to, but I can't recall the names just now. They were talking about this matter in a general way, that is, that the Waters Pierce Oil Company is a trust. They gave no particular reason why they thought it is a trust. That discussion was in connection with the Bailey matter. As to whether or not it had any reference to the facts in this particular case, I will say that it did have such reference, because it was going on the proposition that the company had been fraudulently re-admitted into the State. I don't know whether that particular crowd was Bailey or anti-Bailey. I heard a considerable number of the people in that section express themselves one way or another about the matter. I cannot approximate just how many; I wouldn't attempt to do so. I don't know positively that there are not a hundred men at Pflugerville, out of the one hundred and sixty out there, that have no views about this matter, but would be qualified jurors in this case. As far as I have heard the matter discussed in this county, including Pflugerville, I don't think that twelve could be found at Pflugerville who are qualified jurors. My opinion is that if you were to have every one of the men at Pflugerville brought in and tested, that you would not get three jurors. There are neither one hundred nor fifty men at Pflugerville I do not know; I suppose there may be twenty-five I do not know. I do not know personally how any of them stand in this matter. I suppose there are a hundred men at Pflugerville I have heard no expression from. As far as personal contact with those people is *contact with those people is* concerned, I suppose there are a hundred out there about whose attitude in this matter I know nothing. As far as any character of information is concerned, I believe that all of the people have concluded one way or the other
258 in this matter and are disqualified; have prejudged the matter one way or the other, that is, basing my idea on the people of Travis County, believing that they are intelligent enough to post themselves on any such issue as that to be submitted to them, and judging from the manner in which this case has been discussed; not this particular case, based on the identical facts involved in this case, but taking the other anti-trust suit in which the Waters Pierce Oil Company was prohibited from doing business in Texas, and its re-admission, and Mr. Bailey's connection with this matter, and the tremendous effort that was made both for and against Mr. Bailey in this county. I do not know what the vote was at Pflugerville. As to the number of people out there, I will say that it has been a good while since I looked at the list but I think that they generally cast eighty-five or ninety votes. I suppose there are more than one hundred qualified voters. There are more qualified jurors than there are voters. It is a fact that I and all the other people who were managing for Senator Bailey, and Mr. Shelton and the other people against him did all they could to get an expressions from the people on the Bailey business. I think it is also true that more interest with reference to Mr. Bailey, than with reference to this Waters Pierce Oil Company case, was taken. In their discussions of the

matter, the people never separated Mr. Bailey from this case. They did not discuss this particular case, but they talked about the Waters Pierce Oil Company, and whether or not it is a trust, and whether or not it was properly re-admitted into the State of Texas. They didn't go into the facts of this case, just as I stated before.

Dessau and Pflugerville are right together and I don't know where the line is between the citizenship out there. The five or six persons I have already mentioned, I would consider as belonging to Dessau and Pflugerville together. I have heard a number of people
259 from that section of the county, but I can't remember their names, they discussed this Bailey matter and Mr. Bailey's connection with the Waters Pierce Oil Company, and the fact that they thought that the Waters Pierce Oil Company was a part of the Standard Oil Company; but who they are I can't recall. It was not in my mind at the time, as to whether or not they constituted ten per cent. of the population out there; I don't say that they constituted two per cent. or what per cent. I do not say that as far as I know ninety-eight per cent. of the people at Dessau are qualified jurors. I know that quite a number of people out there voted on the matter, but I don't remember now what the vote was. I do not remember who the particular individuals were who discussed this matter, but I heard a great many.

At Fishville I don't remember hearing anybody discuss this matter, except one, who spoke of it in a very casual way, and that was Mr. E. W. Holler, whom I overheard talking to some one on the street.

I didn't go to New Sweden in my campaign. I don't remember what the vote was at New Sweden; I can't recall the vote in my own ward on the proposition. The vote was light out there. From the vote cast out there, I have not come to any conclusion on this case. I remember hearing a many by the name of Bustin, who runs a store right by the church, discussing this case, that is the Waters Pierce Oil Company, in a general way, as I have stated before; he was talking as if he had made up his mind on the matter, and was trying to convince a man he was talking to. I have heard a great many of those people out there discussing the Bailey matter. I don't remember their names now; they are foreign names, but they are people I have known for years. I can't tell just how many I heard, but I have heard more than ten. They were discussing the Bailey matter and the Waters Pierce Oil Company, but not
260 this particular case, as it hadn't been brought at that time. This was during last summer.

I don't remember how many people I talked with at Lund. I may be mistaken, but I think I talked with Mr. Olle at Lund. I don't know the dividing line there; I suppose it is Onion Creek. I have got Lund confused with Dutch Water Hole. Mr. Olle doesn't live at Lund at all. I do not recall any particular person I have spoken to at Lund; I know I have heard a number of people from there discuss the matter. Do not recall any particular person, and do not remember what was said, except in a most general way. Besides Mr. Olle, I do not recall talking to anybody in person from

the Dutch Water Hole neighborhood; but I have heard a number of people discuss it, that I knew were from that neighborhood. I cannot tell how many, because I wasn't taking note of that fact; I think probably six or seven. Outside of the six or seven I spoke to from that neighborhood, I know nothing personally as to the attitude of the jurors there. I do not say that as far as I can give testimony here the balance of the people in that neighborhood are qualified voters; I say as far as I know from personal contact.

I do not know just where Kimbrough is located, but if it is in the neighborhood of Manda, I don't think I have talked to anybody in there personally, except one man by the name of Palmquist, I think. I am not certain just what his voting box is, but he is from that section. Outside of this man, I don't remember talking to anybody else from there in person; that is, talking to any one individually. All I can tell about the attitude of the people in that neighborhood I gathered from what he said, and he wasn't talking to me at the time; he was at Elgin talking to somebody there at the depot. I can't tell how many people from that box are disqualified,
261 except from what he said. He said everybody out there thought the Waters Pierce Oil Company is a trust; is a part of the Standard Oil Company. That is all I know about that neighborhood. This man Palmquist, I think lives out about six miles from Elgin on the road running nearly parallel with the M. K. & T. Railroad; at least, that is where he lived the last time I knew him. I didn't make any inquiry of him to ascertain the extent of his information or anything of that sort; in fact; I never spoke to him personally. He was discussing this case with a number of people, and I was just a listener. They were discussing the Bailey matter there at the depot.

At Manor I a pretty well acquainted. I talked with a good number of people down there to try to get them to vote for Mr. Bailey. I have heard a good many discuss it one way or another. I have heard Mr. Burleson; I have heard Mr. Raney, Mr. Jones, Mr. Pittuck, Mr. Allison, Mr. Palm, Mr. Giles, and Mr. Leudeck. Those are not all I heard, but I can't recall any more by name. I don't know how many; nearly everybody in Manor I have heard discuss it one way or another. Those I have mentioned were not discussing the qualifications of a juror; in fact, I never have heard the matter as to the qualifications of jurors discussed at all. None of those I have mentioned, nor any one else I heard down there, discussed the facts of this case in detail any more than I have heretofore stated. Goodness knows how many I have heard discuss this matter. Mr. Bailey made a speech down there and the whole community came to hear him, and lots of them come here to Austin all the time, and I have heard them time and time again discuss the fact that they believe that there wasn't any question on the proposition at all but what the Standard Oil Company owned the Waters Pierce Oil Company, and there was great divergence of opinion as to whether or not Mr. Bailey knew that fact. I
262 suppose I have heard more people from Manor discuss this matter than any other place outside of Austin. When it

comes to fixing a number, I don't know whether they all voted at the Manor box, but I have heard something like two hundred people from that section discuss the matter. I can mention only a few now, as I don't remember the names of most of them. If I were given a list of the voters down there I could more readily point out whom I heard. I was not down there at the time Mr. Bailey made his speech; I never made a visit to Manor on that question at all. I believe less than half the people there voted but I don't know why.

At Decker, I have heard Mr. Swenson, and right at the end of Decker where it strikes the Webberville Road, I have heard Mr. Ed. Rogers, and the others, his sons; I have heard the storekeeper right on the road there at the south end of Decker. That was not all. Two other men whose names I cannot recall; I know they live on that road, not far from the Decker Church; I heard them talking about the matter. Outside of those I have just mentioned, I don't remember anybody else I have heard discuss the matter in that neighborhood. Of the balance of the population there I know nothing.

I have heard a good many from the Garfield neighborhood, but just exactly whether they were from on the other side of Onion Creek, or Del Valle, I can't say; but I have heard Mr. Givens; Mr. Washington, Mr. Sneed, Dr. Maxwell; Mr. Fowler, Mr. Jones; the Swede that bought Judge Terrell's place—I can't remember his name. I heard a bunch of men down there on the day of the election—the Bailey primary, I mean. I was there from early in the morning until one o'clock, and I heard every man that came there to vote discuss the matter one way or another. That was the Del Valle Box. There were twenty-seven votes cast there, and one hundred and fifty people got out and discussed it one way
263 or another, but passed on, some going to town, and some coming out. I don't now how many people did pass there. I stayed out there and talked with the judges of the election and everybody that came around. I don't know whether they lived at Garfield, or whether or not they were legal voters, but they were passing backwards and forwards. They came from three directions—from down the river, from Garfield, and from Moore's Crossing, and congregated there at the Del Valle Store. What their names were or where they were from I can't tell. I think there are something like two hundred and fifty voters at Garfield and Del Valle. Not from what the people told me, is it a fact that they didn't feel enough interest in this matter at Garfield to go and vote. I was not at Garfield, and don't know whether it is a fact or not that the poll at Garfield was not opened for this election. I know this, as one of the Bailey men. There were twenty-seven votes at Del Valle; twenty-seven for, and fourteen against. A great many people passed there going to and coming from Austin. My recollection is that Mr. Bailey got twenty-eight votes; I don't remember the exact vote against him.

I have heard quite a number of people from the Carl and Bluff Springs neighborhood. I have heard Mr. Thaxton; J. Woods

Smith, I think I have heard Mr. Ab Jones; I have heard Mr. Milo Nuckols, and his brother who died the other day; I have heard the young man in the store there; he is kin to Mr. Caldwell—Tom Caldwell, I have heard him discuss it; I have heard Mr. Wamsley; I have heard the man who used to keep a store at Creedmoor, Mr. Miller, and many others. I have heard a great many from out there, but can't recall their names. Everyone I heard discuss it, seemed to be discussing it as though his mind had been made up. I don't think they held an election at Carl; I don't know why they didn't. I didn't talk to as many people as I heard discuss
264 it in crowds here on the Avenue, but including those I think I heard something like thirty or forty from the Carl, Bluff Springs and Creedmoor neighborhood. That is as many as I can recall of the jurors out of that neighborhood; I cannot undertake to say how the balance stand.

From the Mountain boxes I have talked with and heard Emmet White, just beyond Oatmanville; I heard the storekeeper at Cedar Valley—I have forgotten his name; at Bee Cave I heard Mr. Beck, and I heard one of the Heffingtons, and I heard Mr. Eck; a man who lives on the other side of the creek, Mr. Bray, I believe is his name, and a man by the name of Williams. That is all I can recall of those I heard from that side of the river, outside of perhaps some that I think live at Oatmanville. I don't know exactly where they live. Including Oatmanville, I heard Mr. Patton, Mr. Trautwein, Mr. Nolan, the druggist out there, I can't call his name. Then there is a man just below the drug-store, by the name of Johnson. I heard others whose names I can't recall, but I know they live in that neighborhood. I can think of three or four more, but don't remember their names. I can't recall any more because I made no note of the fact of who they were. I can't remember what all of them said; the matter of whether or not they could try this case fairly was not discussed. From around Fairview and Mud I heard Mr. Lohman and I also heard the Constable of that precinct. I have forgotten his name. That is all whose names I can remember out of the six or eight boxes who have expressed an opinion to the effect that the Waters Pierce Oil Company is a trust, or who discussed the matter in general. I did not hear the facts in this case discussed by those people. Only from what I heard those people say am I able to speak of the attitude of the people in that section of the county.

265 Redirect examination:

As to how prejudice often arises is a question about as wide as the world. As to how mobs are formed, I have no knowledge whatever except from reading. I never lived in a community where there was a mob.

The Bailey matter and Mr. Bailey's alleged connection with the Waters Pierce Oil Company became practically a public question in this county. Mr. Bailey himself is a public man. People usually derive their information as to public questions from the public press; from public utterances of public men, and general conversa-

tions by the various citizens throughout the community, pretending to know, whether they do or not, the facts. In Austin there are only two daily papers published—the Statesman and Tribune. Those papers have a fair circulation throughout the county, as well as in the city. One of those papers was on one side and one on the other in the Bailey matter, and there wasn't an issue of either one when they didn't have something about it. I don't read the Statesman, but I take the Tribune and Galveston News. I haven't taken the Statesman, except on Sundays, for some time. Sometimes I borrow Mr. Shelton's copy at the office, otherwise I don't read the Statesman. I never say anything in either of those papers defending the Waters Pierce Oil Company. Mr. Bailey was defendant, but it was always claimed he had nothing to do with the Waters Pierce Oil Company in a criminal way, but that he represented Mr. Pierce. During the Bailey campaign before the primaries, Mr. Francis, Mr. Cocke, Mr. Bailey, Judge Terrell, and Col. Wynne made speeches. I believe I heard that Mr. Moore made a speech, but I didn't hear him. I heard Mr. Bailey and those others that I have mentioned, except Mr. Cocke. I never heard him. In addition to the speeches, there was personal activity on the part of individuals in town here. There was a Bailey and an anti-
266 Bailey headquarters, and each one had its active partisans in control and management. They had their headquarters and their literature and worked night and day, and buttonholed everybody—strangers and all. If there is a man in Travis County that didn't get fully posted on the subject, I don't see what was the matter with him. I have no doubt but that every man of any intelligence in Travis County was fully advised on that subject; if Travis County couldn't be advised on a matter between the papers and the friends and enemies of Mr. Bailey and people who were not his enemies, but were opposed to him on the facts, and everything of that kind, I don't see how it is possible to say that he lives in a civilized community without having made up his mind on that proposition. I never heard a single man in all this agitation and association of Mr. Bailey's name with the Waters Pierce Oil Company, defend the Waters Pierce Oil Company. If there is a man in Travis County that ever said that the Waters Pierce Oil Company was not a part of the trust, I haven't heard it, whether he be Bailey or anti-Bailey. I haven't any information as to the amount of literature distributed by the Bailey and anti-Bailey headquarters. I never went to the headquarters of either party.

Recross-examination:

I never heard Mr. Bailey say the Waters Pierce Oil Company was not a trust. He didn't make that statement in his speech at the Opera House. I was on the stage and introduced him. If he stated it I didn't hear him, and I think I heard everything he said. It is true I heard him speak of its not being convicted as a trust. Mr. Bailey said that it was the judgment of the court in the case tried six years ago, that the Waters Pierce Oil Company was not a trust.

He read the report of the case—read of their making only
267 one exclusive contract, and that Judge Brooks withdrew the charge of conspiracy, the contract relating to the Standard Oil Company as not being supported by sufficient evidence. He did not, I think make the proposition here that the Waters Pierce Oil Company was not a trust. If he did, he failed to make that impression on me, because I thought he was standing strictly on the case as tried and on the judgment as rendered, and had nothing to do with the question of this State having ousted the Waters Pierce Oil Company by reason of its being a trust, but it was because of its making the exclusive contract, when everybody was stating throughout the country, and everything of that kind, that it had been a trust, when that was not so. He undertook to correct the impression that existed in this county with reference to that judgment. I stated and he stated and everybody state in order to state the truth about the matter, that that was a fact, because it was not convicted. I do not think that the conclusion or judgment of the people was predicated on that judgment of the Court of Travis County. A large number made out like Mr. Bailey was trying to get behind a subterfuge. Other facts that have been developed, besides the judgment rendered here six or seven years ago, were the facts stated in the press and every place else that the Standard Oil Company owned a majority of the stock of this company, and they claimed that Mr. Bailey knew it. I don't know whether that got into the Statesman; I didn't read the Statesman. Mr. Bailey was supported by the Statesman. I do not know as to whether or not the Tribune's circulation is confined to the town here; I have seen a number of copies in the country. With reference to the balance of the press, that part of the press that goes to the country, I didn't see any paper that
went to the country, unless it was the Statesman, or Tribune,
268 and don't know whether any effort was made to develop the facts concerning the Waters Pierce Oil Company's being a trust. My conclusions as to the extent to which the press developed these facts is not based on an inadequate stock of facts. It was developed during the Bailey contest that the Standard Oil Company owned a majority of the stock in the Waters Pierce Oil Company, and Mr. Pierce's testimony taken in St. Louis was published in the Galveston News, Dallas News, Houston Post and San Antonio Express, which went all through this county, as well as those other papers, except the Statesman. I don't know that this has ever been denied; if so, I am not cognizant of it. I don't know to what extent the Galveston News or any of the other papers, go through the county. As to whether or not the other daily papers have been defending the Waters Pierce Oil Company, I cannot say. I don't know about the Fort Worth Record. I don't know about the Houston Post; I do not take the Post, and if it was in there, I did not see it. I understood that the Houston Post defended Mr. Bailey. I did not know it defended the Waters Pierce Oil Company; my understanding was that it defended Mr. Bailey.

Redirect examination:

It is my recollection that Mr. Bailey stated in his speech at the Opera House that he didn't know anything about the Waters Pierce Oil Company's being a trust; that he had been deceived by Mr. Pierce. In that connection he produced the judgment of the court, and stated that the Waters Pierce Oil Company had never been convicted of being a trust in Texas, but that it had been convicted of making one exclusive contract, and he took the Southwestern Reporter and read from it that portion of the case which shows those facts, and the withdrawal of the trust feature of the case from
269 the jury by Judge Brooks. That was with reference to what he knew about its being a trust. He also discussed the Henry & Stribling matter.

GEORGE W. LITTLEFIELD, a witness for the defendant, being duly sworn, testified as follows:

I live in Austin; have lived here twenty-four years. I have been in the banking business here most of the time, that is for seventeen years, and know a good many people in the county. I know a great many people in Travis County, as well as in the city. I have frequently heard discussions with reference to the Waters Pierce trial, and with reference to the candidacy of Mr. Bailey and the Investigation in the Legislature. Just in a casual way I would hear men express their opinions about the matter. I think the concensus of opinion among those I have heard express themselves is that they consider it a trust, and that it is in connection with the Standard Oil Company. I couldn't call to memory with whom I talked about the matter, but in a general way the re-admission of the company into Texas is looked upon as a fraud. I don't know that I have heard so many discussions in regard to the matter; it has been the general impressions. With reference to the question as to whether or not the defendant could in the ordinary way of securing juries, get a jury of impartial unprejudiced men to try this case, I am of the opinion that there is a general prejudice against the Waters Pierce Oil Company. It might be possible to get a jury, but I think great prejudice would be found. I don't know whether it is probable or improbable that a jury of unprejudiced men could be secured in this county. I say there is a general prejudice in the county against the defendant, as a trust dealing unfairly and so on, and I know how those prejudices are with all of us. I do not know of any defenders of the Waters Pierce Oil Company. Don't remember hearing anybody talk in their defense.

270 Cross-examination:

They seem to be prejudiced on account of the concentrating of the business, and the controlling of their line of trade. There is a prejudice against trusts generally; more particularly against that because it affects every householder in the country, I suppose. As to whether or not I could fairly try this case on the evidence introduced, I will say that I wouldn't like to get on the jury. There has been a great deal said about the Waters Pierce Oil Company here;

more especially since the trial of Mr. Bailey. I have not heard the facts in this particular case discussed at all. The discussion I have heard is of men expressing themselves as opposed to the company, and that it ought to be gotten rid of. I don't know whether those people I have heard discuss this case, if they said they could fairly try this case, could in fact do so. I don't know how they feel about it. I only judge them by the way I feel about it myself in that respect; I don't want to get on such a case. I have no particular men in mind. I am a busy man in the bank and haven't interest- myself in this matter. I am not willing to come here and sit all day and give in my testimony in a way that will probably be beneficial to the defendant. I just know I was summoned, was not told what for. I know Mr. W. R. Davis, of Creedmoor. Mr. Davis might be able to try the case fairly if he indicates that notwithstanding any notions that he might have on the subject, that he could do so. I don't know how he feels about it. I know Mr. Davis very well. I know Mr. Reynolds of Govalle, but am not intimately acquainted with him. As to whether or not twelve men of the kind Mr. Davis is could fairly try this case, if they said they could, I can't say. I have *have* known Bill Davis for forty years and regard him as an honorable, upright man, and have great confi-
271 dence in him, but don't know what he has learned in this case; what he knows about the evidence; he might know things I don't know, and he might not feel as I do towards it, and it might be with other men the same way. I would not like to get on the jury, because the country generally is prejudiced against this company; every man nearly will admit that it is a trust, I mean. They are nearly all prejudiced against trusts, but especially against this one, I think. I do not know how many qualified jurors there are who don't know anything about this matter. I am speaking about how I feel; how other men feel I can't say. My whole testimony is predicated on my own feeling in the matter and what men have said in my presence. I don't say a great number have discussed the matter with me, but it is the general impression that has been left with me from my conversations with men in general. I wouldn't undertake to say how many people have spoken to me about this matter; not a great many, I say. My knowledge of the matter of opinion of the people is gained from conversations had with town people mostly. Probably Mr. Davis would be better able to speak of the sentiment in his neighborhood than I am. I think he knows his neighborhood better than I do, and I think he could better speak for his neighborhood than I could. I live in the Fourth Ward. I don't know whether or not you could secure twelve men out of that ward who could fairly try this case. I wouldn't undertake to say that you could, or that you could not.

Redirect examination:

I did not know what I was being summoned for when I was summoned to appear here as a witness. I had not talked with any one connected with this case about the matter. I had no idea what I

was wanted for. When they 'phoned for me I told them
272 I knew nothing of the facts. I have in my testimony undertaken to tell the court the facts as I understand them; nothing more.

Recross-examination:

Notwithstanding the fact that I believe the Waters Pierce Oil Company is a trust, and notwithstanding the fact that I haven't been talked to by any one of the parties and have no interest in the matter, I am willing to come up and be fair in the matter of giving in my testimony.

Redirect examination:

I do not think, considering the fact that I have read the papers with reference to the Waters Pierce Oil Company being a trust, and with reference to the re-admission of the present company into the State after the old company was ousted, that I could weigh the testimony of H. C. Pierce as impartially as if I had not read these things, if I were taken on the jury in this case.

W. E. CARPENTER, a witness for the defendant, being duly sworn, testified as follows:

My name is W. E. Carpenter. I live in the city, and have lived here about twenty-five years. I have lived still longer in Travis County. I lived at Webberville before moving to Austin. I am engaged in the general merchandising business on Pecan Street. My trade hails from down the river, south and north, from Hornsby's Bend, Webberville, Govalle, Del Valle, Creedmoor, Carl, Sprinkle and Manor. I haven't very much trade from out at Fiskville. I do not recollect what the extent of my trade is with the people of that portion of the county; I suppose it is about medium.

I have heard the people discuss the Waters Pierce Oil Company both with reference to their connection with the Bailey con-
273 troversy, and in regard to this suit, during the last few months. I haven't heard the matter discussed to any great extent. I am busy and hear a little and then am called away and afterwards hear a little more. It has been discussed very frequently at the store, by people from different parts of the county. The general opinion expressed by the people I have heard is that the Waters Pierce Oil Company is a trust. They seem also to think that the admission of the present company into Texas, after the old Company was excluded, was fraudulent. I am not able to state whether or not it would be possible to secure in this county a fair and impartial jury for this case. I don't think I ever heard anybody say a good word for the Waters Pierce Oil Company during all of this discussion.

Cross-examination:

I have not heard the particular facts of this case discussed. I heard the matter discussed in connection with the Bailey controversy. I do not now much about the controversy in this case.

Neither do I know whether any of the people I have heard talk about the matter, know what the controversy is in this case. I have heard people speak of this present case a little; I have heard them discuss the facts just in general*ly*. I don't know much about this particular case, but I have an idea, of course. I have not discussed the issues *of* any one today, in regard to this case. I have not read the petition in this case. I have seen a little of the evidence as published in the papers. I haven't any real knowledge of what the issues are in this case. What I know about the case and the Waters Pierce Oil Company has come to me in that way—statements in the papers and general talk; that is about the size of it. I would not want to be on the jury in this case. I reckon I could fairly try this case, if I had to. I would try to be as fair in the
274 final disposition of this case, as I am in giving this testimony in the change of venue matter, and under the instructions of the court, I would decide this case upon what the witnesses said and the evidence introduced. I really don't think I could be a qualified juror in this case. I reckon I could fairly decide it on the evidence introduced. I don't recall anybody I have talked with who intimated that he would be able to qualify as a juror in this case. I don't recollect anyone who I don't think would be a fair and impartial juror in this case. I believe there — at least twelve men among the people I have talked to in my store, who could be as fair *is* this matter as myself. I guess there are that number that are as good as I am, but I believe they are prejudiced against the company. They may and may not be *be* prejudiced — than I am; I can't say. I don't know how many people I talked to about this matter, whether it was forty or a hundred. I just don't know. I don't recollect whom I talked to. I don't know what per cent. they constituted of the total number of qualified jurors, and don't know whether they could qualify in this case or not, as jurors. I can't say what per cent. of my customers I have talked this matter over with; I can't say whether it was more or less than ten per cent. I have talked to them indiscriminately, and have not gone to the bottom of it with any of them. I wasn't busying myself about whether or not they were qualified jurors. Took no special interest in the matter; just heard them talking to me and other people standing around. I made no effort to find out which one was qualified as a juror. I don't know what per cent., whether one or ten per cent., could qualify as jurors.

Redirect examination:

I am prejudiced against the Waters Pierce Oil Company;
275 believe it is a trust. I believe that its re-admission into the State was a fraud. If I were taken under the conditions I have stated—that I have discussed this matter; have read about it, and am prejudiced, I would try to make a fair juror. Of course, I could not weigh the testimony of H. C. Pierce and other officers of the company, or its, witnesses, as impartially as if I had not read and heard what I have. I think all other men would be like myself in this respect.

Recross-examination:

I think my previous knowledge would have something to do with whether or not I believed a person's testimony, if I were on any other jury, and I think it would be one of my functions to tell whether or not they were telling the truth.

ARTHUR FONVILLE, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

I live at Webberville, Travis County, Texas; I am well acquainted both at Webberville and at Austin. I have lived in Travis County all my life.

I have during the last three or four months heard the Waters Pierce Oil Company discussed among the people of this county, with reference to whether or not it is a trust. I have also heard them discuss the matter as to whether or not the admission of the present company into Texas was a fraud. I have heard these discussions and conversations out at Webberville and here in town mostly. The discussions were among the citizens generally. The general opinion seemed to be that they thought the company is a trust. I think the general opinion also was that the admission of the present company into Texas was a fraud. I never heard any one say he did not think it was a trust; neither did I
276 ever hear any one say that the admission of the present company into Texas was not a fraud.

Cross-examination:

There are a great many people I have not heard express themselves at all on the matter. I was on the jury when they had the case up before, and I heard it talked of as a general matter then. I haven't seen or heard anything, except from general hearsay, to indicate whether or not they could get a fair trial in this county; nothing of my own knowledge. I believe they could get a fair trial in the county, but I don't think they could get a fair and impartial trial the way we have of selecting our juries, but I do think they could get it in the county. I say there are plenty of qualified jurors in the county to give them a fair and impartial trial. I could serve on the jury and give them a fair and impartial trial if I heard the evidence, notwithstanding any prior notion I may have on the subject. I think I know plenty of men in my own neighborhood who would do the same thing; I know enough in Austin who would. I couldn't say that I know at least twelve men in my own neighborhood that would do as I would, but I believe they would give a fair trial. I think they could fairly and impartially try it on the evidence.

Redirect examination:

I said I believe it would be possible to get twelve men in this county who would fairly and impartially try this case, but they

could not be gotten in the ordinary way of securing juries. I don't think they could be gotten in the ordinary way of securing juries. In speaking of this case being up before and my being on the jury, I meant last November. I don't think I heard any discussions among the jurors at that time about the merits of this case. I think I could give the defendant a fair and impartial trial
277 and could weigh the testimony of H. Clay Pierce and other officers of this company as impartially as I could have done if I had not read and heard what I have. If I didn't see the man, but got the testimony by deposition, I think I could weigh the testimony just as impartially, that is, if it had to be sworn to. If it were sworn to it would be the same with me. I might be difficult for me to do it impartially.

Recross-examination:

In saying that I do not think a jury could be selected in the ordinary way, I mean in the general way of selecting thirty or forty men and trying to pick the jury from among that number. I understand the matter of securing a jury to continue until all were secured, and that those who had views on the subject or were prejudiced in the matter would be excused, and others gotten in their place. I think with that process, that is, of getting a special venire, a jury could be secured for this case.

JAMES BYRNE, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is James Byrne. I live in Austin, having lived here permanently since 1882. I think I have a fairly large acquaintance in the city. I have been in Austin during the past six months. During that time I have not heard much discussion with reference to this suit, but with reference to the Bailey controversy I have. I heard a good deal of talk about it. I heard all kinds of people talking about it; people from the country as well as from the city. Among those I heard discuss the matter, those who were
278 against Mr. Bailey said the Waters Pierce Oil Company was a trust, and accused Mr. Bailey of knowing it at the time the company came back into the State. I have heard it expressed that the Waters Pierce Oil Company should not be allowed here under the law.

I think Mr. Bailey lost the city in the primary election. I do not remember by what amount he lost the city; I think the whole county went a hundred or a fraction over against him. Now I am not sure whether the city went against him, but I know the county was a fraction over a hundred against him.

Taking into consideration what I have heard stated in the discussions I have mentioned, I can't answer as to whether it would be probable or improbable to secure a fair and impartial jury for the trial of this case. As compared with an ordinary case, I think it

would be necessary to have more citizens to draw from. I think it would be more difficult to secure a fair and impartial jury, than in an ordinary case.

J. B. MANOR, a witness for the defendant, being duly sworn, testified as follows:

My name is J. B. Manor. I reside at Webberville, which is about eighteen or twenty miles from Austin. I am a farmer and merchant. Have resided in this county all my life; was born in the county, and am now thirty-nine years old. I am a member of the Grand Jury at this term.

I can't state as to whether or not I am very well acquainted with public sentiment in the community where I reside. I come in contact with a good many people in that community. My business is of a public nature. I have heard the Bailey matter discussed among the people, and in that connection the Waters Pierce Oil Company was discussed. I remember the holding of a primary election in this county about the first of this year, and know it was called for
the purpose of giving the Democrats of the county an oppor-
279 tunity to express their views on the Senatorial succession. Bailey's connection with the trusts was what brought on that election. In connection with those discussions it was assumed that the Waters Pierce Oil Company was a trust. I think it was generally believed that it is a trust. I remember that during that discussion it was charged and discussed among the people that the Waters Pierce Oil Company had once been put out of business in Texas and its permit to do business here forfeited in one of the courts of Travis County. I didn't hear the matter of their getting back into the State under fraudulent pretenses discussed at all after this controversy, but up to the first of the year that seemed to be the general impression we got from the newspapers at that time. I think it was generally believed that the Waters Pierce Oil Company came back into the State as a fraud on the laws and the judgment of the courts of this State. As to whether or not these facts I have stated with reference to public opinion in the vicinity where I live were general at that time, I will say I don't believe I ever heard any one take the other side of the question. I do not take any of the Travis County papers. I take the Manor paper, a weekly publication, called the Progressive Age, I believe. I do not recall how that paper stood in the discussion; I hardly ever read that paper. The general news I get — some of *some of* the daily papers. In regard to the Waters Pierce Oil Company, in regard to people discussing it there in my presence, it didn't seem that they have any enmity against the Waters Pierce Oil Company; it seems the discussion has been in regard to it and Bailey; the people think it is all right for them to employ any counsel, except an officer. I have stated that I believed the people generally assumed that it is a trust, and their opposition to the employment of an officer as their counsel was based on that
assumption. I do not think that the issue of its being a
280 trust has been so prejudiced against the company that it would be difficult for them to get a fair and impartial trial.

My opinion as to the difficulty of getting a juror who has not so prejudged that issue to such an extent that he could not qualify as a juror is this: In almost every case of any prominence we have in the Courts the issues are published and discussed through the newspapers, and that every man who reads the papers forms some opinion for or against it. Now, that is only from the newspaper reports. It doesn't seem that if a man were an honest man that that would affect his decision as a juror in the case, as I think he would have to decide according to the evidence brought in before him. My supposition is that the honest man would lay aside any opinion he had already formed. Because of the fact that the issue as to whether or not the Waters Pierce Oil Company is a trust has been so prejudged in this county, I think it would be more difficult to get a fair and impartial jury to try this case, than it would for any ordinary case. I don't recall any civil case during my residence in the county, that has excited the same public discussion that this case has. At present I don't think of any other civil transaction which got to be a law suit which ever brought on a political campaign in this county.

Cross-examination:

At the present time I see here in the court room listening to the trial of this motion thirty-five or thirty-six people, including the newspaper men reporting the trial, the attorneys on both sides, the officers of the court, and the witnesses subpœnæd, that have been subpœnæd in this issue. I think I have in a great many civil cases seen twice as many people in the Court House watching the
281 proceedings. I think I have seen twice that many in a Justice Court in this county in a civil case.

It is a fact that what I know about the Waters Pierce Oil Company is from newspaper statements, general rumors, and matters of that character. I have never undertaken to find out what the facts are. My opinion is predicated on such statements, newspaper reports and matters of that sort. I think the information possessed by the people in my community is gathered almost exclusively from the press and from discussions. I think if I were called here and tested as to my qualifications as a juror, that I could fairly and impartially try this case. I could disregard anything I had heard up to this time and try it on the evidence and the law before the court. I do believe at this time that the Waters Pierce Oil Company is a trust. I believe I am of the opinion that it was re-admitted into this State through fraud.

R. C. Burleson, a witness for the defendant, being duly sworn, testified as follows:

My name is R. C. Burleson; I live in Austin, Texas. I have lived in the city a little over a year. Before coming to the city I lived at Webberville. I am tolerably well acquainted in the city of Austin. I know nearly everybody down the river towards Webberville. Across the river towards Creedmoor and in fact all over the county I know a good many people.

During the last six months I have heard some discussion in the city of Austin with reference to the Waters Pierce Oil Company trial and also in connection with the Bailey controversy. The matter was pretty well discussed during the primary we had here. In the discussions I heard, I think most of the people thought the Waters Pierce Oil Company is a trust. I gathered that from what they said.

I think most of the people thought it got back into Texas,
282 after the old Company was ousted by fraud. I think these expressions were general among the people who discussed these matters. I do not remember that I ever heard a contrary opinion expressed. I have not heard very many expressions from people living in different parts of the County; I have been living in town since last January. I have heard the matter discussed some by people from my old neighborhood. They expressed themselves about the same was as the other people I have mentioned. From the discussions I have heard, I think the general concensus of opinion among the people is that the Waters Pierce Oil Company is a trust. From the way the people talk, I would take it that they think it is a trust. I don't know what they think as to whether or not the re-admission of the company into Texas was fraudulent.

A political controversy in this county arose over this matter with reference to Senator Bailey, and a primary was called to instruct the Representatives. There was considerable talk and discussion about this matter just before the primary election was held. I suppose I read the published accounts of the testimony taken before the Investigating Committee, but I don't remember anything about it. I just glanced through the papers. I don't remember whether or not I heard that testimony discussed among the people here in the city.

Cross-examination:

I have heard the facts of this case discussed since the application for change of venue was made. Prior to that time I only heard it discussed in connection with Senator Bailey—his connection with the Waters Pierce Oil Company. I don't know how many people I have heard discuss the case of the State of Texas *vs.* Waters Pierce Oil Company, prior to the time the application for change of venue was made, and since the Bailey campaign closed. Only since
283 Monday have I heard the facts of this case discussed. I heard discussions as to whether or not the defendant could get a fair trial, in this county. Some seemed to think they could, and some seemed to think they could not. It looks to me like they ought to be able to get a fair trial. I don't know of any reason why they should not. If I were called as a juror, I would have to admit that I was prejudiced, but I believe I could qualify as a juror. I mean by that that from newspaper reports and general talk outside of the particular facts in the case, I have come to the conclusion that the Waters Pierce Oil Company is part of a trust. I say I am prejudiced, but I have no feeling about the matter. I think if I were brought here as a juror I could honestly state to the Court that I could go into the jury box and decide the case

on the evidence introduced before me. That is the way I feel about it.

Redirect examination:

I think I could, as an honest man although I believe the Waters Pierce Oil Company is a trust, and the people generally so believe, take the oath as a juror is this case and disregard any formed opinion I had about the matter and try the case on the law and the evidence. That would apply to any honest man who went on the jury. I said I thought I could go on the jury and give them a fair trial, even though I am prejudiced against them. I am prejudiced against them.

Redirect examination:

I don't know whether or not there are a great many people between here and Webberville that have not taken any interest in the matter and don't now anything about the Waters Pierce Oil Company. I couldn't say whether there are any who have
284 not expressed themselves on the matter. It is true that I have talked to a great many people since this matter has come up, who didn't discuss the matter with me. A great many people didn't go to the polls. A great many around Webberville didn't go to the polls. There are a good many men in that community who don't or didn't used to take the daily papers. I suppose there are a good many men in that community whom I could meet with and treat with in a business way and who could hold their own in a business way, who have not kept posted with reference to these matters.

Redirect examination:

I do not know that it — a fact that a good many people who didn't vote in the primary because they regarded Mr. Bailey as the Democratic nominee and regarded the matter as settled by the Dallas Convention. I do not know as to that.

H. F. MURRAY, a witness for the defendant, being duly sworn, testified as follows:

My name is H. F. Murray. I live about three miles north of the city. I am engaged in the business of farming and dealing in mules and horses. I have been engaged in the business of dealing in mules and horses for about thirty years. I was engaged in that business here in the city of Austin during the past fall and winter. My customers in that business were mostly farmers, but I sold some to people in town. My customers mostly came from the prairie country to the southeast. I am fairly well acquainted in the city.

During the last six months, particularly during the months of December, January and February, I have heard discussions of the Waters Pierce Oil Company in connection with Senator Bailey's race. I heard the matter discussed right often, not so much among

the farmers, as in the city. I think I heard some discussions
285 among the farmers. My recollection is that it was generally conceded among those I heard discuss the matter, that it was a trust; they looked on it as a trust. I can't call to mind hearing much discussion as to whether or not the re-admission of the company was fraudulent, but the discussions I did hear on that point were to the effect that the re-admission was fraudulent. There was considerable excitement over the question in this city and county during the month of December, that is from the time the primary election was called until the time it was held; at least, that is the view I took of it. I don't believe that I ever heard any one say a good word for the Waters Pierce Oil Company, or undertake to defend*ant* it. It is generally looked upon as a trust; as being a part of the Standard Oil Company.

Cross-examination:

I think I might have heard the facts of this case discussed; but very little, if any. I have heard that it might be termed an ouster case; that they want to oust the company from the State. I have not heard any one who pretended to be able to state what was involved in the case. The view I have with reference to the Waters Pierce Oil Company is based on statements or suggestions seen by me in the papers, and what I have heard in conversations and discussions. I have no knowledge of the particular facts. As to the matters charged in the plaintiff's petition, I have been of the opinion that they are true. I am of the opinion that the Waters Pierce Oil Company is a trust, and my opinion is based on what I have read and heard. It is not such a fixed opinion as would influence me if I were a juror. I have not heard the evidence. It appears to me that I could decide the case on the evidence if I were
taken as a juror. I have not heard any one suggest that
286 he could not do the same thing. I have no ill-feeling whatever against the Waters Pierce Oil Company. I don't think I have ever heard anyone express any ill-will or bad feeling against the Waters Pierce Oil Company. It appears to me as if the defendant could get a fair and impartial trial in this county. There might be some that would be biased, but I think there would be plenty of men that would not be.

Redirect examination:

I do not know exactly what challenges would be allowed in a case of this sort, but it might be that out of a hundred men you could get a jury. I am satisfied in my own mind that there are plenty of impartial men that would render a just verdict. I think that any honest conscientious man would lay aside any previously formed opinion and decide the case exclusively on the law and the evidence. With reference to my being able to look upon the testimony of H. Clay Pierce and other officers of this company as impartially as I could have done if I had never heard any discussions or read anything of this matter, I will say that I don't know about that. It might be so that from what I have read of them and heard of

them, I might not weigh the evidence correctly, or, as you might say, not believe everything those men would say on the stand. I believe I would be inclined from the start to look upon their testimony with suspicion; I have never heard anything about their being untruthful on this proposition. I would have to be convinced that they had been wrongfully charged before I would believe everything that they should say on the stand. I haven't any doubt in my mind that the Waters Pierce Oil Company is a trust, not from what I have read; I haven't any doubt. Having in mind the way jurors are selected, and that the defendant in the trial, of a case is entitled to a jury of unprejudiced men, and under-
287 standing that prejudice does not mean hostility or animosity, but that the case has been prejudged against the defendant; and further that the defendant is entitled to a jury of men who have not formed such opinions that they cannot lay them absolutely aside and look with impartiality upon the testimony of each witness, and decide the case impartiality and without considering what they have read or heard before, I say, considering all these things I don't hardly think it would be easy to get a jury in this county. But I am confident in my mind, not knowing the dispositions of the men that there are plenty of men in the county that would act impartially in a case like this. I still think, after considering all the matters just stated, that I could sit as a juror in this case. Considering the fact that I would look with suspicion upon the testimony of Mr. Pierce, puts the matter in another light. Now, after hearing Mr. Pierce's testimony I might change my mind. It is generally understood that Mr. Pierce did swear falsely in regard to getting the company back into Texas, and I would have to have that rather removed from my mind, that is, that I thought that he did was *was* calculated to swear falsely, before I would believe what he would say. I couldn't tell whether the majority of other men would feel as I do about this. I believe that men who have taken any notice of the case and read the newspapers would be of the opinion that Mr. Pierce had sworn falsely in regard to this case. I think he would have to satisfy them with his presence and his evidence that he had not sworn falsely.

Recross-examination:

If I were taken as a juror in this case and took the oath to fairly and impartially try this case, I think I would try to give to the testimony of each witness that degree of credence that I think it was entitled to under the law, and I am of the opinion that
288 I could do it, but as I said before, in regard to Mr. Pierce, I would have to be satisfied from his evidence that he was not swearing falsely, although I might by his presence and his manner of giving his evidence, be led to think that he was swearing correctly. Assuming the case that the State was depending upon the testimony of Mr. Pierce, under those circumstances I don't think I would be so prejudiced against the defendant as not to give them the benefit of any question that they might be entitled to.

I come in contact with a good many people all over the county.

I rarely ever hear the Waters Pierce Oil Company or the Bailey matter spoken of except by men in the city. I don't know about the people in the country taking the papers, but I guess there are some who do not and who don't take any interest in public affairs. It is because they are very busy from early until dark and don't read much afterwards. I have heard the case talked of very little, outside of meeting men here in town, I have heard very little said about it. I am of the opinion that any views there might be with reference to this matter in the county, so far as my observation goes, are based on newspaper reports, discussions, general rumors and things of that sort.

C. E. GILBERT, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is C. E. Gilbert. I live in Austin, Texas; have lived hereabout ten years and a half, I believe. I am engaged in the newspaper business. I am the editor of the Tribune, an afternoon paper published here in the city of Austin. Since living in this county I have held the official positions of State Expert Printer and Superintendent of Public Buildings and Grounds. I was
289 State Expert Printer for four years, and Superintendent of Buildings and Grounds for the same number of years. The Tribune has been published continuously from September 1st, of last year, up to this time. During that time the Tribune has had a circulation of about two thousand; sometimes a little over, and sometimes a little less. During September, October, November and December I had nothing to do with the Tribune and cannot state as to its circulation during that time. Since I became connected with the Tribune the circulation somewhat over what it was two months ago, but there hasn't been any marked increase. I have been connected with the Tribune about two months, since about March 1st. When I went in it had a subscription in the city of between sixteen and seventeen hundred. I am not positive as to what it was outside of the city, but I think it was between two and three hundred. I recognize this as the file of the Austin Tribune (pointing to files on table) for the months of January, February and March, 1907. I recognize that (pointing to other file) as the the file of the Tribune for the months of November and December, 1906. I had them brought up here from the office. And this is the file (pointing to third file) for the months July to October 31, 1906.

Cross-examination:

I don't know whether I could say that I have been fairly in touch with public sentiment in this county with reference to the Bailey matter and the Waters Pierce Oil Company since the first of January. I reckon I have. I come in contact with and speak to a great number of people all the time. I discuss matters of interest and matters of public interest with different people, but I have been pretty
290 busy the last few weeks. I also keep up with what is said in the newspapers. From what I have seen and heard and

know, I think the Waters Pierce Oil Company can get a fair and impartial trial in this county. I think I could fairly and impartially try any issue with reference to the Waters Pierce Oil Company. I think any fair-minded man could do that. I think I understand the issues in this case, but I don't know that I have read anything that might be called strictly evidence. I have read newspaper reports and I have heard a good deal said about it. If I were to be chosen as a juror in this case I could certainly try the case on the law as given by the Court, and the evidence as adduced here on the trial of the case.

I said I went with the Tribune about the first of March. I had nothing to do with the paper up to that time. Prior to that time I was not responsible for the editorial expressions of that paper.

Redirect examination:

I said I could act as a juror in this case, but I would not want to do so. From what I have heard and read and understand, I believe the Waters Pierce Oil Company is a trust. With reference to the readmission of the company into Texas in 1900 by fraud, as to the character of fraud I do not know; I think it was procured by misrepresentation or deception. I have only a general impression concerning the affidavit made by Mr. Pierce, from what I have seen and heard. I have never read the affidavit itself. My impression is that the affidavit was not correct, but as I said I have not read the affidavit. While I was Superintendent of Public Buildings and Grounds I did refuse to buy oils for the State from the Waters Pierce Oil Company, but I don't think that it was a matter of prejudice with me. I did not think the State ought to patronize trusts.
291 I think the policy of the State is against trusts and it declares against them, and I told them I would not buy from them. From a sense of duty I looked upon it as a trust and from that sense I refused to buy from them.

I think it is the general sentiment among the people of this city and county that the Waters Pierce Oil Company is a trust. So far as I know and have heard, the general sentiment is that the affidavit which Mr. Pierce made at the time the company was re-admitted into the State was false. I have never heard a contrary opinion expressed. I know that the people generally believe that the permit of this company was obtained by deception and misrepresentation. I believe the people of the city and county generally think that the Waters Pierce Oil Company ought to be ousted from the State. From what I have heard, I think the people of this city and county generally want to see the State succeed in this case and want to put the Waters Pierce Oil Company out of business in Texas.

Recross-examination:

Any views of that kind entertained by me are based on general newspaper statements and irresponsible talk. I don't think that anybody has really undertaken to get at the facts of this matter. I don't think that anybody has undertaken to publish the actual evidence in the case. The same view is general over the State as in the county; I am pretty sure of that.

Redirect examination:

I saw copies of the Chicago American that were distributed here free about the first of January containing what purported to be photographs of vouchers and drafts and so on of the Waters Pierce Oil Company, and what purported to be an interview with
292 Mr. Gruet, the chief witness in this case. I understood at the time that a large number of those papers were sent here and distributed free. I remember it contained articles that were very bitter against Bailey, but don't remember that it had any denunciation of the Waters Pierce Oil Company. I remember it purported to contain a statement by Mr. Gruet of the facts relative to the readmission of the Waters Pierce Oil Company into Texas.

M. J. KNAPE, a witness for the defendant, being duly sworn, testified as follows:

My name is M. J. Knape; I live in Austin, Texas, and have lived here since 1894. I am engaged in the newspaper business. I publish a political newspaper in the Swedish language. It is circulated all over the State of Texas among the Swedish people. Its largest circulation is in Travis and Williamson County; it has about the same circulation in those two counties. We figure that there are about three thousand Swedes in Travis and Williamson Counties, that is counting men, women and children. In Travis County the circulation of my paper is about eighteen hundred; in Williamson it is fourteen or fifteen hundred. It is hard to tell where the largest Swedish settlement in Travis County is located. The Swedish people mostly live in the portions of the county adjoining Williamson and Bastrop Counties.

We didn't take any political sides in our paper during the campaign preceding the election in January. We only asked the people to investigate the facts and find out for themselves. We didn't give the people any advice at all in regard to the matter. Personally I was against Mr. Bailey; my reason for being against him was I thought he had done a thing he ought not to have done, in that he was the people's representative and was also representing the Waters Pierce Oil Company. I thought the Waters Pierce Oil Com-
293 pany was a trust. I heard so much I could not keep from thinking that, but I couldn't say whether it is or not. I have an opinion, however. Some of the people I heard express themselves were for the Waters Pierce Oil Company, and some against it. I do not know how the majority expressed themselves. One day I would meet one or two that were for them, and another day one or two against them. Out in the Swedish settlements I didn't speak to more than half a dozen, and about half of those stood one way and half the other. Those that were against Mr. Bailey gave as their reason that they thought he was representing the Waters Pierce Oil Company and that he was not fit to represent both the Waters Pierce Oil Company and the State of Texas. They are very religious and don't believe in a man serving two masters. The Swedish people are supposed to be very religious, and are people of firm convictions.

No editorials that I know of with reference to Mr. Bailey or the

Waters Pierce Oil Company were published in my paper; nor was any of the evidence taken before the Bailey Investigating Committee, published. None of the witness Gruet's testimony was published, and none of Senator Bailey's.

Cross-examination:

I know of no Swedish paper that took any special interest in the matter. I don't think there was any Swedish paper circulated in this county that took any special interest in the matter. There were a few copies of papers from the north, from Chicago and Minneapolis, but I don't think I saw a word about that in those papers. The only Swedish paper published in Texas had nothing to amount to about it, and I don't remember seeing anything about it in the papers coming from outside of the State. Most of the Swedish
294 people read only the Swedish papers, a majority of them don't read the American papers at all.

In the boxes in which the Swedish people are in the majority, I think the vote was very light, that is, during the Bailey election. A lot of the Swedish people didn't care enough about it to go and vote; didn't take any interest at all. There are lots of them, although quite intelligent that don't know anything about the Waters Pierce Oil Company; don't pay any attention to it. I suppose there are a great many who don't know anything about this suit, but I don't know for certain as to that. I know the Swedish people pretty well. I don't know of any prejudice or feeling against the Waters Pierce Oil Company on the part of the Swedish people of the County. Most of them are intelligent people and are qualified jurors. Most of them, also, are conscientious people. A majority of them are educated; some of the old ones are not. I suppose they are among the best people of the county, and make good conscientious and capable jurors.

A. G. Smoot, a witness for the defendant, being duly sworn, testified as follows:

My name is A. G. Smoot. I have lived in Travis County for thirty years. During the last eight or ten years I have been in the newspaper business; I am connected with the Austin Statesman. For the last year or so I have been in the active management of that paper.

During the year 1901, and during the session of the Legislature of 1901, I was living in Austin. During that session of the Legislature we handled the proceedings of the Legislature very fully. I remember an investigation that was held during that session of the Legislature, concerning Senator Bailey. I remember the reso-
295 lution introduced in that session of the Legislature by Hon. D. A. McFall, now deceased, and then a member of the Legislature from Travis County. I do not remember the details, but I remember the resolution. My recollection is that there was an investigation held by the Legislature as the result of the offering of that resolution and the controversy growing out of it. I think the sessions of that committee were open, and lasted two or three weeks: They probably had one or two executive sessions, but most of it was open.

At that time they were investigating Senator Bailey on the charge that he was connected with the Waters Pierce Oil Company, and it was charged that the Waters Pierce Oil Company was a trust. My recollection is that the newspapers then published in the county gave general publicity to that investigation and the political controversy growing out of it. I don't remember as to the dates about this matter, whether it was after the new company secured a permit or not. I would have to refresh my memory. I think the ouster of the old company and the admission of the new company into the State was the basis of the agitation. The agitation and discussion growing out of that controversy at that time was general in this county as a political question and subject of discussion; as well as the whole state.

I was here in Austin during the last session of the Legislature, and I was here and in the newspaper business at the time of the filing of this present suit against the Waters Pierce Oil Company. With reference to the time of the holding of the Democratic State Convention in August last, this new agitation over the Waters Pierce Oil Company, as I remember it, commenced soon after the publication of Mr. Pierce's testimony taken in St. Louis. I could not state positively as to whether or not there had been any public discussion of what is claimed to be new discoveries in this matter until
296 after the State Convention. I don't remember whether it was prior to or after the State Convention. I think the time of the publication of certain correspondence between Attorney General Davidson and Senator Bailey was last November or December; it was in December. My recollection is that Senator Bailey was here during part of that time, and was away during part of it. The publication of that correspondence commenced here*in* in the city of Austin and was sent out from this city. As a result of that correspondence and as the result of the filing of this suit, and the publication of what is claimed to be disclosures with reference to the Waters Pierce Oil Company, a political campaign was stirred up. The campaign was in the nature of primaries, held to decide whether this county should instruct its Representatives to vote for or against Senator Bailey. To state what the general discussion was and the extent of it, before the primaries would be quite an extensive proposition. It caused a great deal of discussion pro and con. The executive Committee finally decided it by ordering the election. To the best of my knowledge, the question as to whether the Primary was first to be ordered was quite a question of discussion. As a result of this agitation there was about the usual amount of partisan strife, such as ordinarily arises in a political question of that kind. The primary was finally ordered. I couldn't remember the exact number of days from the day of ordering the election to the day it was held, but it was a very short time. I suppose about twelve or fifteen days, probably not so long as that. It was a very short campaign and was fierce while it lasted. Senator Bailey was here and made speeches, and others made speeches against him. Local citizens didn't participate in the campaign in this county as extensively as might be thought they would, but there were some who participated in it.

There was some literature circulated and distributed through-
297 out the county, but to what extent I do not know. It is my recollection that the election was held the 5th day of January. That was, I think, about five days before the convening of the Legislature. After the holding of the primary and in anticipation of the meeting of the Legislature, there was some discussion in the county over the Waters Pierce Oil Company, its method of doing business, and its getting back into the State, but the discussion was principally with regard to Mr. Bailey and not so much concerning the Waters Pierce Oil Company. I think the Waters Pierce Oil Company in that campaign was spoken of as a trust. I don't know whether there were any defenders of the Waters Pierce Oil Company or not. It was not exactly the issue; it was more Bailey than the Waters Pierce Case. I didn't hear enough discussion to base my judgment on the question as to whether or not the real issue was that the Waters Pierce Oil Company was a trust, and in second place, concerning Mr. Bailey's association with it. The discussion immediately after the holding of the primary election and upon the convening of the Legislature, was very lurid for a good part of the time there. I remember that Judge Duncan made a speech in the House of Representatives. I think he opened the campaign, and his speech was very lengthy. There was a very large crowd present in the House of Representatives when Judge Duncan made his speech. Others participated in the discussion, and it excited a great deal of comment, and a very large attendance was there most of the time. My recollection is that Judge Jas. H. Robertson participated in the discussion. The discussion I have just spoken of was preliminary to the investigation proper. The discussion as to whether an investigation would be ordered continued for several days. The Investigation was finally ordered and was held and it seemed to me like it never
298 stopped. I- lasted something like a month and a half. In one way or another during the investigation proper, there was a continual agitation of the matter on the floor of the House of Representatives. We handled the testimony that was heard by the Investigating Committee, pretty fully in the Statesman. I- took up about one-third of our local news space. It was such an item of public news that the substance of the proceedings was reported. I don't know whether the discussion kept up throughout the Investigation; didn't have time to find out about that, but I think everybody was reading the reports. The scope of the Investigation was pretty wide. I heard the name of the Waters Pierce Oil Company mentioned a good deal in connection with the Investigation. I recall the fact that the witness J. P. Gruet was here and testified. He was on the witness stand for some time; I don't remember how long. I do not remember how many pages his testimony covered, but it took up a good many. I remember the fact of his son, J. P. Gruet, Jr., being here and testifying also the fact of John D. Johnson, the General Attorney of the Waters Pierce Oil Company's being here and testifying. I also recall the fact that H. Nordain, an auditor of the Waters Pierce Oil Company, being here and testifying. I think A. J. Hutchings was here also. I believe A. J. Cole, of Dal-

las, who once worked for the Waters Pierce Oil Company, was also here and testified. Senator Bailey also testified. Two counties in the State of Texas held primary elections to instruct their representatives how to vote in the election of United States Senator. Travis County was one and Comanche County the other. There was some agitation in Waco, but no election was ordered. They held a general election as the result of a State senatorial resignation in the West, but that was not a partisan primary. I know as a matter of fact that Travis County is the only county in the State in which they have ever had an investigation of this matter. The old suit against the company on which they were ousted from the State several years ago originated in Travis County. The new suit is now pending in Travis County. I could not answer offhand whether or not during my thirty years of residence in Travis County any other controversy that resulted in a lawsuit has precipitated or provoked a political campaign. I would have to refresh my memory on that point. I have no present recollection of any such having arisen in the county before.

(It was here agreed by Counsel on both sides that certain files of the Austin Daily Statesman which were in their possession, should be considered as properly identified.)

The circulation of the Daily Statesman for the last twelve months in the city can be conservatively placed at five thousand. It has been greater on Sundays than week days. The circulation in the county extends over the Daily and the Semi-Weekly. I suppose the circulation could be safely placed at eight thousand five hundred in all. We do not publish a Weekly Statesman; we publish only a Semi-Weekly and Daily. The Daily includes Sunday.

Cross-examination:

We have always endorsed Mr. Bailey's views on all matters connected with this agitation. I don't know that it could be said that Senator Bailey and his friends have dictated the policy of the paper; we have been supporting him entirely, though. Nothing that was regarded as detrimental to him was put into the paper. Unless a matter had a news feature to it, the editor has tried to keep out everything that was detrimental to Mr. Bailey. The matter before the Investigation Committee was somewhat carefully edited, but not at all times. To my recollection there was not during all this time any discussion of the merits of this case of the State of Texas *vs.* Waters Pierce Oil Company. Nothing except in the line of evidence before the Committee has been said about this case in my paper. I don't remember of anything having been published indicating that the Waters Pierce Oil Company is a trust. My recollection is that the editorial utterances were with regard to Mr. Bailey more than with regard to the Waters Pierce Oil Company. We have never attempted to establish the fact that the Waters Pierce Oil Company is associated with the Standard Oil Company, or that it is a trust. We might have stated it as a news item, but have not gone into it as a logical deduction of the matter. We have not intentionally said anything in the editorial or other

parts of the paper calculated to stir up ill-feeling or ill-will toward the Waters Pierce Oil Company or the Standard Oil Company. Our paper gave currency to all utterances of Mr. Bailey upon every matter connected with his campaign. We published everything that he gave out for publication. I do not recall as to whether we published his contention that the Waters Pierce Oil Company had not been convicted as a trust in the former suit. I rather think we did. We published full reports of his speeches at the Opera House and at the Skating Rink, and if he made that contention in those speeches, it was no doubt published in our paper. Our subscription list for this section of the country, that is, Travis County, has about 8500 subscribers on it. I don't recall that the Statesman has at any time published anything calculated to stir up antagonism to
301 the Waters Pierce Oil Company or to the Standard Oil Company. I don't remember that it has been making any fierce attacks on the trusts or anything of that sort.

I did not compare the reports of the proceedings before the Investigating Committee as published in the other papers of the State and as published in the Statesman, and cannot state whether they handled the matter as fully as the Statesman did. I know that all the daily papers handled it very extensively. The Dallas and Galveston News, San Antonio Express, Fort Worth Record, and the Houston Chronicle all handled it very extensively. I have never discussed the matter of a fair trial to any extent, and therefore don't know whether there is much prejudice or not. I have not heard anything to indicate that the Waters Pierce Oil Company couldn't get a fair trial. The truth is I have heard very little discussion of this particular case. It is part of my business to know what is going on, and as far as I know there has been very little discussion of this case, that is with me. If there is any sentiment in this community to prevent the Waters Pierce Oil Company from getting a fair trial, it has not been expressed to me.

Recross-examination:

So far as the news feature was concerned, I think we handled both sides of the matter. The editorial columns of our paper were friendly to Senator Bailey. I don't recall any editorial utterances for or against the Waters Pierce Oil Company. There were no utterances on that matter, except perhaps in an indirect way. I said if we handled the speeches made by Senator Bailey at the Opera House and Skating Rink in which he spoke of what the Waters Pierce Oil Company was convicted some six years ago, the
302 files will show what he said in his speeches. I do not remember what he said. I think the contention in this county was not as to the Waters Pierce Oil Company's not being a trust, but as to Senator Bailey's knowledge or any connection there might have been between the Waters Pierce Oil Company and the Standard Oil Company at the time of its re-admission into the State. I think that had a good deal to do with the proposition. In as much as it was not an issue, I do not think it was necessary for anybody to defend*ant* the Waters Pierce Oil Company, unless they wanted to.

As I said before, the matter as to whether or not the Waters Pierce Oil Company was a trust, and had come back into Texas through fraud and misrepresentation, was not discussed sufficiently in my presence, for me to form an opinion on what the general public thought.

M. L. JOHNSON, a witness for the defendant, being duly sworn, testified as follows:

My name is M. L. Johnson. I live in Austin, and have been living here about five years. I am now engaged in the printing business. Up to about the first of last December I was engaged in the newspaper business. I was publishing the Austin Sifter. The Sifter was a political paper. The Austin Forum is the labor paper. Up to the time I sold the Sifter I was strictly against Mr. Bailey, and did all I could against him. That was the attitude of the paper. During last fall the circulation of the paper ranged from one to two thousand; never less than a thousand. Editorials against Senator Bailey appeared in that paper. The basis of my opposition to Mr. Bailey was that I thought he was guilty of what he had been charged with, namely, of assisting the Waters Pierce Oil Company or the Standard Oil Company, or whatever you might term it, of assisting them in getting back into the State after they had
303 been driven out. I stated in that paper that the re-admission of the Waters Pierce Oil Company in 1900 was a fraud. I don't know that I urged in that paper that the Waters Pierce Oil Company was a trust, further than they were robbing the people as a trust. I have never said anything good for the Waters Pierce Oil Company.

I am pretty well acquainted in the city. I think I sold that paper in November. I am not sure of that, but I think I did. I did not write any editorial on the affidavit made by Mr. Pierce on which the present company was brought back into the State. So far as I could see the discussion of the Waters Pierce Oil Company and Senator Bailey's connection with it, seemed to overshadow everything else. As to what the concensus of opinion of the people is on the question of whether or not the Waters Pierce Oil Company is a trust, I can best answer that question this way: So far as I can see, and I try to observe everything that comes along in that line, and I talk to all my friends and to strangers, and I think the people generally are against the Waters Pierce Oil Company. A majority of the people I have talked to on this matter, have so expressed themselves. For what the people said in regard to the admission into the State in 1900 of the new company, they seemed to think it was illegally done. I don't say by fraud, but illegally done. I have heard some few people that would stand right up for the Waters Pierce Oil Company and for Mr. Bailey. I have heard very few stand up for the Waters Pierce Oil Company. I have not discussed the affidavit made by Mr. Pierce, with very many people, but those I discussed it with thought it was false. As to whether or not the Waters Pierce Oil Company could secure a fair and impartial trial in this county, I will say that I believe there are as good people in

Austin and Travis County as there are in the State, but as to
304 whether they could secure a fair and impartial trial I could not say, because that would be charging my neighbors and fellow men in a way that I should not do, but it looks to me like they are in a pretty hard row of stumps, if they undertake it here. I believe a majority of the people in this county are prejudiced against the Waters Pierce Oil Company. I am acquainted with a great many of the laboring people in this city. The laboring people, the mechanics, artisans, etc., think it is a rotten thing all the way through. I mean that Senator Bailey and the Waters Pierce Oil Company are rotten things all the way through. All the people I talked to seemed to have a firm conviction in regard to these matters. My conviction with reference to the Waters Pierce Oil Company is that they are just as rotten as can be, and that Pierce Perjured himself, but that is merely my opinion. I couldn't try this case impartially. I- wouldn't do at all for me to go on the jury.

I am the publisher of this pamphlet just shown me. This edition here was published last week. This is a new edition of an old one. The old edition was published about a month ago. That circular was pretty well circulated in Travis County, but it went to several counties. In Travis County something like two thousand copies were put out of the first edition, and perhaps two thousand of the second. I think the second edition was put out Thursday or Friday of last week. The circular was sent to people in the country, as well as in the town.

Cross-examination:

I am enthused over this matter more than the average citizen. I have studied the question more than most of the people I come in contact with. I get every paper I can on it, and give it some
305 thought every day. Most of the people in this county, especially the laboring people are not so intensely interested as I am. It is my intention to work up such intense feeling on the part of the people. My reason is that they are not educated up to the facts, a recognition on my part that they do not know the facts and haven't the proper feeling on the matter. That is the reason I am issuing these circulars. I have come in contact with a few people in town here who don't know anything about this matter, but those that don't know something are very scattering. There are very few that know the facts in the case, and -ome that won't discuss it at all. There is no intense feeling in the matter, further than the few deeply interested in the matter. There were very few that wouldn't talk about the matter at all. They haven't any feeling against the Waters Pierce Oil Company, I suppose. As to whether or not many of the laboring people are too busy to take time to acquaint themselves with these matters of public moment, I can't say, but I believe that there are some laboring people so sick of politics they don't care whether they are informed or not. There are some few of that kind, I think. I can't say that I have discussed the matter with a great many of the people in town; I don't know many. My discussions were with people of all classes and all walks. I have discussed it with more than a hundred people; just to make a rough

guess I would say that I have discussed it with two hundred. I don't know whether it would be safe to limit it to three hundred. I don't know whether I have discussed the matter with more than ten per cent. of the voters of the town. I don't suppose I have a personal acquaintance with more than three or four hundred voters in town. Outside of the city to the north and west and some few east I am well acquainted. I am acquainted with nearly every single man to the county line north. I know them personally. I did busi-
306 ness out at Watters Station, nine miles north of town, and at Merrilltown, which is north of here, and I am well acquainted out there. In the eastern and southern part of the county I haven't any great acquaintance. I have seen at least twenty per cent. of these people during the discussion of this question. There are a great many people in the county I have not discussed the matter with. I did not say the defendant could not get a fair trial in this county; I said I thought it would be rather hard to get a jury, but we have good people here. I think there are a good many people who have not studied the Waters Pierce Oil Company and the Standard Oil Company business and J. W. Bailey as much as they ought to have. There may be a great many people who are not informed about these issues. I believe that if the county were gone over that a jury could be had, but it would be troublesome. I don't want the job of getting a jury.

I sold the Sifter just after the beginning of the Bailey campaign. I fought Bailey in one or two issues, and then sold the paper. The character of the paper changed at once; it wheeled right around. Lots of remarks about the Waters Pierce Oil Company, but they were pleasant and nice. The last expressions from the paper are entirely opposite to what my policy was. My idea in publishing the paper was that the people of this county had no sufficient or proper appreciation of the fact that the Waters Pierce Oil Company and the Standard Oil Company were trusts and were violating the laws of this state. When I sold the paper a new policy altogether was taken up, counteracting the very effect of my efforts to get these facts before the people, and, incidentally, I would not have sold it if I had known it. I don't think the interest in this matter will die out until Mr. Bailey is retired altogether—put on the shelf. There has not been as general discussion of the matter since the Bailey
307 campaign. There has been no further active interest than just to talk about it. There is not as much talk as there was during the campaign. I have discussed the merits of this particular case with a good many people. I- would be a limited number in comparison with the whole population of the county, but if I talk to a man he would talk to several of his neighbors and they would talk about it to others and so it would go on. There has been some discussion as to whether they got back into Texas legally or illegally but most of them seemed to think it was done illegally. I know one or two in this county that have a more intense feeling in this matter than I have. A stranger came from a long distance and called for M. L. Johnson and said "I have come all the way, twelve miles, to shake hands and get acquainted with you," and said, "You

are my man and you discuss that Bailey matter to suit me exactly,". Hardly a day passes but what a str*na*ger comes and asks me if I am M. L. Johnson, and says he wants to look me in the eye. I think there are some few who appreciate the matter as I do, but a very small per cent. are as much enthused as I am. I am willing to come here and testify in behalf of the defendant, because I always try to do what is right, but I would not go beyond what I thought was right. I believe there are men in the county who do not know as many facts about this matter as I do, who could come here and make competent jurors.

Redirect examination:

The expressions of the twenty or thirty per cent. of the people living in the northern portion of the county with whom I have discussed the matter, their expressions were the same as those others I have told about. They expressed themselves with the same practical unanimity. Only one man in the northern portion of
308 the county expressed himself otherwise, and that was Mr. Dink Parker. Having in mind the way a jury is ordinarily selected, I am of the opinion that it would be very hard to get a jury to try this case, but it might be done. I would hate to ride enough to get a jury. I do not know to what extent I can keep my previously conceived ideas from controlling my judgment.

Recross-examination:

I know very few of the Swedish people who live in the Eastern part of the county. I am acquainted with the sentiments of some of of the Swedish people, but very few. I formerly lived at Merrillton; lived there about two years. That was seven years ago. There was only one man out there that I talked with who differed with me about this matter. Those I didn't talk with I don't know anything about further than what their neighbors told me. I didn't keep up with the Bailey election out there. I hadn't got interested in the same way at that time. It may be a fact that not more than half of the people voted in the Bailey Election, and that of those who did vote more than half voted for Bailey; I don't know as to that. There has been a change in sentiment at Merrillton since the primaries. If the thing was to be done over again, it would be done like it was at that place.

Redirect examination:

My acquaintance among the Swedes is limited, and I have not heard many Swedes express themselves. Those that I have talked to about the matter, seemed to think as I do.

Recross-examination:

I can recall some particular individuals among the Swedes
309 that have expressed themselves to me on this matter. It would be a hard matter to state just how many. If I had time to study I might recall several. My acquaintance with the Swedes is limited. At this moment I cannot perhaps recall more than three or four.

Redirect examination:

As far as I can see and learn the sentiment in this county against Mr. Bailey has become more bitter since the first of January. This also applies to the Waters Pierce Oil Company, so far as I can learn.

J. S. BONNER, a witness for the defendant, being duly sworn, testified as follows:

My name is J. S. Bonner. I live in Austin. I am engaged in the business of publishing a paper, called the Harpoon. It is known as Kalamity's Harpoon. I have been publishing that paper about four years. Its circulation in Travis County is somewhere between three thousand and thirty-five hundred. I don't know exactly what its circulation is here in the city of Austin; it is probably a third of it here. During the last six months its circulation has been practically the same in Travis County; it has been increasing slowly. I presume its circulates among all classes of people. I have here a copy of the issue published the first of February; in fact, I have copies for the last six months. It is a monthly publication.

Cross-examination:

My paper is one of general circulation. I come in contact with the people of the town and county and have been coming in contact with them for the last six months, but I don't see as many as a good many people would think. I have discussed the merits of this
310 particular case in my paper. I have not gone into a discussion of the particular facts. My discussions have been mainly of Mr. Bailey and his connection with the Waters Pierce Oil Company. I have commented considerably on the pending case, but I didn't go into the facts because I didn't know what they were. In a general way I have gone into what I understood to be the salient facts. I don't think I am in a position to judge as to the minds of the people of this county with reference to this case. I don't have much conversation with citizens generally. In my discussions with people in regard to this case, I have not heard anything to indicate that the Waters Pierce Oil Company could not get a fair trial in this county. Parties directly interested on the other side indicated that a fair trial could not be had. Personally I don't see why they shouldn't get a fair trial in this county.

Redirect examination:

I have not talked generally with the people in this county with reference to this case. I have tried to mould sentiment against Mr. Bailey through the columns of my paper. I know that the Tribune did the same thing. I don't know that Judge Terrell, Taylor Moore and W. A. Cocke abused Mr. Bailey or not; I know they tried to beat him. They charged that the Waters Pierce Oil Company was operating in violation of law. I know that a majority of the people in Travis County voted against Mr. Bailey in the primary election. I know that the basis of the opposition was the charge that he had been working for the Waters Pierce Oil Company, and that it was a

trust, and a part of the Standard Oil Company. I know that
311 it has been charged that the re-admission of the Waters Pierce Oil Company, or the admission of the present company into Texas was a fraud perpetrated on the State. I have argued that in my paper, and it has been argued in the Austin Tribune and the Houston Chronicle. After these things, I don't see why they couldn't get a fair trial. If they had been lied on, it would change the minds of men. Fair-minded men would give them a fair trial. I say even after considering the matters I have just enumerated as to what has been charged against the Waters Pierce Oil Company, there doesn't anything occur to me that it might not be possible for the defendant to secure a fair trial. I would not like to sit on the jury in this case. There would have to be some powerful evidence to change my mind. From the people I have talked to I have heard very little in regard to the Waters Pierce Oil Company. I suppose because I was on the other side I heard more about Bailey. Being against Bailey our side would talk more. The basis of their opposition to Bailey was his connection with the Waters Pierce Oil Company, and because he got the company back into the State fraudulently, and also because the Waters Pierce Oil Company is a trust. I have not heard anybody say anything good for the Waters Pierce Oil Company.

The local circulation of the Harpoon is 3,500. I am sorry to say that my paper is peculiar in this respect, that if only one copy gets into a neighborhood, everybody reads it.

JOHN L. MARTIN, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is John L. Martin. I am engaged in the plumbing and electric supply business here in the city. I have been in that business for something over three years; have lived in this city
312 about twenty-five years. I am pretty well acquainted with the public; was not raised here, but have been in the city for twenty-five years. Within the last few months I have heard discussions among the citizens with reference to the Waters Pierce Oil Company and with reference to Senator Bailey. I have heard that generally among the laboring class and contractors. It has been a subject of general discussion with them, during the months of January and February and up until now. The opinion among the people I have heard discuss the matter, is to the effect that it is a trust. That is the general opinion among the people I have heard discuss the matter. I do not think I have ever heard a contrary opinion expressed. The people I heard express themselves seemed to be convinced that it was a trust; they did not seem merely to be of that impression.

Cross-examination:

All I have heard about the case now in court is what I read in the papers. I have not heard any views about the merits of the case.

The people I have heard talk about this matter seemed to think they are going to try the Waters Pierce Oil Company as being a trust; but I haven't heard any one discuss the merits of this case. I don't say the Waters Pierce Oil Company could not get a fair trial in this County. For the last four or five months it is all we have heard in the papers, and I really believe seven-eighths of the people have read the papers in regard to the Waters Pierce Oil Company and Bailey, and have made up their minds that it is a trust and got into the State fraudulently. I have views on this subject myself. They are not based on newspaper reports, general talk and things of that sort, but on my own intelligence. I haven't heard what the evidence is,
and wouldn't say that I would not decide the case fairly, if
313 I were on the jury. I haven't any such decided opinion as to
prevent my doing right in the case. I have it in my head that the Waters Pierce Oil Company is not a trust. I would entertain some doubt as to my ability to treat the State fairly. I have no prejudice whatever against the Waters Pierce Oil Company. Very few people I come in contact with are like myself. The percentage is very small, perhaps one man out of a hundred is on the side I am on. There being about three thousand voters in the city, and assuming that I would associate with a thousand people, at that rate ten men could be found who have no prejudice against the Waters Pierce Oil Company, that is here in the city. It would be a hard matter out of the few men that would be brought here to get a fair and impartial jury of men that would have the view that the Waters Pierce Oil Company was not a trust. I don't say they are not to be found in the county. Not only for the last month or two but for the last six months it seems like every time you get into a crowd that this matter of Bailey and the Waters Pierce Oil Company is brought up.

Without counting them, I should guess there are fifty people in the court room at this time. Counting them, I see thirty five or forty, including the newspaper men, lawyers and officers of the Court. There have been times when I have seen ten times as many people here for the trial of a case. I can't say that I have seen as many in a Justice Court; I have never been in a Justice of the Peace Court but once in my life. I don't visit the courts at all.

I don't know whom I have talked with before I was summoned as a witness. I didn't know why I was summoned. Really don't know who secured my views with reference to this matter. I don't think I talked with Sam Harlan any on this subject. He might have
talked to me, but I don't know. I was talking to a confection-
314 ery man down here the other day. I have talked to a great
many people about this matter and have read the newspapers, and I have no prejudice whatever against the Waters Pierce Oil Company. I try to be an average good citizen. I don't say that I read all the newspapers published here; I read part of them. I read the Statesman and Tribune some; also K. Lamity's Harpoon, and the new one out now, the Prohibition paper. I try to read them all.

J. E. Lucy, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is James E. Lucy. I live in Austin; I have lived here nearly thirty years. I was Chief of Police here twelve or fourteen years. Since then I have been engaged in the Surety business. It has been seven or eight years since I was Chief of Police the last time. During the last six months I have heard discussions among the citizens of Austin with reference to the Waters Pierce Oil Company and Senator Bailey's connection with it. I think this has been a matter of frequent discussion. There were speakers in the county who discussed the matter. I heard portions of the speeches that were made. I heard a portion of the speech made here one night by Judge Terrell. I didn't hear Taylor Moore's speeches, but I read them. I did not hear Mr. Cocke speak. The extent to which the people in this city have expressed themselves on this matter is large. Every paper that is published here in the city has denounced the Waters Pierce Oil Company as a trust, and nearly every speaker in the last campaign, that is, the Bailey campaign, denounced the Waters Pierce Oil Company as a trust. In fact, literature to that effect was
315 sent all over the county. As to expressions from individual citizens, I will say that I have only talked to intimate friends about the matter. I have not discussed it generally myself, but I just got the impression that the people think the re-admi- Pierce Oil Company is a trust. With reference to the re-admission of the company into the State six years ago, the general impression among the people in the city and county is to the effect that it was fraudulent. I know what the result was of the election held early in January for the purpose of instructing our Representatives whether or not to vote for Senator Bailey. I think the sole question submitted in that primary was just "For Bailey" or "Against Bailey." There was no one running against Senator Bailey. I don't remember the vote that was cast in that election. I think Senator Bailey was defeated by a couple hundred. I think the vote cast against him in the city was something like a hundred and fifty. The basis of the opposition to Senator Bailey was the fact of his aiding the Waters Pierce Oil Company to get back into Texas. The objection urged against the Waters Pierce Oil Company was that they were considered a trust. I believe it was based on Mr. Pierce's testimony in St. Louis, or some acknowledgment that he may have made there. I have had considerable experience with courts. Taking into consideration what I have heard; the public speeches, the individual expressions; what I have seen in the newspapers, my knowledge of the basis of the opposition to Senator Bailey, and the result of the primary election in this county—I do not believe that the Waters Pierce Oil Company can secure a fair and impartial trial in this county, that is, secure a jury of unprejudiced men in the ordinary way of securing
316 juries.

Cross-examination:

I have no individual prejudice against the Waters Pierce Oil Company. With reference to giving the Waters Pierce Oil Company, the defendant, here, a fair trial, I will say that I think I could give any question a fair trial if I were a juror. I have heard just about what everybody else has heard about it being a trust and so on. I think I might be qualified to go into the jury box and give the Waters Pierce Oil Company a fair and impartial trial. I would rather believe it would be a difficult thing to get twelve men who had not made up their minds one way or the other, in this county. As to whether or not I could go into the jury box without any feeling that would prevent me from giving the Waters Pierce Oil Company a fair trial, it would depend upon circumstances. I was not very friendly with the Waters Pierce Oil Company in the beginning of the campaign. As to my present attitude in the matter, I believe, as I said before, that I could give any person or corporation or individual a fair trial. I don't make any exception of the Waters Pierce Oil Company, as far as that is concerned. With regard to the reason for my being willing to assume that the effect of what has gone on in the county would be different on the ordinary man of intelligence and character that the effect it has had on me, I will say that I feel this way about it,—that the Waters Pierce Oil Company has been denounced generally in this county, and the ordinary jury that would be secured in a panel I don't think might be qualified to pass upon a matter of that sort probably as well as I would. It would not be fair for me to assume that persons who would be examined here as to their qualifications as jurors, that they would not answer the questions as fairly as I would. It would not be fair for me to
317 assume special intelligence and virtue that does not come to other men of intelligence and virtue in the county, but at the same time I am of the opinion that there is a great and widespread prejudice in this county. I took quite an interest in the Bailey Election, and was an active Bailey supporter. I did what I could to get a full and proper vote, but did it late in the campaign. We were led to believe that no election would be called in this county, that is, the Bailey people were led to believe that, and finally when it was called we thought that we would ignore it, and until four or five days before the election came off we were quiet and did nothing. We did what we could in the last week or so before the election. I think it is true that a very large per cent. of the people of the county failed to vote in the election, notwithstanding that which was done in the campaign. Quite a number of the people right here in town did not vote. I am not prepared to say it is true that there are a great number of people in this town who have read just about what I have read and heard what I have heard and know just about what I know about the Waters Pierce Oil Company and who now entertain the same views that I do. I think it would be very difficult indeed to get a jury in this town that would fairly and impartially dispose of this case on the facts which would be submitted to them. There may be many people in town who have had the same opportunities for information I have had, but I doubt exceedingly whether a jury

could be found in Travis County that would give the Waters Pierce Oil Company a fair and impartial trial; I think the case has been prejudged by the press in every issue almost that has been printed here for the last four months. I have no special interest in this matter, and am not an employé of the Waters Pierce Oil Company. I do not feel certain that there are a great number of people in this county who have no prejudice in the matter. I don't think I
318 have been just in the same position every body else has with reference to information and reading the papers. I thought that I knew something more about it than the general run of people in this county. I acknowledge that there are many people in the city of Austin who are not substantially different from me in the matter of intellect; I have no doubt there are five hundred men of that kind. I don't doubt that there are perhaps five or six hundred men that would be classed along with me in regard to moral character. In regard to there being four or five hundred people who have had the same advantages or facilities to study the Waters Pierce Oil Company or Mr. Bailey, I will say that I think I have given it a closer consideration and study than the ordinary five hundred men in this city. I am not certain as to whether it is a matter of a little more investigation, and that if they gave it the same investigation they would reach the same conclusion. Assuming the same opportunities and all, I don't assume that any ordinary man would not be fair, but I do assume that this case has been prejudged here beyond any question. It has been hammered into the people daily. I don't think there has been a single issue of the newspapers that haven't denounced the Waters Pierce Oil Company as a trust. I don't know as to whether or not it has not had any effect on me. I don't know that it hasn't put me to the point where I am not prejudiced. I don't know the real facts of the re-admission of the Waters Pierce Oil Company into Texas. I don't know hardly anybody that does. I have not heard the facts discussed. I think the ordinary man brought here to be examined as a juror would have the idea that the Waters Pierce Oil Company is a part of the Standard Oil Company and is a trust. I had that kind of an opinion my-
319 self before I made an investigation, and I don't know whether or not it is true now. I can't say that I have any prejudice against the Waters Pierce Oil Company; and I don't know that I can say that I have no prejudice against it. I have had prejudice against it. I was very much prejudiced against the Waters Pierce Oil Company when it appeared that certain statements had been sworn to by Mr. Pierce which indicated that the Waters Pierce Oil Company was a part of or was owned by the Standard Oil Company, and I thought that Mr. Bailey was deceived. I had no reason especially to change my mind about that, but notwithstanding that, as I said before, I think I have given the matter such personal investigation that I believe I would be able to give them a fair trial, and I don't beileve that every man in this county would. It might be true that there are plenty of unprejudiced men here and that they could be secured for a jury. I would not undertake to say there are not plenty of fair-minded men; my opinion is absolutely that this county and this

community has been poisoned against the Waters Pierce Oil Company and it is being continued. I think I have seen such poisonous matter in the Statesman. I think I have seen suggestions in there that the Waters Pierce Oil Company is a trust. I think such will be found in an examination of the files, and I think it will be found further that the Statesman printed strong articles, not recently perhaps, but they have been printed, about that matter. I may say I know that every single paper and every single newspaper correspondent in this town, without a single exception was an anti-Bailey man and wrote stuff for his papers about that.

Redirect examination:

I think I stated before what the basis was for my feeling
320 considerable resentment with reference to the Waters Pierce Oil Company, but I am not positive that I did. The basis of resentment was that I thought Senator Bailey had been imposed upon by the Waters Pierce Oil Company. I don't doubt it at all that that opinion was shared in by other Bailey men in this city and county. I don't recall any particular men who expressed themselves to that effect, among the Bailey supporters, but I believe that was the general feeling among Bailey men. I was positive and am positive that so far as Mr. Bailey was concerned, he acted perfectly candid, and I made investigation enough to satisfy myself on that question, and I believe that he was deceived. I don't think I could or any other man could determine in advance just to what extent a previously conceived opinion would affect him in rendering a fair and impartial trial in this case. In stating that I do not think the defendant could secure in this county a fair and impartial trial, I certainly took into consideration that the law considers that at times a change of venue would be warranted although it might be possible to get twelve honest and conscientious men who would come up and admit that they had prejudged the case, but still say that they would go into the jury box and render a fair and impartial verdict.

Redirect examination:

I can't say that I am entirely without prejudice in this case. I made some investigations and made some inquiries directly concerning this Bailey incident, of the attorneys of the Waters Pierce Oil Company, Judge Priest and Mr. Johnson, when they were down here, and I think that I have information that the public generally has not in regard to that matter. I made the investigation into this matter as a friend of Mr. Bailey. These matters might have a bearing on this case. I started out with some degree of feeling
321 against the Waters Pierce Oil Company. Now in regard to a development of the facts pertinent to this case having left me without prejudice against the Waters Pierce Oil Company, and my being willing to go into the jury box and give them a fair trial, and being able in this particular hearing to give them help, I say this, that I have had greater opportunities to ascertain what I believe to be the situation in regard to the Waters Pierce Oil Company than the majority of people, than probably anybody else outside of the

lawyers who are interested in the case here. That was done on my motion for my own benefit and for the benefit of Mr. Bailey. I had no interest in the Waters Pierce Oil Company; cared nothing about them. I thought Mr. Bailey had been wronged and had been deceived, and I believe so still. In regard to indicating the facts which I have acquired that have not been acquired by the public, appertaining to whether this company is a trust, I will say I don't think that I ought to detail private conversations between myself and the attorneys; but I can do it, if you desire it. The only additional facts I might know I got directly from the attorneys and their statements, and I don't think that would be proper for me to detail at this time. The attorneys have not been employed by me, and there is no relation of client and attorney between me and those attorneys. I have absolutely no connection with the Waters Pierce Oil Company; our relations are in no sense confidential. I was simply trying to satisfy myself in the matter as a citizen of this town and as a friend of Mr. Bailey. In regard to my stating the additional facts, not stating how I got them, that I have which the other citizens have not, I will say that I don't think I ought to tell the private conversations between the attorneys in this case and myself. I don't think I ought
to be asked to do it. Unless the Court demands that I detail
322 the conversation between the attorneys and myself, I will not
do it. I cannot undertake to detail any facts I know without detailing a private conversation. I can't answer that I know any facts which would convince me that the Waters Pierce Oil Company was not a trust, I can't say that I have any information bearing upon the issue as to whether or not it is a trust, that is not publicly known. I don't know whether the information I have is the same which the ordinary citizen has. I said that most of the people in Travis County, judging from the conditions, would not be likely to give the Waters Pierce Oil Company a fair trial. I say this in regard to the selection of Jurors, that I have been about the court house all my life and seen a great many trials, and I believe that I would not be affected as the ordinary juror that would be picked up. I don't mean to say that I am better qualified intellectually, but say that I am more familiar with court procedure. I think that a man who is familiar with such procedure would be better equipped than an ordinary man to decide. I think a lawyer would be better able to decide the justice of a case than a layman. My relations with Mr. Pierce and Mr. Johnson are neither close or confidential. When the petition in this case was filed here they were in town and I went to see them in regard to this matter and to get such facts as I could from them in regard to the transaction. I don't know whether it was at the time this case was filed; it was about the time of the Bailey controversy. That is the only relation I have with them.

J. P. LIGHTFOOT, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is Jewell P. Lightfoot. I am one of the assistants
323 to the Attorney General in this case. I have just heard the
reading to the Court of the notice filed November 27th last,

demanding that the defendant in this case produce certain books, papers, vouchers and so on. It is not a fact that contemporaneously with the preparation of this notice I had carbon copies prepared and furnished to the Representatives of the Press here in Austin for immediate publication. There were only three copies prepared. I don't think one was immediately furnished to a representative of one of the newspapers here for publication by me. One copy was prepared for the office, another was filed in the Court, and the third was served on Judge Clark. Since the matter has been called to my attention, my recollection is that Mr. Thornton phoned me and said that some representatives of the press had the copy that was filed in the Court, and that he was anxious to get it on the wire for his paper, and wanted to know if I had another copy in the office. I did not know as a matter of fact that this notice was going over the wires within a few minutes after it was filed. Mr. Brady, Mr. Batts and myself after the notice was prepared came down to the court room and Mr. Hart was in his office. I left him a copy and told him I wanted to file a copy in the court, but before I would have the filemarks put on it I would go and serve a copy on Judge Clark. Mr. Batts took a car and went on towards home, and Mr. Brady and I went to Judge Clark's room at the Driskill, but he was not there. Some one informed us he was probably at Cochran & Penn's office, and then Mr. Brady and myself started to that office and met Judge Clark right in the middle of the street where East Sixth Street crosses Congress Avenue. We served the copy there and Mr. Brady and I turned and left—Mr. Brady went home, and I came by the office and informed the Clerk that I had served the copy, and he filed
the copy at 7:05 P. M. I then went to my home and I never
324 saw a newspaper reporter during the whole round, but an
hour or two afterwards that Mr. Thornton called me up and we had the conversation I have already detailed. It is not a fact that I showed the notice to the newspapers reporters before it was filed. I showed it to no one except Mr. Thornton, and he saw it an hour or two after the papers were filed in the Court.

EDWARD SCHUTZE, a witness for the defendant, being duly sworn, testified as follows:

My name is Ed Schutze. I live in Austin, and have lived here all my life. I am engaged in the business of publishing a newspaper—the Texas Vorwaerts. I have been with the paper for twenty-three years. I am not the editor of the paper. I was connected with that paper as its publisher during the months of October, November and December, 1906, and also during the months of the present year down to this date. That paper is published in the German language and circulates mainly among the German citizens. The circulation in this county is four or five hundred; I have never counted the subscribers. In Austin the circulation is something like two hundred and fifty. During the latter part of last year that paper had editorial utterances regarding Senator Bailey and regarding the Oil Trust, but it didn't specially mention the Waters Pierce Oil Company. I couldn't say how often Senator Bailey was referred to, but not frequently; may be, two or three times. I don't exactly remember

what was said in substance respecting Senator Bailey's connection with the Oil Trust, as I didn't read the articles. I have the papers here with me and could turn to those articles, but it would be a hard job, and would take some time to translate them. The attitude of the paper was anti-Bailey, basing its attitude on the agitation
325 that was started that he represented the trust, and the paper didn't think he was fit to be the Senator of Texas. I don't remember exactly whether it said trust, but I think it said the Oil Trust. I think that was the only trust he was charged to have any connection with. The connection on his part as a lawyer, I believe is what was objected to. I don't remember whether anything was said in regard to the instrumentality of Senator Bailey in securing the admission of the Waters Pierce Oil Company into Texas by fraud after it had been ousted by this Court. Whatever was said on that subject in my paper was adverse to Mr. Bailey. It had nothing to say in his favor. Nothing was said in favor of the Oil Trust that I know of. I think a few of the German boxes on the outside went anti-Bailey in the primary election held in this county. I don't know for certain; the returns will show.

Cross-examination:

I don't think there was any discussion at all in my paper of the Waters Pierce Oil Company. Made no statement that it was or was not a trust. As far as I remember, it just spoke of the Oil Trust. I have no personal knowledge of the Waters Pierce Oil Company; do not know whether it is a trust, or not. I read the papers about as much as most German citizens do. I have no prejudice at all against the defendant in this case. I claim to be a fairly representative German citizen. I do not know of any prejudice or ill-feeling against the Waters Pierce Oil Company in this county among the German citizens. It is my recollection that some of the German boxes went against Bailey. I think Pflugerville went against him. I can't remember how much; I think something like sixteen. It might have been fifteen to seventeen; I don't remember. According to the last votes I think they claimed seventy-five votes at Pflugerville. I do not know whether they are all German
326 votes or not; I think not.

I know of no reason, if I were summoned here as a juror, why I could not serve as a juror and fairly and impartially try this case. I never heard any German citizens express themselves to the effect that by reason of prejudice they could not fairly and impartially try this case. I have never heard any expressions of prejudice from any of the Germans. I associate with them intimately and most of the time; meet them in a social way whenever I have an opportunity. I meet some one or more of them and talk with them every day. I think there are a considerable number of Germans out at Bee Cave. As well as I can remember, I don't believe any election was held at that place in the Bailey matter. I do not know of any reason why the Waters Pierce Oil Company could not get a fair and impartial trial of this case in Travis County.

Redirect examination:

I don't know whether the Waters Pierce Oil Company is a trust or not. As to what my opinion on the mater is, well I don't know whether it is a trust or not a trust. As far as the agitation is concerned, I might believe it is, but I don't know. I don't remember that I have ever called it so in my conversations with people. I do not know whether its introduction into Texas after the ouster was fraudulent or not. My only view is that our Senator took them in hand and represented them, but whether it was fraudulent or not, I don't know. My objections to Senator Bailey's helping them was that he was representing a trust which our laws prohibited from entering our State. I thought it was on Oil Trust he was helping, but didn't know whether it was the Waters Pierce Oil Company or not. I do not know that the only oil company in Texas against which there has been much said was the Waters Pierce Oil Company.

I think that is the one the people always talk about, and say
327 that it belongs to the Standard Oil Company. I do not say that that was my idea; it might have been my idea. I do not remember in my associations with my German fellow-citizens that they sometimes refer to this as a trust. I think not; they don't bother about it. Some of them are pretty well informed, and my paper told them something about it—it spoke of Bailey and the Oil Trust. I cannot say that it said that to influence my people against Bailey. The object of the paper was not to have Senator Bailey re-elected, because he represented the trusts, whether the Oil Trust or not.

Recross-examination:

I have no definite notion at this time whether the Waters Pierce Oil Company is a trust. I know no German citizens that have, notwithstanding I am running a German newspaper and come in contact with a great number. It is a fact that the criticism in my paper of Senator Bailey was predicated on the general idea that he was representing an Oil Trust, without any specific idea on notion that the Waters Pierce Oil Company was itself a trust. I don't know that I have heard it said that it was the Southwestern Oil Company he was representing, but that it was a Trust. I did not hear of his drawing the charter of the Security Oil Company of Beaumont, or of voting the stock of the Security Oil Company at Houston.

Redirect examination:

I read the communications addressed by Attorney General Davidson to Mr. Bailey, the open letters published in the newspapers, in which the Attorney General charged Bailey with being connected with the Waters Pierce Oil Company, and in which he asserted that the Waters Pierce Oil Company was a trust. I didn't write the

editorial utterances in my paper and do not know when they
328 were published. I think it was previous to the primaries.

I don't remember the dates when the Attorney General's letters were published. I think my paper spoke on that after the

letter was written and published on October 9th. My editor may have had in mind that the Waters Pierce Oil Company was a trust. He wrote the articles in my paper. The fact that Attorney General Davidson's letters came from the head of a Department of the State made an impression on me; I believed what he said was true; and most people did.

E. SEELIG, a witness for the defendant, being duly sworn, testified as follows:

My name is E. Seelig. I live in Austin, Texas, and am engaged in the cigar and news business. I have been engaged in that business for fourteen years. My place of business is located on Congress Avenue, on the East side, between Sixth and Seventh Streets. About the 20th to 23rd of January of this past year I received at my newsstand for free distribution copies of a paper called the Chicago American. It was an issue of the paper containing what purported to be photographic copies of vouchers and other papers relating to the Waters Pierce Oil Company and Senator Bailey. It also contained what purported to be an interview with John P. Gruet. I think I received in the neighborhood of 2500 copies of that paper. My instructions with reference to them were to distribute them free of charge; that if there were any extra charges from me, why just to send my bill in to them. Those papers were sent to me from the Chicago American Office. I got a telegram from them notifying me that they were going to send that many copies down here for free distribution. I think all they sent me were distributed by me.

329 I did not have to send out and distribute them; people came and got them. There was quite a demand for them after the people found out they were in town, and I believe they were at some other newsstands. I wasn't the only one; they were sent to three or four in the city, but I don't know whether they were all put on for distribution. The people who called for them were citizens of Austin and Travis County, and some were strangers. It was during the time of the Legislature and so a great many strangers got them. There were generally distributed among the people of Austin and Travis County.

Cross-examination:

I think the Waters Pierce people got some of them. Mr. McNulty came and got some of them. I really don't know how many copies he got. There was some trouble about the papers. A darky bootblack happened to sit on the outside and had a lot of papers on his lap and handed them out to the people. The people came and got them; they knew he had them there. And it seems like Mr. Lucy found out that those papers were to be given away, and he came by and took the whole bunch away, as I understand it. I didn't see it myself. I didn't know anything about the negro having these papers, and I told him not to take any more and sit on the outside, when I learned about this, and told him to let the people come on the inside, and so I had them on the showcase, and Mr. McNulty came in and asked if he could take one or two, and my young man

said, "Help yourself," and I believe he took six or seven; and I found out they were trying to get them away from me and burn them up, and I understood that they sent a lot of boys from the Driskill who got them for that purpose. So I took the papers and stuck them behind the counter, and if anybody asked for them I just gave them a copy, because I wasn't interest- one way or another, in the Waters Pierce Oil Company or the Chicago Examiner.
330 They sent them to me for distribution, and I wanted to give them to the proper people, and didn't want them destroyed. I understood that a boy at the Driskill said he got a lot of them from me and burned them up. The boy was sent around by some of the Bailey people or the Waters Pierce people. The way I found out about the effect that was being made to destroy the papers was Captain Lucy's taking the papers from the negro boy. That was James E. Lucy. The next thing I knew about it was when Mr. McNulty got copies. I don't know him personally. I have been told that he works for the Waters Pierce Oil Company. When the boy from the Driskill came and got the papers for the purpose of burning them up, I stopped that.

I have no views on the subject of whether or not the Waters Pierce Oil Company is a trust; I do not know. All I know about this case is what I have read in the papers. I have no prejudice whatever against the Waters Pierce Oil Company. All I know about the question of whether or not it was readmitted into the State by fraud, I read in the papers. I have no outside views on the matter, and don't know whether it was re-admitted by fraud. I have no character of prejudice whatever against the defendant. If I were called as a juror I could say that I could decide the case fairly and impartially upon the evidence. I do not come in contact with a great many people. I am engaged in a public business and have been for fourteen years. I know a great many people in town, but don't know many country people; don't get out much. My acquaintance is largely in town. From what I know of the people in town, and what I have heard from them and read in the papers, I don't see any reason why they shouldn't get a fair and impartial trial in this county. I never heard anybody say they couldn't, and I don't see why they couldn't get as fair a trial here as any-
331 where in the State. I don't see any reason why they couldn't get an absolutely fair trial here.

Redirect examination:

I am pretty busy at my place of business all the time. I do not stay there every night, but every other night only. I do not talk to my customers much; just wait on them. Don't talk any politics. I don't talk a great deal, and do not take much interest in public affairs in the way of discussions. I have heard some people express themselves with reference to the Waters Pierce Oil Company. You hear that of course just when two or three people are standing there discussing it. From what I have heard I could say that the readmission of the Waters Pierce Oil Company into Texas six years ago was a fraud. I don't know whether it is or not; I wouldn't say.

positively. From general newspaper talk, my impression is that it is a fraud. I don't say what the people seem to think about the matter, from what I have heard discussed and the few I have heard discuss it. The people that come into my place of business are not much interested in such affairs. They are nearly all young people and don't talk much about such things. Not all the people who get the papers were young people. I really don't know anything about the affidavit alleged to have been made by Mr. Pierce. I don't read but very little of such affairs as that.

Recross-examination:

There are a great many other very busy men in town besides myself. There are a great many who don't take any special interest in these affairs. I have discussed this matter very little with my intimate acquaintances. They know I don't take much stock in it. I haven't heard them talking among themselves and show any
332 great interest. I don't know of any excitement in this town or special interest in this case. In my capacity as a dealer in newspapers and cigars I come in contact with a good many people, and if there is any matter of public inter-st going on in which they take a great deal of interest they make remarks about it but don't stop very long. There may be considerable inter-st taken in this case, but not around my place.

G. W. MENDELL, a witness for the defendant, being duly sworn, testified as follows:

My name is George Mendell. I live in Austin; have lived here about eighteen years. I am local correspondent for the Houston Chronicle. I have been local correspondent from Austin for the Houston Chronicle for about four years. The circulation of the Houston Chronicle in Travis County for the past six or eight months has been about 400 daily and six to eight hundred on Sunday. I do not know anything about its circulation at Manor. I am familiar with the contents of the paper now before me. The photographs, articles and interviews published in that paper relating to the Waters Pierce Oil Company case and to Senator Bailey are reproductions of the same things as they appeared in the Chicago Examiner, the issue that Mr. Seelig testified about this morning. Photographs and all are the same. The paper shown the witness and the parts referred to by him was pages 1, 2 and 3 of the Houston Chronicle of January 27th, 1907, and hereinafter set out.

Cross-examination:

I have during the time I have indicated, that is, during the last six or eight months, read all the copies of the Chronicle. I know what it contained in general with referenec to the Waters Pierce Oil Company and the Bailey matter. It was the intention and
333 idea of that paper to publish both sides of the controversy, and it did so to a great extent. It printed all the letters that Senator Bailey gave out in reply to matters that had been brought up in this case and in reply to letter of the Attorney General, and it

printed anything that Senator Bailey might see fit to say or any of his friends who might take the trouble. It printed and gave publicity to the argument or statement of Senator Bailey that the Waters Pierce Oil Company had not in the previous suit been convicted of being a trust. It also printed and gave publicity to the statement and claim of Mr. Johnson and Mr. Priest to the effect that the statement or affidavit of Mr. Pierce was in accordance with the truth, and that that statement or affidavit of Mr. Pierce was made at the suggestion and under the direction of attorney in the case. It also published and gave publicity to the statement and contention of Mr. Bailey that the vouchers which have been referred to were forgeries. It printed every utterance of Mr. Bailey on the subject that we could get hold of in any way, either from his own papers or from himself. I have not regularly read the Houston Post during the last six or eight months, but only occasionally. I can't answer as to whether or not the Houston Post also published and circulated the claims of Mr. Bailey, to the effect that the Waters Pierce Oil Company had not been convicted as a trust, that the documents and vouchers were forgeries, etc. I do not know as to whether or not the Houston Post has been defending Mr. Pierce and claiming that Mr. Pierce was not guilty of making the false affidavit. I do not know anything about the circulation of the Houston Post. I should judge they have considerable circulation here. I know that it has a circulation here.

334 I have heard discussions of the question as to whether or not the Waters Pierce Oil Company could get a fair and impartial trial in this County. I have not heard any other than what I heard in reporting the case. I haven't heard anything to the effect that it could not get a fair trial. I am a newspaper man and lately have been circulating mainly among the members of the Legislature. Have not been on the streets much. During the last five or six months I have heard discussions with reference to Bailey and the Waters Pierce Oil Company. Haven't heard anything in those discussions that the Waters Pierce Oil Company could or could not get a fair and impartial trial in this county. I haven't heard or seen anything to indicate that the people of Travis County are taking any particular interest in this particular case. So far as the attendance on this court is concerned, I should think they were not. It is a fact that the principal attendance here has been of attorneys and newspaper men and witnesses. I have seen a great many cases on trial here where more people have been on attendance, excluding the classes I have mentioned just now. The discussion I have heard of these matters during the last five or six months have generally been about Bailey and his connection with the Waters Pierce Oil Company, which is regarded as a trust. I have not generally heard any discussion as to whether or not the Waters Pierce Oil Company is a trust.

Redirect examination:

I don't think the circulation of the Houston Post in this County is anything like as large as that of the Chronicle. Our paper is twenty-five cents a month cheaper, and the people have an idea they

can get all the news out of the Chronicle. It is probable that since some time in December the editorials and headlines of the Houston Chronicle have been continually adverse to Mr. Bailey and
335 incidentally adverse to the Waters Pierce Oil Company and H. C. Pierce. Editorially that has been the case, and the headline-writer would let his opinion creep into his writing in the headlines.

I am pretty well acquainted in Austin. I regard the Waters Pierce Oil Company as a trust, and in the discussions I have heard about Bailey it is generally regarded as a trust. I never heard anybody who regarded that it is not a trust. It is generally regarded among the people that I know and have heard express themselves, that Mr. Pierce's affidavit made when this company obtained its permit to do business in Texas was false. I have also heard the people say they regarded the re-admission of the company into Texas as a fraud perpetrated on the State, and I have also heard Mr. Bailey deny that. This amounts almost to a positive conviction with me and most of the people of this county that I have talked with; it is the same way in regard to all questions adverse to the company. I attended both the regular and special sessions of the Legislature just closed. I remember when the resolution to investigate Senator Bailey on account of his alleged connection with the Waters Pierce Oil Company and other matters was introduced. I was present when these matters were discussed, in the Legislature, and heard the arguments of Judge Duncan and Judge Robertson and others in favor of the Investigation. I heard it charged on the floor of the House that the Waters Pierce Oil Company was a trust; it was done by leading members of the Legislature. I also heard it charged that the affidavit of Mr. Pierce, already referred to was false, and that the admission of this company into Texas was a fraud. There was a very large attendance during the time of those discussions. I don't know what part was confined to Travis County; there were a great many people here from a distance. The galleries were always crowded. I frequently sa/ people of Austin and Travis County there, but I
336 can't state which were in the majority—they or the strangers. The anti-Bailey speeches were not published to any great extent in the local papers, but the Bailey speeches were. The Tribune is rather small and could not print the speeches in full. It published synopses of the anti-Bailey speeches.

During the month of December, that is, for three or four weeks preceding the primary election here, held about the fifth of January, Senator Bailey and his alleged connection with the Waters Pierce Oil Company and its re-entry into the State was the principal topic of political discussion in Austin. I don't know about the county in regard to this. This discussion continued in the Legislature. My duties took me to that and I wasn't on the streets much, except going to and from dinner. It was the subject of a great deal of discussion in both halls of the Legislature and in the lobbies and on the galleries. It would crop out at times even during the special session of the Legislature. For instance, a measure of some kind would be up, and Bailey's friends thought it would be a stab at him, and the

anti-Bailey people would think it was not. But the discussions were not as frequent as up to the time of the so-called vindication. I did not during the session of the Legislature ever hear any friend of Mr. Bailey or any one else defend the Waters Pierce Oil Company or H. C. Pierce against the charges brought against them. They defended Bailey, but I didn't hear that part of it.

I have seen other civil cases on trial in a District Court of Travis County where there were as large a number of newspaper men taking down the testimony and reporting the proceedings, as there are here. One was an anti-trust case against the Pullman Palace Car Company and the other was the Fort Worth Stockyards case. In fact, most of the anti-trust cases attracted the attention of
337 the staff men who are here. I reported those cases to the same extent that I am reporting this case. Of the correspondents here now, there are Mr. Wassom, for the Dallas and Galveston News, Mr. Pricer for the San Antonio Express, Mr. Stroter, I believe, is writing for the Statesman; I report for the Houston Chronicle. Each of these papers tries to gives the news features of the proceedings here, that is the substance. There has been a reporter here for the Tribune, I don't see him now. I think his name is Anderson. There is no one here that I know of, reporter for the Houston Post. They get their news through the Statesman. Outside of those anti-trust cases, I have never known of a civil case in which there has been as much interest manifested by the newspaper men. I do not know, of course, what the attendance will be here if this case goes to trial on the facts.

Recross-examination:

I have not heard anybody say a good word for Mr. Pierce or the Waters Pierce Oil Company during this controversy, that I can recall. I did not state a while ago that Mr. Bailey defended Mr. Pierce and the defendant. I said Mr. Bailey defended the charge that it was fraudulently re-admitted. I have heard him say frequently that that was untrue, and no one would repeat it but liars and dogs and scoundrels. I never heard him make the statement that the Standard Oil Company was attacking Mr. Pierce in these proceedings. He said that with regard to the Attorney General and these officials in his speech. I haven't heard the Standard Oil Company feature of it mentioned. I never say this contention published in the Post; I heard that was the case. I say that the Waters Pierce is a trust, and mean by that I believe that a majority of its
338 stock is owned by the Standard Oil Company. I don't know what the general belief is on that, but it is mine. And when I speak of its being fraudulently re-admitted into the State, I mean that when Mr. Pierce made the affidavit the Standard Oil Company then owned a majority of the stock, and that he knew it. I think that it is general basis for the belief that the Waters Pierce Oil Company is a trust, that is to say, that it is controlled by the Standard Oil Company; and also that when Mr. Pierce made the affidavit on which the Waters Pierce Oil Company was re-admitted into the State he knew that the Waters Pierce Oil Company was owned and controlled by the Standard Oil Company.

GLENN PRICER, a witness for the defendant, being duly sworn, testified as follows:

My name is Glenn Pricer. I live in Austin, and have been here for five months. My business here during the session of the Legislature just closed, both regular and extra sessions, was that of Correspondent for the San Antonio Express. During that time my duties called me to different places. I was in the House part of the time; part of the time in the Senate, and part of the time in the Bailey Investigating Committee room. I was present in the State Senate when nominations were being made for United States Senator. I know Senator G. W. Glasscock, and know that he is the Representative for Travis and Williamson Counties in the State Senate. He lives in Georgetown. I heard his speech on the occasion just mentioned. I do not think I made any notes from his speech at the time; I think he had a copy prepared and I used that. I think he nominated A. W. Terrell for United States Senator. I remember he was denunciatory of both Senator Bailey and the Waters Pierce Oil Company in his speech. I do not think there
339 was any one more violent against the Waters Pierce Oil Company than Senator Glasscock, throughout the session of the Legislature and the controversy pending over the Senatorship growing out of the controversy over the Waters Pierce Oil Company.

Cross-examination:

I don't remember exactly what Senator Glasscock said about the Waters Pierce Oil Company. He discussed the Waters Pierce Oil Company to some extent, but only because of Senator Bailey's connection with it. I think he said it was a trust; I am not quite sure he did. I do not think he discussed the facts on which he predicated that. He just denounced the company in a general way. That was on the occasion of the speech he made in nominating Judge Terrell for the Unted States Senate. He denounced it on several other occasions also. I do not think that in reporting his speech or any of the proceedings that I reported any of the facts indicating that the Waters Pierce Oil Company was a trust. I had his speech as he wrote it, and if there was anything in that I don't remember. I don't think I wrote anything myself about its being a trust.

The paper I represent is the San Antonio Express. I don't know whether the San Antonio Express published Senator Bailey's contentions to the effect that the old judgment of the District Court of Travis County didn't hold that the Waters Pierce Oil Company was a trust. I think it was their intention to publish all the letters given out by him. They published his contention that the vouchers and documents referred to by the Attorney General were forgeries. They also published his suggestion that there was a conspiracy among the officers and his enemies against the Waters Pierce Oil Company and Pierce himself.

340 Redirect examination:

Judge J. H. Robertson and Colonel John L. Peeler represented Travis County in the House of Representatives. I was not in the House when they voted on the question of United States Senator.

As a matter of general knowledge, I know they voted against Senator Bailey and for some other person. There was no other nominee by any other party for the United States Senate than Senator Bailey, the nominee of the Democratic Party. I know that Senator Glasscock, Judge Robertson and Colonel John L. Peeler were Democrats and were elected as Democratic nominees.

It is admitted that at the regular session of the Legislature of 1901, Judge D. A. McFall, then a Representative in the Legislature from Travis County, introduced in the Legislature a bill to revoke the permit to do business in Texas granted to the Waters Pierce Oil Company on May 31, 1900; and that the Legislature failed to pass the bill.

It is also admitted that Judge D. A. McFall, as the Representative from Travis County of the Legislature of Texas, at the regular session in 1901, introduced a resolution to investigate Senator Bailey on account of his alleged connection with the admission of the Waters Pierce Oil Company into Texas, and its obtaining its permit on May 31, 1900; and it is agreed that the Journals of that Legislature with reference to that matter may be considered in evidence and either party may refer to them in the argument or incorporate in the record any part of those Journals that they may desire.

341 WALTER CALDWELL, for the defendant, testified as follows:

My name is Walter Caldwell. I have lived in Travis County since 1874. I live at No. 1009 West Sixth Street in Austin. I have not lived in any other portion of Travis County than the city of Austin. My home was in Bastrop county before I came here. I am best acquainted in the Southeastern portion of Travis County. I am acquainted in Hornsby's and Webberville, but better acquainted around in the Del Valle country. I have a pretty general acquaintance in the city of Austin. During the last six months I have heard expressions among the citizens with reference to the Waters Pierce Oil Company as to whether it is a trust and as to its being admitted to do business in this State through fraud practiced on the State; I have heard people assign that as their reason for their opposition to Mr. Bailey. I have heard quite a number of people assign that as their reason for their opposition to him. The matter was the subject of general discussion during that trial here in the Legislature in January and February of this year. I have heard very little about it since then. I think it is the general opinion that the Waters Pierce Oil Company is a trust, and I have heard it charged that its re-admission into this State was procured by fraud. I have just heard it in a general way that the Waters Pierce Oil Company is a trust. I have heard people from portions of Travis County outside of the city of Austin express themselves on the subject, but generally the talk I have heard about it was in the city. I may have occasionally talked about the subject on the road going out to my farm with some farmers, but I don't remember any particular instance. I have not heard anybody speak in favor of or undertake to defend

the Waters Pierce Oil Company. I have heard people defend Mr. Bailey for his connection with this oil company, but they
342 didn't defend the company, not that I remember of.

Cross-examination:

I have not heard the facts of this case discussed that I know of; it may be that I have, but I don't remember it now. In fact, I don't know the merits of the case. From what I have heard and know about the matter, I have no reason to suppose that the Waters Pierce Oil Company cannot get a fair and impartial trial in this county. I think there are plenty of good men in this county who will observe the law and their oaths.

Redirect examination:

As to whether or not I take into consideration the fact that a man's prejudgment of a question may unconsciously influence his action, I would much rather a man would be biased in my favor than against me. So far as I have heard opinions expressed by people in this county, I believe they are prejudiced against the Waters Pierce Oil Company.

Recross-examination:

I believe I could give the defendant a fair and impartial trial if I were on the jury. I believe that there are plenty of men honest enough, notwithstanding they may be prejudiced, that would come here and give an honest verdict according to the law and the evidence. I don't know how many such men there are in this county, but there are plenty of good people in this county. I think there are more than twelve such men in this county. I don't know whether there are more than twelve such men in my own ward or not. I believe there are plenty of men in this county, that would be entirely willing to disregard newspaper statements that
343 they have read and the general talk that has been indulged in and come here and fairly and impartially try this case.

Redirect examination:

The idea I mean to convey is, that I think that any fair, honest and conscientious man ought to be able to come here and when sworn on the jury lay aside any prejudice he might have and make up his verdict entirely on the testimony that is adduced on the trial and the law as given in charge by the Court. I believe that an honest man will lay aside his prejudice as far as a human being can do it and bring in a verdict on the law and evidence.

J. L. NICHOLS, for the defendant, testified as follows:

I live eight miles South of the city of Austin, out near Manchaca. I have lived there fifty odd years. My acquaintance is general in that community, and I know a good many people here in Austin. I have been living or staying in Austin since about the 18th of last January, being employed up at the Capitol now as one of the Capitol policemen. During the last four or five months I have heard very

few expressions of opinion among the people living in and around Manchaca with reference to the Waters Pierce Oil Company and the Bailey controversy, as I have been in Austin the most of the time. During December and January before I came here I heard a few expressions of opinion on that subject around Manchaca, but very few. The expressions of the people I heard discuss it were that the Waters Pierce Oil Company is a trust, and they thought its admission to do business in Texas was a fruad. I have heard very few people express themselves on the subject; I could not be positive as to the number. I have not heard anybody in that commu-
344 nity express a contrary opinion. Since I came to Austin to work at the Capitol, it was general talk for a month or two around the Capitol, but I paid very little attention to it. There were a good many whom I know and a good many whom I did not know that discussed the matter. Among those whom I knew as living in Travis County the opinion expressed was that the Waters Pierce Oil Company was a trust and its admission to do business in Texas was a fraud. I have not heard anybody in the city of Austin express a contrary opinion.

Cross-examination:

I don't think I have heard anything to indicate that the defendant could not get a fair and impartial trial in this county. From the talk I heard at Manchaca and since I have been working at the Capitol I don't know whether the defendant can get a fair and impartial trial in this county or not. From what I have heard, it would be a hard matter to get a jury. I have talked to very few people about it at Manchaca. I have not talked to more than three or four men here in town about it. I have just heard them casually talking about it. My idea is that if everybody else believed like those three or four it would be hard to get a fair trial here. I have never heard the facts of this case discussed. The most of the discussion I have heard about it was with reference to the Bailey controversy that existed some time ago. It has not been talked of for some time. It has been some time since I have heard anybody say anything about it at all. I think something near half of the voters at Manchaca box felt enough interest to vote at the election held in January in the Bailey controversy. The others didn't feel enough interest in it to go to the polls. I could not tell whether or not a number of jurors could be obtained at Manchaca who would fairly try
345 this case, as I have not been there for some time. I don't know whether I could fairly try the case or not. If I were on the jury I think I would decide the case on the evidence before me, without reference to any facts I may have gathered from the newspapers or general talk. I believe the most of the people I know at Manchaca would be just as fair and impartial as I would.

I know Tom Carpenter and John Patterson very well. They are residents of Manchaca. I suppose they understand public sentiment there better than I do, as I have not been to Manchaca for several months. They live right there, and I hardly ever go to Manchaca even when I am at home.

Redirect examination:

I am in some doubt as to whether or not I could act as a juror impartially in this case. I have formed an opinion about the matter, and would not like to serve on the jury. I believe that the Waters Pierce Oil Company is guilty and that it ought to lose out in this case. I am in doubt as to whether or not I could look at the testimony of Mr. Pierce and other officers of the company and weigh it as impartially as I could if I had no opinion, if I were taken on the jury. In expressing the opinion that the company could get an impartial trial of this case I think that any honest man ought to be able when taken on a jury to lay aside his former opinions and prejudices and render a verdict based solely on the evidence. I don't believe you could get a jury in this case without getting men on it who had already made up their minds, like I have, that the company is guilty.

Recross-examination:

That is based simply on the little knowledge I have from the talk at Manchaca and with a few people here in town. I don't
346 know anything about the balance of the county. I suppose there are a number of people at Manchaca and in that neighborhood who don't care anything about the Waters Pierce Oil Company, don't read the papers at all, haven't taken any stock in this business, and don't know anything about it. If they did-'t know anything about it, I don't suppose they could be prejudiced.

W. M. McElroy, for the defendant, testified as follows:

I live at No. 3012 Gaudalupe Street in Austin. I have lived in Austin about eleven years, and in Travis County thirty-three years. I know a great many people in Travis County. As to which portion of the county I am best acquainted in, there isn't much difference. I am engaged in buying cotton, down on East Fifth Street. I have been engaged in that business ever since I have been here. I have been in the cotton business about seventeen years. In my business I am brought in contact with citizens of Austin and different portions of Travis County. I buy cotton from both producers and merchants. During the past five or six months I have heard a good deal of talk with reference to whether or not the Waters Pierce Oil Company is a trust or monopoly and as to whether or not the admission of the present company into Texas to do business was procured by fraud. I have heard it discussed both by people here in the city and by country people. I could not say just what portions of the county the country people were from; they would meet down at the yard or at my office and be talking about it. From what I have heard, I believe the most of the people regard the Waters Pierce Oil Company as a trust or monopoly operating here in violation of law.

I have not heard anybody express a good word for the com-
347 pany until to-day, when I heard three men do so. The rest of the people I have heard discuss it were demeaning the company and saying they ought to be driven out of the country. I didn't pay any attention, only they were just talking. From what

I have heard and from my knowledge of the people of this county, I do not believe you could secure in this county a fair and impartial jury of men who have no prejudice. Taking into consideration the statement that among the issues in this case are the charges that the defendant company is a trust and a monopoly and that its admission into the State was procured by fraud, I do not believe you could secure a jury of impartial men in this county, from what I have heard.

Cross-examination:

I do not think I could try the case fairly. All I know about the matter is from general rumors, newspaper articles and all that kind of business. I have not heard any discussion of what purported to be the facts that are to be introduced in the trial of this case. I do not know what defense is to be made here, nor the character of the evidence that is to be introduced against this company. I could not fairly try the case because from what I have heard and read my opinion would be sort of made up, and when a man makes up his mind it is hard to change it. I don't know whether or not I could come here and try the case according to the testimony; I might do it. I would not like to say. I am not certain about it.

I think there are about 470 voters in my ward. I don't know how many of those I have heard express themselves on this subject, but at the last school election Mr. Marcuse and others were talking about it. I suppose I have heard fifty of the voters in that ward
348 express themselves. They were not all talking to me, but just standing there talking. I have not heard a single one say he could not try the case fairly; I have not heard anything on that line at all. As to the other 420 voters in that ward, I have not heard any expression from them. I have heard more talk down at my place of business than up there. I could not say how many I have heard talking about it down there, but maybe fifty or more. I have heard a larger percentage of people in my own ward talk about it than in any other ward, but I have more of them talking about it down at my place of business. I have not heard as many as fifty men from one voting box talk about the matter, and I know nothing of what are the views of about 420 voters in my own ward. I am not certain that I have heard even as many as fifty men in my own ward talk about it; I may have heard more than that, or maybe not that many, because I didn't pay any attention to the number. I don't think I could right now indicate more than four or five men who I have heard talk about it, because I didn't pay much attention to them. As to whether or not I am in position to say that the qualified voters in the Sixth Ward could not come here and qualify as jurors in this case, I don't know except as to those I have heard talk about it; that's all I can tell you.

Redirect examination:

I have not heard any one say a good word for the Waters Pierce Oil Company. I don't know exactly the number, but I believe there were about 370 votes polled in my ward in the Primary election held

early in January to instruct our representatives whether or not they should vote for Senator Bailey for re-election. That ward went against Senator Bailey in that election, but I do not remember
349 by what majority now. The basis of the opposition to Senator Bailey or the reason assigned for not supporting him was that they said he was concerned in this trust business with the Waters Pierce Oil Company as attorney or something—anyhow, that he had been implicated in it in some way.

Recross-examination:

I don't know how many I heard assign that as their reason for their voting against Senator Bailey, but I heard several men say so. A very large percentage of the voters there did not express themselves in my hearing. As to the most of them, I don't know what influenced them.

Redirect examination:

I could not say as to whether the opposition in my ward to Senator Bailey began about the time this suit was filed or not. I don't know what time it was, as I was not paying any attention to it. I was the Democratic Chairman in that precinct last year. There was no issue in regard to Mr. Bailey in the Democratic primaries last July. I did not hear any opposition to Mr. Bailey up to that time. The first I heard that Mr. Bailey was attorney for the Waters Pierce Oil Company was just after the State Democratic Convention last year.

Recross examination:

Mr. Bailey's name was not on the tickets at the Primary election last year.

W. B. WALKER, for the defendant, testified as follows:

My name is W. B. Walker, and I live in Austin. I have lived here thirty-five years. I am engaged in the wholesale grocery busi-
350 ness. I have been in the wholesale business seven years, and before that was in the retail grocery business. When I was in the retail business I knew nearly every man in Travis County. I have not now as good an acquaintance in the county as formerly.

As to my opinion of the Waters Pierce Oil Company, I think they are a lot of thugs. I have expressed that opinion whenever anybody asked me about it. Everybody that knows anything about the oil business knows that the Waters Pierce Oil Company is a trust. I mean everybody in Texas or the United States or Travis County or anywhere else. Of course its admission to do business in Texas after the old company was excluded was a fraud. They simply turned their coats and came back into Texas. They have some friends here, but not many, I think. I have not talked with country people at all about it; I have talked only with merchants and the grocery merchants. Some of the people I have talked to in the last few months don't care anything about it, and half the people of this county don't know the Waters Pierce Oil Company or who they buy oil from.

(No cross examination.)

J. M. MEREDITH, for the Defendant, testified as follows:

I live in Hyde Park, and am engaged in the retail grocery business. I have been engaged in that business out there about five years. I have a general acquaintance in Austin and the Northern part of Travis County. My acquaintance is limited in the Southern and Eastern portions of the County. I get my trade from the Northern part of the city and the Northern part of the County. I have customers in Hyde Park and some as far down as Nineteenth street and some out as far as the county line, out about Fiskville and
351 Sprinkle. I am one of the Aldermen of the City of Austin.

During the past five or six months I have heard considerable discussion of the Waters Pierce Oil Company among the people of this city and county. My place of business out there as rather a public place; there is a watering trough there and a great many farmers stop there. During the Bailey controversy there was always more or less people on my porch there discussing that matter, day in and day out. I don't remember when it began, but it was all during the first part of the Legislature last Winter; it was almost a constant thing that more or less people were there talking about that matter. The testimony taken before the Bailey Investigating Committee was published in the daily newspapers, and I read it every day. The testimony was discussed as it came out. I had the "Statesman" there and somebody would get it and read it, and that would start the discussion. It was almost the universal opinion of the people I heard discuss it that the Waters Pierce Oil Company was part of the Standard Oil Company and in the trust. It was the general belief that the present company re-entered the State in a fraudulent manner, as far as I have heard it discussed. I have never heard anybody say a good word for the Waters Pierce Oil Company in my life. Among those whom I have heard discuss the matter there were citizens of the county and residents of the city. This matter was the subject of general discussion at my store for a period running over several months by people stopping there. Basing my opinion upon the expressions of the people of my acquaintance whom I have *I have* heard discuss it, I will say that if the sentiment of the county is the same as that among the people I have heard discuss it, I do not think you could secure in this county a jury of impartial, unprejudiced men who have not made up their minds with reference to any of the issues in this case; but I
352 do not pretend to know the sentiment of the majority of the people of Travis County. I have an opinion on the question, and would not attempt to sit as a juror in the case.

Cross-examination:

I have customers living out at Fiskville and farther up towards the mountains. A good many people come from Sprinkle and trade with me. I would not attempt to name them, but a good many people come by there and stop to water their horses and probably come in and buy something and sit down and talk. I haven't any customers from Pecan Springs; that is too far East. There are more than three or four parties from Sprinkle that come by and

purchase from me; there are probably eight or ten from Sprinkle. Almost everybody from Fiskville in coming to Austin has to come by my place, but they don't all stop. All the people from Fiskville did not stop at my store and discuss it. I have no idea how many of them stopped there. Just a small percentage of the whole number of people in that section came by and talked about this question at my place, but I could not tell you what per cent. I don't suppose I have heard over ten per cent. of the qualified voters residing in that portion of the county discuss the subject. I do not suppose I have heard one-tenth of the qualified voters of the Fourth Ward discuss the matter, and my idea is based on the expressions of a limited number of the people as compared with the whole. I know absolutely nothing about the sentiment of the East end of the county running from Hyde Park out East, nor do I know the sentiment of the mountain people up about Jollyville. If the sentiment of the people of the county is the same as among the people I know, I don't think you could get a jury of impartial men, but whether
353 or not the sentiment is the same I cannot say. If every other man in Travis County thinks like I do, the defendant could not get a fair trial, but I don't undertake to say that they do. I heard some discussion as to whether the Waters Pierce Oil Company was a trust, independent of the Bailey controversy, but very few. I buy oil from the company, and abuse them once in a while. I have not discussed the question with their driver—their driver won't talk. I believe the Waters Pierce Oil Company is a trust, and would like to see it fired. I have not heard the facts discussed by anybody that knew the facts any better than I did, and have not heard anybody that knew the facts say that it is not a part of the Standard Oil Company. Everybody that discussed the question just assumed that it was a trust, without knowing any of the facts. I have prejudice instilled into my mind so deep that I would not attempt to go into the jury box, because I would be afraid of myself. I could not *law* aside my prejudice; it would not be human to do it. I am not setting myself up as a standard for other people; they can do as they please. I have been dealing with the company for several years and have had it in my mind and have discussed it with my neighbors. I have discussed it with other merchants and with drummers. I have given the question considerable thought, and have read a good deal about it. I have read magazine articles, on the subject. I have read Mr. Tarbell's magazine articles. I would not undertake to say that all the other people of Travis County—the farmers, merchants, laboring men and others—have given the subject the same thought as I have and formed the same ideas. I don't suppose more than one man in ten has as great prejudice against the Waters Pierce Oil Company as I have. I do not mean that all the other people out there entertain the same views as I do; they are not quite as radical as I am. Some of those men are just as honest as I am. I have heard some good men testify here that a fair trial can be had in this county, and I regard
354 them as honest men. They may believe what they say they could do. I am just as honest on the other side that I could not do it. I don't know whether the defendant com-

pany can get a fair trial in this county or not; it might get as fair a trial here as it could in any other.

Redirect examination:

If Mr. Brady were running for District Attorney, and I heard ten per cent. of the people out in the North End of the county and in my neighborhood express themselves very bitterly against him, and the same reports came from Webberville, Creedmoor, Manchaca, Manor and elsewhere, and I never heard any one speak a good word for him, I would not think he stood very good chance of election.

Recross-examination:

If I heard only thirty or forty men express themselves, and did not know anything about the rest of the county, I think I would have a pretty good idea of how it would result. I have been an officer myself, and had some boxes where I got a few votes, but still won out.

Defendant next introduced in evidence the head-lines and following portions of an editorial published in the Houston Chronicle of date Feb. 8th, 1907, the head-lines and portions of said editorial so introduced being as follows:—

Defending H. Clay Pierce.

Whatever may be thought of a newspaper professedly democratic, and therefore supposed to be in sympathy with the doctrine of the party for the suppression of the trusts, no one can sincerely say that the Houston Post has not consistently defended H. Clay
355 Pierce, one of the greatest trust masters in the United States. Even in behalf of its own idol, Senator Bailey, the Post has not been more vigorous, nor his it been more vehement in its denunciation of the anti-Baileyites than of those whose official duties made it necessary to bring out the facts and circumstances upon which the grand jury of Travis County indicted H. Clay Pierce for perjury.

There are two men, at least who in the estimation of the Houston Post can do no wrong. One of them is H. Clay Pierce, a self-confessed perjurer, and now under indictment in Texas, and the other is Senator Joseph Weldon Bailey, how being investigated upon charges which, if proven, show a moral unfitness for the office of United States Senator, or of any other office of trust in a representative form of government.

* * * * * * *

It is a singular coincidence that the Post first took a fancy, to the magnificent character and magnetic personality of Henry Clay Pierce just after Senator Bailey had successfully officiated at the ceremonies attendant upon the readmission of the oil octopus into the State. Then it was that the Houston Post discovered so much for the common weal, in the way that Henry Clay Pierce was "Bowing to the Law," and this was chronologically just after Senator Joseph Weldon Bailey, upon the strength of a day's acquaintance, had made that historical "touch" for $3300, and various other sums.

When the Post commended Henry Clay Pierce's method of "bow-

ing to the law," six years ago, about the time Pierce committed perjury in order to get the oil octopus back into Texas, it is to be taken for granted that it did not know of the act of perjury, because Senator Bailey declares that he did not know of it. There-
356 fore, since Senator Bailey, though declaring that Pierce had deceived him, has not denounced him for his perfidy, it seems to be another one of those coincidences to find the Post vehemently and blindly defending Henry Clay Pierce, as appears from the following from an editorial, which appeared in that paper the other day.

* * * * * * *

The substance of Pierce's affidavit in Texas was that the Waters Pierce Oil Company was not a trust. The substance of Pierce's testimony in the Missouri ouster cases was that the Waters Pierce Oil Company was a trust at the time it was re-admitted to Texas, because its stock was owned by the Standard Oil Company. This kind of perjury the Post calls "technical rather than criminal." The Post has evidently discovered a new class of falsehoods, which it would call "technical."

In certain pleadings at law, it is necessary to make what is called a formal oath, and the fact that all of the allegations are not proven does not subject the affiant to the charge of perjury. But there is no sort of similarity between the formal oath in pleadings in a suit and the affidavit which Pierce was required by law to make before the oil octopus could be readmitted to Texas.

The Waters Pierce Oil Company had been convicted of "making exclusive contra-ts," and that constituted it a trust in the opinion of the Courts. Therefore how perfectly absurd and supremely ridiculous is the assertion that an affidavit required by law that the company is not a trust is "technical rather than criminal."

Pierce knew that his company had been convicted of being a trust, because he knew that it was necessary for a pretended dissolution and reorganization in order to get back into the State. Therefore he must have known that the affidavit for readmission was not a
357 formal affair.

* * * * * * *

Therefore if the Post's own excuse for Pierce is accepted, he is none the less guilty at law, but his lawyer becomes an accessory before the facts, and is likewise guilty of crime.

It is incomprehensible, however, that Henry Clay Pierce is as ignorant of what constitutes an oath at law as the Houston Post professes itself to be, and it is not likely that he will plead the "baby act" by incriminating his lawyer when he cannot extricate himself thereby from the meshes of the law.

Evidently Henry Clay Pierce may be as big as knave as the Post's line of defense seems to indicate, but he is not all kinds of a fool. The Post's devotion is sublime, but its method of defending absurd and ridiculous.

Defendant next introduced in evidence pages 1, 2, & 3, of the Houston Chronicle of the issue of Jan. 27th, 1907, the pages so introduced being as follows:

(Here follows facsimile marked pp. 358, 358*a*, and 358*b*.)

359 Defendant next introduced in evidence the following article appearing in K. Lamity's Harpoon of April 1st, 1907, as published in the issue of said paper of said date, viz:

Warm-blooded Man—Clay Pierce.

The Austin Statesman, a Bailey organ owned by John Henry Kirby the Lumber King and Prince of Pines, says:

"Bailey's record in congress is, as we have before said, as clean as a hound's tooth, and the Standard Oil octupus can not destroy him. He will continue faithfully his duty to do as in the past he has ever done it."

So far as the "cleanliness" of the record is concerned, I fully agree with you, though fail to see where the comparison is any compliment to Mr. Bailey. As for the Standard Oil Company "destroying Joe Bailey," such rot is enough to make the aforesaid hound puke up his teeth by the mouthful.

You must take Texas people for infernal fools. The Waters Pierce Oil Company is controlled and principally owned by the Standard Oil Company. Joe Bailey is the best friend the president of the Waters Pierce Oil, alias the Standard Oil Company ever had in Texas. He was the means of its being re-admitted to Texas, and giving it the opportunity of robbing Texas people out of millions of dollars.

In return the Waters Pierce alias the Standard Oil Company has repaid Bailey by lending him thousands of dollars. The only sane reason why the Waters Pierce alias the Standard Oil Company could possibly want to "destroy Bailey" might be the fear that if they remained on the present friendly terms, Joe might borrow every darned cent it had in the treasury and give his unindorsed note for security.

Such gushes of editorial *guano del torro* falls as flat as a wet
360 blanket when one remembers that in his examination before the investigation committee, the P. of P. said that Clay Pierce, the president of the Waters Pierce alias Standard Oil Company was the "only millionaire he knew, who had warm blood enough in his veins to lend a man money and help him out when he was in a close place."

Yes, that is a commendable trait of character in Clay, to lend money to Democratic Senators and lumber kings when they need it. I honor him for having "warm blood," and helping those who help him. Clay has the "warm blood" and also the "warm money," but in securing the latter (through the political influence of Joe Bailey), Mr. Pierce has certainly thrown the "warm soup" into the Democratic voters of Texas, when they had their faces turned in the opposite direction.

Defendant next introduced in evidence the following portions of an article appearing in K. Lamity's Harpoon, of March 1st, 1907, as published in the issue of said paper of said date, viz:

K. Lamity's Harpoon.

Joe Bailey *vs.* Texas Democrats.

If Joe Bailey has not betrayed the trust placed in his hands by the Texas Democracy, then it is impossible for it to be betrayed. He

has, by his own confession, saddled the Standard oil trust on Texas. To make it worse, he seems to be proud of it, and claims as his most intimate friend, the Hon. H. Clay Pierce—manager of the Waters Pierce Oil Company—said company being under the control of the Standard Oil Company. Clay Pierce—the oil magnate—the ac-*mo*wledged perju*ro*r—who dares not visit Texas, as he is
361 now under indictment for swearing to a bald-faced lie in order to get reinstated in Texas, and thus be able *ro* rob the common people—the people who burn oil—out of millions of hard-earned money. This Clay Pierce, the man who has "warm blood in his veins," is Mr. Bailey's dearest friend, and he now desires to prove his innocence of having gone over to the people's enemies by a man who is under indictment right here in Austin, just under the shadow of the room in the capitol where the white-wash is now being prepared to cover up the oil spots on Bailey's senatorial toga. You may smear damp lime over them a foot thick, boys, but that kerosene is bound to show.

Defendant next introduced in evidence the following portion of an article appearing in the Houston Chronicle of Jan. 6th, 1907, as published in the issue of said paper of said date, viz:

"Bailey Repudiated by Travis County.

Democrats in the Capital City of Texas Rebuke Practice of United Senator in Serving the Trusts.—Battle was Hard Fought Against Tremendous Odds.

Special to The Chronicle.

Austin, Texas, Jan. 5.—Travis County repudiated Senator Bailey's methods today by a small majority ranging from one to two hundred votes.

Only about 2000 votes were polled but enough voters turned out to let the balance of the state know that this county s-ands for purity in public official- and a service to be rendered by them that
362 is not tainted with corporation and trust influences.

Senator Bailey has been in the County nearly all the week during which time he made four speeches in explanation of his conduct and close affiliations with the head of the Waters Pierce Oil Company which is a branch of the Standard Oil Company."

and also the following article appearing in said paper of said date:

Standard Oil is know- to be a corrupter of congressmen. Senator Bailey helped Standard Oil and Pierce, president of the Waters Pierce, a branch of the Standard Oil, loaned money to Senator Bailey and gave him rich employment. The most charitable must admit that an investigation is imperative.

What the people of Texas want is a democratic senator who believes in equal rights to all and special privileges to none, not even to Waters Pierce and Standard Oil.

Defendant next introduced in evidence the following cartoon appearing in The Houston Chronicle of Jan. 20, 1907, as published in the issue of said paper of said date, viz:-

## AN ALL-EMBRACING SITUATION

Be Not So Evil-Minded and So
Hoodlumes to Try
To Nose Out Any Friendship
Twist Myself and Octopi.

365

Can Senator Bailey be an effective public champion of the people and at the same time the private attorney of Pierce of Waters Pierce and Standard Oil fame?

363 Defendant next introduced in evidence the following portion of an article appearing in the Houston Chronicle of Jan. 7th, 1907, as published in the issue of said paper of said date viz:

Farmer's View of Bailey.

His Letter Shows the Rural Districts to be Well Informed.

Special to The Chronicle.

Cameron, Texas, Jan. 6.—R. W. Cage, a farmer of the Walker creek community, has given out a letter on Senator Bailey which shows that the residents of rural communities are well posted on the Bailey agitation, and are not influenced by the statements and opinions of others. Following is the letter.

To R. Lyles and Others, Cameron, Texas.

GENTLEMEN: You say Senator Bailey has rendered to the people faithful and able services during his 15 years in congress. The Standard Oil Company and the Waters Pierce Oil Company can truthfully say more. Six years ago these two criminal corporations were operating in Texas together under the name of the Waters Pierce Oil Company and were making off the people the shameful profit of 700 per cent. each year on their capital invested, and they were by judgment of the court, driven out and prohibited from longer doing business in Texas, and they were readmitted into Texas by the influence of Senator Bailey. This was worth many million dollars to these two corporations.

Yours truly, R. W. CAGE.

364 Defendant next introduced in evidence the following portion of an article appearing in Houston Chronicle of Jan. 8th, 1907, as published in the issue of said paper of said date, viz:

Bailey says he is above being influenced. He asserts, with flashing eyes and fierce visage, that anyone who even intimates that he (Bailey) can be influenced is an infamous liar. Despite such ferocious declarations, it remains a matter of record that Pierce lied to him (Bailey produced a letter from Pierce to prove it), and that Bailey has never yet called Pierce an infamous liar. He has not so much as whispered in that well-known stage whisper of his: "Pierce, you fibbed to me; you nasty naughty thing!" Of course, there are liars and liars—liars who are too far away to hear you when you hiss "infamous liar!"—liars who are useful for stage purposes, "property" liars as it were, who are convenient for creating spect-ular and grandstand effects—liars who are dead broke, and last, but not least, liars who are touchable for $3,300 the day after you meet them. Figure out for yourself which class Pierce is in.

(Here follows facsimile marked p. 365.)

366 Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Jan. 20, 1907, as published in the issue of said paper of said date, viz:

The Cocke Charges Against Joe Bailey.

San Antonio Representative Says He Has Mailed Them to the Committee.

Several Matters are Mentioned of Which the Public Has Not Previously Heard—Alleged Relations With John W. Gates in Port Arthur Deal and Loans Suggested.

Staff Special.

Austin, Texas, Jan. 19.—Formal charges have been prepared by Representative W. A. Cocke for filing with the Chairman of both the House and Senate investigating committees against Senator Bailey. Mr. Cocke stated tonight that he would mail copies to the committees with a statement that he be allowed to question witnesses, otherwise he would withdraw the charges.

Thirty-six charges are contained in the complaint covering the various official acts of the Senator from the time before or during the Spanish war, when he is alleged to have entered into a mule contract, though the episodes of the Waters Pierce trust action, when fraudulent action is alleged to have been taken in securing the dismissal of suits; the facts of the investigation at that time; the acts of Senator Bailey in the upper house of Congress and in Austin; the circumstances of the Tennessee railroad transaction on to the present time. It is alleged that in 1905 Senator Bailey collected a fee of $118,000 through a Bainesville Bank.

* * * * * * *

367 After covering well known allegations concerning the events at Waco, when the Waters Pierce Oil Company was permitted to reorganize and re-enter Texas, Mr. Cocke alleged that Senator Bailey prevented a close scrutiny of his record and failed, when on the stand, to tell the whole truth. An allegation is made to the effect that during 1901 Senator Bailey came to Austin as an agent for the Standard Oil Company to use his influence to the defeat of the Grinnan and Davidson anti-trust bills.

Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle, of Jan. 23, 1907, as published in the issue of said paper of said date, viz:

Bailey and the Trusts in the Sunday Chronicle.

Copies of the Chicago Examiner of Monday, containing an exposition of the relations existing between the Waters Pierce Oil Company and the Standard Oil Company and the close manner in

which Joseph W. Bailey has been identified with these monopolies have been received in Houston.

An effort was made on the part of the owner of the newsstand which received the copies to suppress them.

Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Nov. 28, 1906, as published in the issue of said paper of said date, viz:

368 Did Senator Bailey Take Pierce Money?

Vouchers Showing Sums Paid to Him are Alleged to be in Existence.

Demand Made on Counsel for Waters Pierce Oil Company to Produce Documents Evidencing the Payment of Several Thousand Dollars to Senator Bailey on Account of Texas Cases.

Special to The Chronicle.

Austin, Texas, Nov. 28.—The sensational stage was reached in the ouster suit against the Waters Pierce Oil Company last night when a demand was made by counsel representing the state for documents of the defendant company which it is alleged will show the payment of divers sums to Hon. J. W. Bailey, junior senator from Texas, by H. C. Pierce, on account of "the Texas cases." The documents described in the demand made for their introduction will recall in public memory utterances which Senator Bailey has recently made in Texas to the effect that he did not receive one dollar for any service he may have rendered in getting the Waters Pierce Oil Company reinstated in Texas six years ago.

Transactions showing that the Senator has been paid for services rendered to H. C. Pierce are minutely described in the demand for the production of the documents. Dates and amounts are given, and vouchers showing on what account payments were made, are alleged to be in existence. The sudden and unexpected turn given to the litigation bids fair to convulse the state politically and would seem to render necessary a renewal of Senator Bailey's campaign of explanation and vindication.

369 Money Paid to Bailey.

Attorney General Davidson and assistant counsel for the state served upon Hon. George Clark, of counsel for the Waters Pierce Oil Company, and filed with the District Clerk of Travis County, a notice demanding the production in court of various records and papers of the Waters Pierce Oil Company, showing, among other things, the original trust agreement, and agreement between the Waters Pierce Oil Company and the Eagle Refining Company for the purchase of the Texas property of the last mentioned company; also books showing copies of correspondence between counsel for the Waters Pierce Oil Company and J. W. Bailey, and various vouchers

of specified number and date purporting to show payment of money to J. W. Bailey.

Notice is given that if the original are not produced upon the trial of the case, secondary evidence will be offered by the state.

The text of the notice is as follows:

No. 24,551. The State of Texas *vs.* Waters Pierce Oil Company. Suit Pending in the Twenty-sixth Judicial District Court of Travis County, Texas.

To Messrs. Cochran and Penn or the other attorneys of record for the Waters Pierce Oil Company, defendant.—You are hereby notified to produce upon the trial of the above entitled and number cause the following contracts, agreements, documents, books letters and memoranda:

1. The original trust agreement entered into upon the 2nd day of January, A. D. 1882, and being the instrument set out in plaintiff's original petition, commencing on page 6 thereof and marked Exhibit A.

2. The supplementary agreement entered into on the 4th day of January, A. D. 1882, same being the instrument set out in plaintiff's petition, commencing on page 13 and marked Ex-
370 hibit B.

3. Agreement entered into on the 5th day of October, 1894, between the Eagle Refining Company, party of the first part, S. S. Drake, A. G. Carpenter, W. A. Smith, W. H. K. Rose, A. W. Clem, parties of the second part, and the Waters Pierce Oil Company, party of the third part, relating to the purchase by the Waters Pierce Oil Company of the assets and property of the Eagle Refining Company in Texas.

4. Memoranda of agreement dated St. Louis, Mo. Sept. 13, 1894, addressed to Mr. W. H. Rose, general manager of the Eagle Refining Company, Cleveland, O., relating to the purchase by the Waters Pierce Oil Company's plant, stock, business, etc., situated in the State of Texas, and signed by H. C. Pierce, president, and William H. K. Rose.

5. Resolutions adopted at a special meeting of the directors of the Eagle Refining Company, held in the City of Cleveland, O., on 1st day of October, 1894, and signed by W. A. Smith, secretary, accepting the proposition of the Waters Pierce Oil Company of Missouri for the purchase of the branch of the Eagle Refining Company at Dallas, Texas, and other points in said proposition.

6. Memoranda of agreement made and entered into on the 5th day of October, 1894, between the Waters Pierce Oil Company and A. W. Clem of the State of Texas, relating to the employment of said Clem as manager of the Waters Pierce Oil Company, signed by the Waters Pierce Oil Company, and H. C. Pierce, President, and A. W. Clem.

7. All contracts and agreements entered into between the Waters Pierce Oil Company and the Texas Oil and Gasoline Company, or Roy Campbell, relating to the purchase of the business and assets of said Texas Oil and Gasoline Company, or the business of said Roy Campbell, or the employment of the said Roy Campbell by
371 the Waters Pierce Oil Company as agent or manager of either of said businesses.

8. Copies of all letters addressed to A. W. Clem or the Eagle Refining Company or the Texas Oil and Gasoline Company or Roy Campbell relating to the management of the business of the Eagle Refining Company or the Texas Oil and Gasoline Company and the suppression of competition by them.

9. All letters, documents, reports, etc., received from the Eagle Refining Company or the Texas Oil and Gasoline Company or W. Clem or Roy Campbell relating to the suppression of competition by those concerned and parties in the State of Texas.

10. All maps drawings and writings outlining, marking or otherwise defining the territorial limits in which the Waters Pierce Oil Company organized in 1878, and the Waters Pierce Oil Company organized on May 29, 1900, confined their business operations.

11. All memoranda of agreement made by John D. Johnson, H. S. Priest, attorney of record for defendant, and the defendant company, with H. S. Hadley, attorney general of Missouri, while taking the testimony of H. H. Rogers of New York, wherein it was admitted for the purpose of that case only that now and during the time charged in the information a majority of the shares of stock of the Standard Oil Company of Indiana and of the Republic Oil Company was and is held for the Standard Oil Company of New Jersey, and that all of the shares of stock of the Waters Pierce Oil Company standing on its books in the name of M. M. Van Buren are held for the Standard Oil Company of New Jersey.

12. All letters books and records showing copies of all letters from J. D. Johnson to George Clark of Waco, Texas, and all letters from George Clark to J. D. Johnson of St. Louis, Mo. and all letters from J. D. Johnson to all parties in Texas, and all letters from Mr.
372 J. D. Johnson, and Mr. George Clark to J. W. Bailey, and all letters from Mr. J. D. Johnson and Mr. George Clark to parties in New York relating to the settlement of the cases pending in the city of Waco, Texas, against the old Waters Pierce Oil Company, and its officers and agents, all of said letters being written during the year 1900. Also all letters and copies of letters written by and to the above parties, as set out, relating to the re-admission of the Waters Pierce Oil Company into Texas in 1900.

13. Personal voucher of H. C. Pierce, dated April 25, 1900 for $3300, for money advanced to Joseph W. Bailey as a demand loan on account of Texas cases; also voucher record book showing entry of such voucher; also bills receivable book of defendant showing entry of the demand loan to Joseph W. Bailey on April 25, 1900, for $3300; also voucher record book showing entry of voucher No. F-462, issued June 30, 1900, by Waters Pierce Oil Company for $3300 and audited by D. W. Conroy, auditor of the Standard Oil Company of New Jersey; also cash book folio of defendant in use June 30, 1900.

. 14. Voucher record of defendant in use June 15, 1900, showing entry of voucher F-86 to Henry & Stribling of Waco, Texas, "Account of expense in anti-trust civil case of State of Texas *vs.* W. P. O. Co. at Waco," approved by J. D. Johnson; also sight draft drawn by J. W. Bailey for $1500 on Waters Pierce Oil Company for said

amount, paid to Henry & Stribling; also cash book in use as that time containing folio 117, showing a record of said transaction.

15. Voucher record of defendant in use November 23, 1900, showing entry of voucher No. L-130, dated November 23, 1900, for $200, paid to J. W. Bailey "account of Texas cases." Also cash book in use November 23, 1900, containing folio No. 110 showing record of above transaction.

373 16. Voucher record of defendant in use November 20, 1900, showing entry voucher No. L-92 and also H. C. Pierce's personal voucher, dated November 20, 1900, for $3100, advanced to J. D. Johnson, and paid out by him to connection with "Waco, Texas, penalty suits." Also cash book in use at that date containing folio 7, showing a record of said transaction.

17. Check of H. C. Pierce, dated March 28, 1901 for $1750 sent to J. W. Bailey in response to a letter from J. W. Bailey to H. C. Pierce of that date requesting New York exchange for that amount. Also voucher record of defendant in use on June 12, 1901, showing entry of voucher No. F-41 for $1750 paid by defendant to J. W. Bailey "for legal expense account Texas matters."

Also draft of Fourth National Bank of St. Louis, No. 561890, on Chatham National Bank of New York, transmitting to J. W. Bailey $1750. Also cash book in use March 28, 1901, containing folio 223, showing a record of said transaction.

18. Voucher record of defendant in use March 6, 1901, showing entry of voucher No. C-12, audited by C. W. Norman, auditor, of the Standard Oil Company of New Jersey, for $8000 for "amount of loan to J. W. B. as per note in hands of treasurer." Also bills receivable book of defendant in use at that time showing entry of said note. Also cash book in use at that date containing folio 119, showing entry of said transaction. Also check of defendant No. 44430 for $8000.

In event of your failure to produce the above books, records, documents, writings, cash books, checks and memorandas as called for above, the plaintiff *was* introduce secondary evidence to prove the contents thereof.

R. V. DAVIDSON,
*Attorney General.*

374 JEWEL P. LIGHTFOOT,
*Assistant Attorney General.*
JOHN W. BRADY,
*County Attorney of Travis County.*
GREGORY & BATTS,
*Attorney for Plaintiff.*

I hereby certify that I served a true and correct copy of the within notice upon defendant by delivering a true copy of same in person to Hon. George Clarke, attorney of record of defendant, at 7:05 P. M. on this the 27th day of November, 1906.

JEWEL P. LIGHTFOOT,
*Attorney for Plaintiff.*

Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Dec. 3, 1906, as published in the issue of said paper of said date, viz:—

Maybe H. C. Pierce is as great an expert in juggling records as he proved himself to be in manipulating an affidavit.

375 Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Sept. 17, 1906, as published in the issue of said paper of said date, viz:

Texas May Proceed Against Mr. Pierce.

Magnate's Sworn Testimony and Texas Affidavit Wholly at Variance.

Evidence in Missouri's Ouster Proceedings Admitted that Standard Oil Held 3,000 Shares Waters Pierce Stock when Company was Re-admitted to Texas—Contradicts Previous Affidavit.

Special to The Chronicle.

Austin, Texas, Sept. 17.—Considerable interest is being manifested in state official circles here in the ouster proceeding now being conducted by the State of Missouri against the Waters Pierce Oil Company and the Standard Oil Company before Commissioner Anthony in St. Louis. Special interest is attached to the testimony adduced by Henry Clay Pierce, president of the Waters Pierce Oil Company, as it disclosed that at the time the company was readmitted into the State, in 1900, the Standard Oil Company was the owner of over 3000 shares of the stock. In the face of this disclosure Mr. Pierce made a sworn affidavit to the State of Texas that none of the stock of the Waters Pierce Oil Company was owned by any trust whatever.

The testimony of Mr. Pierce has shown beyond a doubt that it is at variance with his sworn affidavit made in Texas in 1900.

This lays Mr. Pierce liable to the Texas authorities if his company was readmitted into the state under false pretenses. When
376 seen about this matter the attorney general refused to express himself as to what the department will do looking toward the institution of criminal proceedings against President Pierce. The matter, however, would have to be brought to the attention of the Travis County Grand Jury before the state could do anything, and the attorney general has not indicated what he will do in the premises.

The affidavit upon which the Waters Pierce Oil Company was readmitted into the state in 1900 was a stringent one, and its text is as follows:

(Here followed copy of affidavit set out in plaintiff's petition and alleged to have been made by H. C. Pierce, on May 31st, 1900.)

Defendant next offered in evidence the following portion of an article appearing in The Houston Chronicle of Dec. 1, 1906, as published in the issue of said paper of said date, viz:

## The Bailey Chickens Come Home to Roost.

### Attorney General Gives the Senator a Large Dose of His Own Medicine.

Record is Cited to Show that Bailey Did Receive Money from Pierce on Account of the Texas Cases.—Authenticity of the Senator's Denials is Flatly Challenged.

Special to The Chronicle.

Austin, Texas, Dec. 1.—After months and years of evasion, avoidance, denunciations, sophistry and subterfuge, it appears that the Honorable Joseph Weldon Bailey, junior United States sen-
377 ator from Texas, president of the American Trotting Horse Breeders' Association, owner of the Grapevine Ranch promotor of fine Kentucky horse flesh, and in off years corporation counsel for railroad and oil companies at last apparently finds himself cornered.

Unless all signs fail he is 'twixt the devil and the deep blue sea—the oil octopus and the azure of political oblivion.

After denouncing men as infamous liars who reiterated well authenticated and undisputed charges against him the senator is now called upon to dodge the boomerang effect of his own epithets which find application to himself in this that he has publicly denied the existence of facts which have now been disclosed by public documents.

The poultry is now making a return trip.

From the time of the legislative investigation of six years and more ago down to yesterday the senator has denied in sworn testimony and in public speeches and writings that he received any compensation from H. Clay Pierce or the oil company of which Pierce is the head for any services rendered in connection with the civil proceedings against the oil company or the criminal proceedings against Pierce. These denials are shown by records cited by the attorney general of Texas, to be either fabrications or subterfuges. Thus the man who six months ago solemnly challenged the veracity of the President of the United States and who has since that time used the word liar promiscously is called upon to swallow some of his own medicine.

There ought to be efficacy in the remedy for the senator has been given a large dose. His case is a chronic one, with long existing complications. A malady of six years' duration must needs require a remedy of heroic proportions. Such a remedy is administered in a letter which Attorney General Davidson has addressed to Sen-
378 ator Bailey. This letter is in reply to the statement which Senator Bailey gave out from Washington in which he charged a political conspiracy against him, talked wildly about forged documents and threatened prosecution for perjury and goodness knows what besides. The letter from the attorney general is *cl*aculated to knock a hunk of placidity out of the senator's bump of serenity, and is as follows:

Davidson to Bailey.

AUSTIN, TEXAS, *Nov.* 30, 1906.

Hon. J. W. Bailey, Washington, D. C.

DEAR SIR: For more than six years the people of Texas have lived under the shadow of the wrong perpetrated against them by the reintroduction of the Waters Pierce Oil Company into Texas under your guidance and direction after it had been outlawed by the highest courts of the land. During all of this period of time it has plundered the people without conscience and the obligation which I, as attorney general owed to them, prompted me to exhaust every effort to purge this state of an institution which should never have been permitted to re-enter.

In developing the testimony necessary to convict that corporation of continued violations of our laws, I have proceeded with an eye single to that purpase. That our investigations have developed the fact that you have not been candid with the people in stating your connection with its reintroduction has only filled me with shame and sadness.

Even under the great provocation of having unworthy motives ascribed to me, my assistants and associates, I have had no feeling other than that of sorrow, that one to whom has been entrusted the high position of United States senator should resort to abuse and vilification in an effort to silence the righteous indignation of our people.

379 In my anxiety to escape a controversy that might have injuriously affected the interests of the state in the case of the Waters Pierce Oil Company, I have refrained from denying your mis-statement, to the effect that you had tendered your services to the state in that case.

If the attack made by you on me through the papers of this date were purely personal, I might still refrain, but when you charge that the officers of the State have entered into a conspiracy to do injury to a citizen I owe it to the people who elected me to an honorable position to answer.

I have filed a petition wherein it is charged that H. C. Pierce, acting for the Waters Pierce Oil Company before and after its reorganization paid out money in connection with the cases pending against the old company, thereby assuming obligations of the old corporation and that such sums so paid were audited and approved by the auditors of the Standard Oil Company of New Jersey. The allegations have been sustained by the district judge as proper: They would not have been made if the facts had not been regarded as pertinent nor would they have been if I had not been in position to prove them.

The circumstance that the evidence established that you received some of the money which the company charged to expenses and connected with the Texas anti-trust cases is a fact for which I am in no sense responsible; and my idea of the discharge of public duties does not comport with the suppression of evidence because such evidence might injure one in high position.

That you may have an opportunity of explaining the facts suggested by the notice filed by us in the discharge of official duty, I make the following statements and ask the following questions:

April 25, 1900, you received from H. C. Pierce $3300.

This sum was subsequently returned to H. C. Pierce by the
380 Waters Pierce Oil Company and charged as "account of Texas cases." Was the sum given to you as a loan or as a fee? If a loan, has it ever been paid? If a fee, for what service?

On June 15, 1900, a charge was made in the books of the Waters Pierce Oil Company of $1500 paid to Henry & Stribling "on account of expenses of anti-trust civil case." Was not this sum paid by a sight draft drawn by you? You have stated that you did not draw on the Waters Pierce Oil Company for such sum. Did you draw such a draft on H. C. Pierce or J. D. Johnson?

You received $200 on November 23, 1900, which was charged up on the books of the Waters Pierce Oil Company as "on account of the Texas cases." Did you represent the Waters Pierce Oil Company or H. C. Pierce in Texas in any case other than the anti-trust case? Was the sum paid to you by H. C. Pierce or the Waters Pierce Oil Company?

On March 28, 1901, or about that time, you wrote a letter to H. C. Pierce, in response to which you received New York exchange for $1750. This sum was charged up on the books of the Waters Pierce Oil Company as "on account of Texas legal expenses." Did you in this letter request a loan, or did you demand a fee? If a loan, has it been paid? If a fee, for what service?

On March 6, 1901, you executed your note for $8000 due in four months to H. C. Pierce. You received Pierce's check for the amount. He immediately had the amount repaid him by the Waters Pierce Oil Company. Has this note ever been paid? Has payment ever been demanded?

Yours truly, R. V. DAVIDSON.

381 Defendant next offered in evidence the following portion of an article in The Austin Statesman of Dec. 1, 1906, as published in the issue of said paper of said date, viz:—

Replies to Bailey.

Attorney General Davidson Gives Out Open Letter to Senator.

Asks Him to Answer Certain Questions.

Declares He has Learned Facts While Making Official Investigation that Fill Him With Sadness.

Attorney General R. V. Davidson last night gave out the following open letter written by him to Joseph W. Bailey in reply to a statement given out by Mr. Bailey in Washington Thursday night, a special report of which was published in The Statesman yesterday morning:

AUSTIN, TEXAS, *November* 30, 1906.

Hon. J. W. Bailey, Washington, D. C.

DEAR SIR: For more than six years the people of Texas have lived under the shadow of the wrong perpetrated against them by the reintroduction of the Waters Pierce Oil Company into Texas under your guidance and direction after it had been outlawed by the highest courts of the land. During all of this period of time it has plundered the people without conscience and the obligation which I, as attorney general owed to them, prompted me to exhaust every effort to purge this state of an institution which should never have been permitted to re-enter.

382 In developing the testimony necessary to convict that corporation of continued violations of our laws, I have proceeded with an eye single to that purpose. That our investigations have developed the fact that you have not been candid with the people in stating your connection with its reintroduction has only filled me with shame and sadness.

Even under the great provocation of having unworthy motives ascribed to me, my assistants and associates, I have had no feeling other than that of sorrow, that one to whom has been entrusted the high position of United States senator should resort to abuse and vilification in an effort to silence the righteous indignation of our people.

In my anxiety to escape a controversy that might have injuriously affected the interests of the state in the case of the Waters Pierce Oil Company, I have refrained from denying your mis-statement, to the effect that you had tendered your services to the state in that case.

If the attack made by you on me through the papers of this date were purely personal, I might still refrain, but when you charge that the officers of the State have entered into a conspiracy to do injury to a citizen I owe it to the people who elected me to an honorable position to answer.

I have filed a petition wherein it is charged that H. C. Pierce, acting for the Waters Pierce Oil Company before and after its reorganization, paid out money in connection with the cases pending against the old company, thereby, assuming obligations of the old corporation and that such sums so paid were audited and approved by the auditors of the Standard Oil Company of New Jersey. The allegations have been sustained by the district judge as proper. They would not have been made if the facts had not been regarded as pertinent nor would they have been if I had not been in a position to prove them.

383 The circumstance that the evidence established that you received some of the money which the company charged to expenses connected with the Texas anti-trust cases is a fact for which I am in no sense responsible; and my idea of the discharge of public duties does not comport with the suppression of evidence because such evidence might injure one in high position.

That you may have an opportunity of explaining the facts sug-

gested by the notice filed by us in the discharge of official duty, I make the following statements and ask the following questions:

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On June 15, 1900, a charge was made in the books of the Waters Pierce Oil Company of $1500 paid to Henry & Stribling "on account of expenses of anti-trust civil case." Was not this sum paid by a sight draft drawn by you? You have stated that you did not draw on the Waters Pierce Oil Company for such sum. Did you draw such a draft on H. C. Pierce or J. D. Johnson?

You received $200 on November 23, 1900, which was charged up on the books of the Waters Pierce Oil Company as "on account of the Texas cases." Did you represent the Waters Pierce Oil Company or H. C. Pierce in Texas in any case other than the anti-trust case? Was the sum paid to you by H. C. Pierce or the Waters Pierce Oil Company?

On March 28, 1901, or about that time, you wrote a letter to H. C. Pierce, in response to which you received New York exchange for $1750. This sum was charged up on the books of the Waters Pierce Oil Company as "on account of Texas legal expenses." Did
384 you in this letter request a loan, or did you demand a fee? If a loan, has it been paid? If a fee, for what service?

On March 6, 1901, you executed your note for $8000 due in four months to H. C. Pierce. You received Pierce's check for the amount. He immediately had the amount repaid him by the Waters Pierce Oil Company. Has this note ever been paid? Has payment ever been demanded?

Yours truly,

R. V. DAVIDSON,
*Attorney General.*

Defendant next offered in evidence the following portion of an article appearing in The Austin Statesman of Oct. 9, 1906, as published in the issue of said paper of said date, viz:—

Correspondence is Made Public.

Senator Bailey Offered to Testify in Waters-Pierce Case.

OCTOBER 6, 1906.

Hon. J. W. Bailey, United States Senator, Gainesville, Texas.

SIR: In answer to your letter of October 3, you are advised that the suit against the Waters-Pierce Oil Company was instituted without reference to any political effect, or without consideration of its consequences upon any person in this State; it was filed for the sole purpose of vindicating an outraged law and punishing a palpable fraud.

385 We have been engaged for months in collecting the necessary testimony upon which to base this action, and the suit was filed as soon as we had sufficient evidence in legal form.

You failed to point out the particular allegations in the petition to which you except. Had you done so I would have probably been in a position to point out its materiality.

I expect to prove every allegation made, and, in my judgment, each and every one is material and relevant to the case which the state expects to present to the Court.

I specifically deny that any allegation was made having in view any political consequence, or to aid a movement of any character.

The question of tendering your services to the state to aid in the prosecution, is one which you must settle according to your own inclinations. If you entertained such a purpose it was never communicated to me, although you had frequent opportunity to do so; and the grounds upon which you predicate your action in refraining from so doing, are based upon a construction for which you alone must accept the responsibility.

As stated, the sole purpose of this suit is to drive from the borders of this state a foreign corporation which has for twenty-five years preyed upon the people, and consumed their substance, which corporation when outlawed by a judgment of the highest court of the land was re-admitted into the state by a fraud, which for premeditated audacity and utter contempt of law has never before, nor since, been equalled in the history of this country. I have resisted every effort made to draw this case into politics as the interest of the state is paramount to the political fortunes of any person. Therefore, I trust that it will not become necessary for me to take any part in this agitation.

Referring to your proposal to testify in the case, concern-
386 ing the representation which the defendant made to you claiming its independence of all trust relations, I beg to advise that if your testimony should be limited to that issue I do not believe that it will be of any material value to the state's case, as I understand that defendant will not deny that it claimed to be independent.

Very respectfully,

(Signed) R. V. DAVIDSON,
*Attorney General.*

Defendant next introduced in evidence letter of date October 6, 1906, from R. V. Davidson, Attorney General, to Honorable J. W. Bailey, which appeared in The Austin Daily Tribune of date Tuesday October 9, 1906, and is as follows:

"AUSTIN, TEXAS, *Oct.* 6, 1906.

"Hon. J. W. Bailey, United States Senator, Gainesville, Texas.

SIR: In answer to your letter of October 3, you are advised that the suit against the Waters-Pierce Oil Company was instituted without reference to any political effect, or without consideration of its consequences upon any person in this State; it was filed for the sole purpose of vindicating an outraged law and punishing a palpable fraud.

We have been engaged for months in collection the necessary testimony upon which to base this action, and the suit was filed as soon as we had sufficient evidence in legal form.

You failed to point out the particular allegation in the petition to which — except. Had you done so I would have probably been in a position to point out its materiality.

387 I expect to prove every allegation made, and, in my judgment, each and every one is material and relevant to the case which the State expects to present to the Court.

I specifically deny that any allegation was made having in view any political consequences, or to aid a movement of any character.

The question of tendering your services to the State to aid in the prosecution is one which you must settle according to your own inclinations. If you entertain such a purpose it was never communicated to me, although you had frequent opportunity to do so; and the grounds upon which you predicate your action in refraining from so doing are based upon a construction for which you alone must accept the responsibility.

As stated, the sole purpose of this suit is to drive from the borders of this State a foreign corporation which has for twenty-five years preyed upon the people and consumed their substance, which corporation when outlawed by a judgment of the highest court of the land was readmitted into the state by a fraud, which for premeditated audacity and utter contempt of law has never before, nor since, been equaled in the history of this country.

I have resisted every effort made to draw this case into politics, as the interest of the state is paramount to the political fortunes of any person. Therefore I trust that it will not become necessary for me to take any part in this agitation.

Referring to your proposal to testify in the case concerning the representation which the defendant made to you claiming its independence of all trust relations, I beg to advise that if your testimony should be limited to that issue I do not believe that it will be of any material value to the state's case, as I understand that

388 defendant will deny that it claimed to be independent.

Very respectfully,

(Signed) R. V. DAVIDSON,
*Attorney General.*"

Defendant next introduced in evidence letter of date November 30, 1906, from R. V. Davidson, Attorney General to Hon. J. W. Bailey, which appeared in the Austin Daily Tribune of date Sunday, December 2, 1906, and which is as follows:

"AUSTIN, TEXAS, *November* 30, 190-.

"Hon. J. W. Bailey, Washington, D. C.

DEAR SIR: For more than six years the people of Texas have lived under the shadow of the wrong perpetrated against them by the reintroduction of the Waters Pierce Oil Company into Texas under your guidance and direction after it had been outlawed by the highest courts of the land.

During all that period of time it has plundered the people without conscience, and the obligation which I, as attorney general, owed them prompted me to exhaust every effort to purge this state of an institution which should never have been permitted to re-enter.

In developing the testimony necessary to convict that corporation of continued violations of our laws, I have proceeded with an eye single to that purpose. That our investigations have developed the fact that you have not been candid with the people in stating your connection with it- reintroduction has only filled me with shame and sadness.

Even under the great provocation of having unworthy —
389 ascribed to me, my assistants and associates, I have had no feeling other than that of sorrow, that one to whom has been entrusted the high position of United States senator should resort to *to* abuse and villification in an effort to silence the righteous indignation of our people.

In my anxiety to escape a controversy that might have injuriously affected the interests of the state in the case against the Waters Pierce Oil Company, I have refrained from denying your mis-statement to the effect that you had tendered your services to the State in that case.

If the attack made by you on me through the papers of this date were purely personal I might still refrain; but when you charge that the officers of the state have entered into a conspiracy to do injury to a citizen, I owe it to the people who elected me to an honorable position to answer.

I have filed a petition wherein it is charged that H. C. Pierce, acting for the Waters Pierce Oil Company, before and after its reorganization, paid out money in connection with cases pending against the oil company, thereby assuming obligations of the old corporation and that such sums so paid were audited and approved by the auditors of the Standard Oil Company of New Jersey. The allegations have been sustained by the district judge as proper. They would not have been made if the facts had not been regarded as pertinent, nor would they have been if I had not been in position to prove them.

The circumstances that the evidence establishes that you received some of the money which the company charged to expenses connected with the Texas anti-trust cases is a fact for which I am in no sense responsible, and my idea of the discharge of public duty does not comport with the suppression of evidence because such evidence might injure one in high position.

390 That you may have an opportunity of explaining the facts suggested by the notice filed by us in the discharge of official duty, I make the following statements and ask the following questions:

April 25, 1900, you received from H. C. Pierce $3,300. This sum was *was* subsequently returned to H. C. Pierce by the Waters Pierce Oil Company and charged as "account of Texas cases." Was the sum given to you as a loan or as a fee? If a loan, has it ever been paid? If a fee, for what service?

On June 15, 1900, a charge was made in the books of the Waters Pierce Oil Company of $1,500 as paid to Henry & Stribling, "on account of expense of anti-trust civil case." Was not this sum paid by a sight draft drawn by you? You have stated that you did not draw for such sums. Did you draw such a draft on H. C. Pierce or J. D. Johnson?

You received $200 on November 23, 1900, which was charged upon the books of the Waters Pierce Oil Company as on "account of Texas cases." Did you represent the Waters Pierce Oil Company or H. C. Pierce in Texas in any case other than the anti-trust case? Was the sum paid to you by H. C. Pierce or the Waters Pierce Oil Company?

On March 28, 1901, or about that time, you wrote a letter to H. C. Pierce in response to which you received New York Exchange for $1,750. This sum was charged on the books of the Waters Pierce Oil Company as on "account of Texas legal expenses." Did you in this letter request a loan, or did you demand a fee? If a loan, has it been paid? If a fee, for what service.

On March 6, 1901, you executed your note for $8,000, due in four months to H. C. Pierce. You received Pierce's check for the amount. He immediately had the amount repaid him by the Waters Pierce Oil Company. Has this note ever been paid? Has pay-
391 ment ever been demanded?

Yours truly,

R. V. DAVIDSON,
*Attorney General.*"

Defendant next introduced in evidence an editorial from the Austin Daily Tribune of date Friday, September 21, 1906, which is as follows:

"Waters-Pierce Suit.

"As foreshadowed in The Tribune, the expected has happened and the state has instituted suit against the Waters-Pierce Oil Company to oust it from the State and to recover penalties aggregating $5,228,400.

Attorney General Davidson has been busy for several months getting up evidence against the company and the testimony of Mr. Pierce in St. Louis last week, damaging as it was, had nothing whatever to do with the action of Attorney General Davidson and County Attorney Brady.

They had secured all of the evidence necessary before Pierce made his statement. His evidence only corroborated that which the State had obtained from various sources.

This case will be of special interest to Texans, as the trial is expected to put Senator Bailey under the brilliant blaze of the searchlight.

For several years Senator Bailey had been suspected of being in the very close confidence of the oil trust and its very able servant and defender, and recent developments tend to show that the suspicion has been fully confirmed.

Progress of the case just filed will be watched with interest."

392 Defendant next introduced in evidence the headlines of an article, and a portion of the article signed by "H. F. Ring, President of the Harris County Good Government Club," dated Houston, Texas, Sept. 16, 1906, and appearing in The Austin Daily Tribune of date Sunday Morning, September 23, 1906, the headlines to the article and the portion of the article offered in evidence being as follows:

Senator Bailey Under the Limelight.

"Shame of Texas" Is Now the Slogan.

Joseph W. Bailey, by His Own Admission "Is a Traitor Senator" to the People.

Does Not Mince Matters.

Good Government Club of Houston Starts the Watch-Fires in a Hot Campaign.

Address to the People.

* * * * * * *

"For twenty years or more the Waters Pierce Oil Company has operated in Texas, unopposed by the Standard, and time and again it had, by nefarious practices, crushed out all attempts to compete with it. The Standard Oil Company has never been known to fail to wage relentless war on every real competitor. Yet the bare assurance of some one was enough to satisfy Mr. Bailey that he was "interceding" for "an independent concern." That "assurance" prevented this green and innocent one from knowing that he was being used as a tool by the Standard Oil Company; from knowing what ever- intelligent merchant and farmer in Texas,
393 knew, namely: That the Waters Pierce Oil Company was controlled by the Standard Oil. And now, since this well known fact has been recently established in a judicial proceeding brought by the attorney general of Missouri, we understand that Mr. Bailey is about to make some kind of grandstand play for the purpose of fooling his constituents into the belief that in 1900 he was innocently imposed upon by the representatives of the Standard Oil Company. Will they be fooled?"

The defendant next introduced in evidence the following article, and the headlines to the article, as same appeared in the Austin Daily Tribune, of date Thursday, November 22, 1906, viz:

"Grand July Indicted H. C. Pierce for Perjury.

The Oily Fox Ensconced in Fastnesses of Empire State to Prevent His Extradition from Missouri.

"That H. C. Pierce recently slipped out of Missouri and went over to the State of New York is taken here to mean that he is ap-

prised of the indictment against him by the Austin Grand Jury for false swearing in his statement to the Court concerning the relations existing between the Standard Oil and Waters Pierce.

It has been rumored here for some days that the Grand Jury of the District court had returned a true bill of indictment against H. Clay Pierce of St. Louis, President of the Waters Pierce Oil Company, and such an indictment has been looked for for a long time. The report was practically confirmed here yesterday although none of the officials connected with the court would make the open
394 statement that such is the case. It is stated, however, that Mr. Pierce knew whether he had been indicted or not, and the further fact was announced that immediately after the report of the alleged indictment became current Mr. Pierce left the State of Missouri and he is now said to be in New York. He also had some of his Texas attorneys come to St. Louis and confer with himself and attorneys in that city in regard to the proposed criminal prosecution here.

The charge against Mr. Pierce contained in the indictment is false swearing. The particular offense is that the affidavit which he made to the Secretary of State of Texas in 1900 at the time the Waters Pierce Company was re-admitted to do business in the state, was false in that it stated that none of the stock of that company was owned or controlled by the Standard Oil Company.

Although the offense of perjury is debarred by limitation at the expiration of three years, it is stated that this limitation runs for only the time that the accused is in Texas. As Mr. Pierce has been out of Texas for most of the time since the alleged offense was committed he is alleged to be still amenable to the law."

The defendant next introduced in evidence the headlines to, and a portion of, an article appearing in the Austin Daily Tribune of date Monday, November 26, 1906, as follows:

395 "Objections Overruled in Waters-Pierce Suit.

Victory Is Now in Sight for Texas Against Oil Trust.

State Asks Time to Amend Petition.

"In the case of the State of Texas against the Waters-Pierce Oil Company this morning Judge Brooks sustained several exceptions from the approximate number of 145 raised by the defendant to the State's petition * * * * * *"

The defendant next introduced in evidence the headlines to, and portions of, an article in the Austin Daily Tribune of date Wednesday, November 28, 1906, as follows:

"State Springs Sensation.

Wants to Know About Bailey's Connection With Re-Admission of Oil Trust.

Books and Vouchers Are in Great Demand.

Which the State Alleges Will Show That the Senator Was Paid Some Fourteen Thousand Dollars.

"The name of Joseph W. Bailey, United States Senator, was brought into the Waters Pierce suit as having received remuneration from the concern for services rendered and loans, it is alleged by the State. The Senator may have an opportunity to explain.

396 "A new sensation was sprung by the State in the Waters Pierce Oil controversy when they brought into the case last evening alleged facts concerning the connection of Senator Joseph W. Bailey with the Waters Pierce Oil Company. They demand correspondence, vouchers, cancelled checks and other papers relating to the alleged payment of several sums of money to him for services rendered on account of demand made to him and on account of a loan of $8000 in March, 1901, for which he gave his note, so it is alleged. The state alleges that the total amount of $14,570 was paid to the Senator on account of services and as loans."

* * * * * * *

"Demand Company Records.

"Last evening at seven o'clock before District Clerk J. P. Hart, the state filed a demand of the Waters Pierce Oil Company of records of transactions of the concern. The papers demanded follow:

No. 24,551.—The State of Texas *vs.* Waters Pierce Oil Company, suit Pending in the Twenty-sixth District Court of Travis County, Texas. To Messrs. Cochran & Penn, attorneys of record for the Waters Pierce Oil Company, defendant:

"You are hereby notified to produce upon the trial of the above entitled and numbered cause the following contracts, agreements, documents, records, books letters and memoranda:

The original trust agreement entered into upon the second day of January, A. D. 1882, and being the instrument set out in plaintiff's original petition commencing on page 6 thereof and marked Exhibit A.

The supplemental agreement entered into on the 4th day of January, A. D. 1882, the same being the instrument set out
397 in plaintiff's petition, commencing on page 13 and marked Exhibit B. Agreement entered into on the 5th day of October, 1894, between the Eagle Refining Company, party of the first part; S. S. Drake, A. G. Carpenter, W. A. Smith, W. H. K. Rose, A. W. Clem, parties of the second part, and the Waters Pierce Oil Company, party of the third part, relating to the purchase by the Waters Pierce Oil Company of the assets and property of the Eagle Refining Company in Texas.

Memoranda of agreement dated St. Louis, Mo., September 13, 1894, addressed to W. H. K. Rose, general manager of the Eagle Refining Company, Cleveland, Ohio, relating to the purchase by the Waters Pierce Oil Company of the Eagle Refining Company's plant, stock, business, etc., situated in the State of Texas and signed by H. C. Pierce, president, and William H. K. Rose.

Resolutions adopted at a special meeting of the directors of the Eagle Refining Company, held in the City of Cleveland, Ohio, on October 1, 1894, and signed W. A. Smith, secretary, accepting the proposition of the Waters Pierce Oil Company of Missouri, for the purchase of the branch of the Eagle Refining Company at Dallas, Texas.

Memoranda of agreement entered into October 5, 1894, between the Waters Pierce Oil Company and A. W. Clem relating to the employment of Clem as manager.

Contracts and agreements entered into between the Waters Pierce Oil Company and the Texas Oil and Gasoline Company or Roy Campbell, relating to the purchase of the business and assets of said company and the employment of Roy Campbell.

Copies of all letters addressed to A. W. Clem or Roy Clem relating to the management of those two concerns.

All maps outlining and defining the territorial limits of the Waters Pierce Oil Company.

398 Memoranda of agreement made by attorneys Johnson & Priest with attorney General Hadley of Missouri, while taking the testimony of H. H. Rogers, wherein it was admitted that now and during the time charged in the information that all shares of stock of the Waters Pierce Oil Company standing on its books in the name of M. M. Van Buren are held for the Standard Oil Company of New Jersey.

All letters, letter books and records showing copies of all letters from J. D. Johnson to George Clark of Waco and from Clark to Johnson and from Johnson to all parties in Texas and all letters from J. D. Johnson and George Clark to J. W. Bailey and all letters from Johnson and Clark to parties in New York, etc., relating to the settlement of the case at Waco against the old Waters Pierce Oil Company.

Personal vouchers of H. C. Pierce, dated April 25, 1900, for $3300, for money advanced to Joseph W. Bailey, as a demand loan on account of Texas cases; also voucher record book showing entry of such voucher; also bills receivable book of defendant showing entry of demand loan to Joseph W. Bailey on April 25, 1900, for $3300; also voucher record book showing entry of voucher No. F-462, issued June 30, 1900, by Waters Pierce Oil Company for $3300 and audited by D. W. Conrey, auditor of the Standard Oil Company of New Jersey; also cash book, folio 156, of defendant in use June 30, 1900.

Voucher record of defendant in use June 15, 1900, showing entry of voucher F-86 to Henry & Stribling of Waco, Texas, "account of expenses in anti-trust civil case of State of Texas *vs.* W. P. Oil Co. at Waco." approved by J. W. Bailey; also sight draft drawn by J. W. Bailey for $1500 on Waters Pierce Oil Company for said amount

paid Henry & Stribling; also cash book in use at that time containing folio 117, showing record of said transaction.

399 Voucher record of defendant in use November 23, 1900, showing entry of voucher No. L-130, dated November 23, 1900, for $200 paid to J. W. Bailey "account of Texas cases"; also cash book in use November 23, 1900, containing folio No. 110, showing record of above transaction.

Also similar records showing $3100 advanced to J. D. Johnson and paid out by him in connection with the Waco (Texas) penalty suits.

Check of H. C. Pierce, dated March 28, 1901, for $1750, sent to J. W. Bailey, in response to a letter from J. W. Bailey to H. C. Pierce of that date requesting New York Exchange for that amount; also draft of Fourth National Bank of St. Louis, No. 561890, on Chatam National Bank of New York, transmitting to J. W. Bailey $1750; also cash books showing this record.

Voucher records of defendant in use March, 1901, showing entry of voucher No. C-12, audited by C. W. Norman, auditor of the Standard Oil Company of New Jersey for $8000 for "amount of loan to J. W. B. as per note in hands of treasurer"; also bills receivable book of defendant in use at the time, showing entry of said note and cash book of that date showing entry of said transaction; also check of defendant No. 44430 for $8000.

In event of your failure to produce the above books, records, documents, etc., the plaintiff will introduce secondary evidence to prove the contents thereof."

Defendant next introduced in evidence the following article from the Austin Daily Tribune of date Sunday, December 9, 1906:

"To the Waters Pierce Oil Company: Skiddoo!"

400 Defendant next introduced in evidence the headlines to, and an article, and in connection therewith a letter from R. V. Davidson, Attorney General, dated Austin, Texas, December 7, 1906, to Hon. J. W. Bailey, all of which appeared in the Austin Daily Tribune of date Sunday December 9, 1906, and which are as follows:

"Six Hundred Demand Defeat of Bailey.

Representative Travis County Democrats Emphatically Opposed to Re-election of Oil Senator.

"Signed by six hundred democrats of Travis County, a petition asking Representative Robertson to vote against Senator Bailey for the United States Senate is being circulated throughout the county. The petition is simple, asking only of Mr. Robertson that he vote against the re-election of Senator Bailey. Copies of the petition were sent to all parts of the County and the eagerness with which it was approved indicates unquestionably the sentiment of the people in Travis County.

Discussion was continued today and many are quoted as saying that they are of the opinion that the senator is up a tree. The At-

torney General placed marked emphasis in his reply to Mr. Bailey's statement. Many hot words are being exchanged between those interested in the fight.

"Senator Bailey departed Friday evening for Dallas and it is expected that he will return to Austin this evening. Just what course he will pursue or just what new sensations will be sprung it is difficult to predict, although developements of interest are expected. The documentary evidence presented by Attorney General Davidson is deemed by many incontrovertible, but the howl of forgery and perjury is being cheered by Bailey's henchmen in the city.

401 "The statement to the people of Texas was given out by Attorney General Davidson Friday night and contained many interesting disclosures. It read as follows:

"The following reply was made by Attorney General Davidson Friday night:

AUSTIN, TEXAS, *December* 7, 1906.

"Hon. J. W. Bailey, Austin, Texas.

SIR: In view of the admissions contained in your letter of yesterday in response to some of the questions set out in my letter to you of November 30, I desire to say only this:

I have never co-operated in any movement to prevent your reelection, but have confined myself to my official duties and to the preparation for trial of the case of the State of Texas *vs.* the Waters Pierce Oil Company. Some of those who are actively opposing you politically asked me to show them the evidence in my possession, but I declined to accede to the request.

But for the fact that the charge is made that I have in my possession, and am using forged documents connecting your name with the Waters Pierce Oil Company I would not make any reply to your letter.

My sense of duty to the people of this State now impels me to make public the evidence in my possession relating to that matter, and I herewith give copies of said documents to the press. The documents are not forgeries. The copies are as follows:

The Western Union Telegraph Company.

1539 Ch. Kk. No. 26. Pd.

402 LAKE NEBAGAMON, WIS., *June* 12.

Andrew M. Finlay, St. Louis.

Audited—H. H. Stein.

If Johnson approves, authorize Bailey to loan Stribling on his note $1500. Bailey should quiet all Texas parties. Tell him I will see him soon.

11:05 a. m. H. C. PIERCE.

The following notation written on telegram:

S. D. drawn by Bailey for $1500.

(*Receipt.*)

$1500.00 ST. LOUIS, MO., *June* 15, 1900.

Received of Waters-Pierce Oil Company, fifteen hundred dollars, J. W. B., account Texas cases.
Voucher F86 W. P. O. Co.
Audited—H. H. Steain.
(Signed) H. C. PIERCE.

No. 3.

(*Voucher.*)

ST. LOUIS, MO., *Nov.* 23, 1900.

Waters-Pierce Oil Company to H. C. Pierce, Dr.

Amount paid J. W. Bailey account Texas cases..... $200.00

Approved for payment—J. P. Gruet, Secretary.
Audited—W. H. Glancy.
Entered—V. R. W. H. Glancy.
Received November 23, 1900, from Waters Pierce Oil Company two hundred dollars in full payment of above account.
H. C. PIERCE.

403 No. 4.

(*Note.*)

$8,000.00. WASHINGTON, D. C., *March* 1, 1901.

Four months after date I promise to pay to the order of H. C. Pierce Eight Thousand Dollars at his office in St. Louis, Mo., for value received.

J. W. BAILEY.

No. —. Due July 14, 1901.

To the above note were attached the following letter and voucher:

The Waldorf-Astoria, Fifth Avenue, Thirty-third and Thirty-Fourth Streets and Astor Court.

NEW YORK, *March* 4, 1901.

J. P. Gruet, Esq., Sec'y.

DEAR SIR: Take this note into bills receivable and deposit company's O'K' for like amount to my credit with Fourth National Bank, as I have given B— my check.

Yours truly, H. C. PIERCE.

(*Notation on Letter.*)

Check No. 44430, $8,000 deposited in Fourth National Bank to cridit of H. C. Pierce.
Cash voucher No. C12, March 6, 1901.

(*Voucher.*)

ST. LOUIS, Mo., *March* 6, 1901.

Waters Pierce Oil Company, to H. C. Pierce, Dr.

For amount of loan to J. W. B. as per note in hands of treasurer ..... $8,000.00

Entered—E. H. Avery.

Approved for payment—J. P. Gruet, Secretary.

404 Received, St. Louis, March 6, 1901, from Waters-Pierce Oil Company Eight Thousand Dollars, $8,000.00 in full payment of above account.

H. C. PIERCE.

By J. P. GRUET, *Secretary.*

Audited—C. W. N.

(*Voucher.*)

ST. LOUIS, Mo., *June* 30, 1900.

Waters-Pierce Oil Company, to H. C. Pierce, Dr.

APRIL 25:

To demand loan to Joseph W. Bailey, see Mr. Pierce's personal voucher of April 25..... $3,300.00

Account Texas cases.

Audited—H. Naudant.

Entered V. R.—J. P. G., Jr.

Approved for payment—J. P. Gruet, Secretary.

Received July 18, 1900, from Waters-Pierce Oil Company, thirty three hundred Dollars ($3,300.00) in full payment of above account.

H. C. PIERCE.

The following endorsements on the back of the above voucher: Voucher No. F462. Waters-Pierce Oil Company St. Louis, Mo. Amount—$3,300.00 Date—June 30, 1900. Audited—D. W. Conrey. In favor of H. C. Pierce Cash Book Folio 156 Charge to Bills Receivable. Amount, $3,300.00.

405 (*Voucher.*)

No. 2.

ST. LOUIS, Mo., *June* 15, 1900.

Waters-Pierce Oil Company, to Henry & Stribling, Waco, Drs.

Account of expense in anti-trust civil cases of State of Texas *vs.* W. P. O. Co. at Waco..... $1,500.00

O. K.—J. D. Johnson.

Draft delivered to Mr. H. C. Pierce by Mr. Gruet, November 17, 1901, H. N.

J. P. GRUET, *Secretary.*

Audited—H. Naudant.

Approved for payment—A. M. Finley, Vice President.

Received, June 15, 1900, from Waters-Pierce Oil Company, fifteen hundred dollars ($1,500.00) in full payment of above account. Draft attached.

To the above voucher were attached the following documents:

Memoranda:

Henry & Stribling, fees Waco civil cases, anti-trust, civil cases.

Audited—H. H. Stein.

(*Letter.*)

No. 5.

Lindsay House, Headquarters Post K. T. P. A. of A., D. McGraw, Proprietor.

GAINESVILLE, TEX., *March* 28, 1901.

Mr. H. C. Pierce, St. Louis, Mo.

MY DEAR PIERCE: Send me New York exchange for $1,750. Have it made payable to my order, so that it will not be
406 necessary for you to endorse it. Send it at once, as I ought to have had it several days.

Your friend, J. W. BAILEY.

Audited—W. J. Higgs.

(*Letter.*)

Waters-Pierce Oil Company.

Henry Clay Pierce.

ST. LOUIS, MO., *June* 10, 1901.

Mr. J. P. Gruet, Secretary.

DEAR SIR: Please send New York exchange for $1,750 to Joseph W. Bailey, Gainesville, Texas, and charge against legal expenses on account of Texas legislation.

I send this amount personally to Mr. Bailey in response to his enclosed letter of March 28. Since then Mr. Bailey has returned the amount to me, and it is now proper for the company to make this payment.

Attach Mr. Bailey's letter to your voucher and merely enclose the draft to him without voucher. His enclosed letter will be your voucher.

Yours truly, H. C. PIERCE, *President.*

Audited—W. J. Higgs.

(*Voucher.*)

ST. LOUIS, MO., *June* 12, 1901.

Waters-Pierce Oil Company to J. W. Bailey, Gainesville, Texas.

For legal expenses, account Texas matters..... $1,750.00

As per letter J. W. B. herewith attached, dated March 28, Fourth National Bank, St. Louis, draft No. 561890 on Chatam National Bank, New York.

407 Audited—A. J. Hutchinson.
Entered V. R.—J. P. G., Jr.
Approved for Payment—J. P. Gruet, Secretary.
Received June 12, 1901, from Waters-Pierce Oil Company, seventeen hundred dollars, $1,750.00, in full payment of above account. Receipt attached.
Audited—W. J. Higgs.

Respectfully,

R. V. DAVIDSON,
*Attorney General.*

Defendant next offered in evidence letter from E. G. Senter, dated Dallas, Texas, Dec. 15, 1906, addressed to the Democratic Voters of the Sixth Senatorial District, and the headlines to the letter as same appeared published in the Austin Daily Tribune of date Sunday Morning, December 16, 1906, as follows, to-wit:

"Arraignment of Senator Bailey.

Senator Elect W. Senter Gives Forceful Reasons Why Bailey Should Not Return to Senate.

"Dallas, Dec. 15.—The following letter was given out here today by State Senator-elect, E. G. Senter:

DALLAS, TEXAS, *Dec.* 15, 1906.

To the Democratic Voters of the Sixth Senatorial District:

The disclosures relating to Mr. Bailey, which have been made public since the primary election create a condition without a precedent. Under similar circumstances, any conscientious
408 judge would grant a new trial in a case pending before him. There are abundant evidences of a strong public demand for a rehearing in the senatorial matter, and believing that this issue is one which should be settled by the democratic voters of the State, rather than by the members of the thirtieth Legislature, I beg to *beg to* submit to you the question whether under the changed conditions, you will now instruct me to vote for or against Mr. Bailey for United States Senator. I do not undertake to say how your will should be expressed, but beg to suggest that it can be ascertained, without serious inconvenience, through mass meetings or local primaries. Inasmuch as the time for action is short, I take the liberty of suggesting further that whatever steps you may choose to take should not be deferred later than Saturday December 29.

The claim that Mr. Bailey has a vested right to the Senatorship by reason of the action of the democratic primaries and state convention must be considered as any other claim of title. If it is proposed to stand upon technicalities, the answer is that the people's forum only acts as a cou-t of equity. If any equity is asserted the claim must come with sufficient proof of clean hands, and that is the very question at issue.

It would be a cowardly evasion of my plain duty if I did not advise you of my own convictions touching this matter.

Up to the time of the publication of the evidence in the possession of the attorney general, and the subsequent admissions of Mr. Bailey I was committed to the view that loyalty to democratic precedents required that every doubt should be resolved in his favor, and in my own mind I have labored long and earnestly to convince myself that I could, without doing violence to my own convictions, make reasonable and satisfactory explanation of the transactions
409 which have lately come under review. The result is, after mature deliberation, that I now come to make public confession of my own mental pettifoggery. All of the years of my life have been given to the advocacy of another kind of gospel. From infancy I was taught that Robert Lee's sublime abnegation and self chosen poverty set a historical standard for Southern leadership which no man had dared or would ever dare to tramble in the dust. Fortune-getting I believe to be incompatible with a zealous and faithful administration of a public trust. The fact that Mr. Bailey has risen, within the brief space of six years, from admitted poverty to affluence, while his time belonged wholly to the public is a circumstance that in the case of any official should call for full and candid explanation. Has this been vouchsafed by Mr. Bailey? Let the record speak for itself:

The public was assured that it had been put in possession of the whole truth when the subject was under investigation six years ago. Did Mr. Bailey deal candidly with the public at that time?

In his late speech-making tour through Texas to explain his connection with the Waters Pierce Oil Company, Mr. Bailey assumed to tell, with emphasis, the full history of his connection with that company. Did he then deal candidly with the public?

Has the public yet been taken into the full confidence of Mr. Bailey, and have all the transactions of the same general class as those under review been disclosed? Has the account between him and Pierce and his associates been closed, and is Mr. Bailey ready to make an exhibit of the whole to the public eye? These questions are pertinent in view of the slow and tedious processes by which all that the public knows about this matter has been revealed.

The trust is that all that he has disclosed about the matter has been in belated explanation of some fact which found its
410 way to the public over his violent protest.

A legislative investigation has been called for, but nothing it could unfold could affect the moral force of these admitted facts:

First. That Mr. Bailey undertook to act as the interceding friend of the Waters-Pierce Oil Company upon no greater evidence of its

innocence than a letter of introduction delivered to him by Pierce and written by David R. Francis, whose identity with law-defying and trust-promoting interests was at the time notorious.

Second. That concurrently with the friendly service which he rendered to the Waters-Pierce Oil Company, Mr. Bailey began to borrow large sums of money from Pierce, that these loans were increased, and that they have apparently been discharged by fees charged against Pierce and his associates for subsequent service.

Third. That the group of financiers surrounding Pierce have, since the re-entrance of the Waters Pierce Oil Company into Texas paid enormous fees to Mr. Bailey, which, in cases disclosed to the public, have been wholly out of proportion to the services rendered, measured by the customs of this state.

Fourth. That Mr. Bailey's reputation as a lawyer was as well established prior to 1900 as thereafter, but that the group of financiers whose clientage brought him wealth did not, as far as the public is advised, seek his counsel or services until after the Waters-Pierce Oil Company re-entered Texas.

It is contended that these controlling facts show nothing more than indiscretion. If that be true, the reply is that there are some kinds of indiscretion which are offenses against the public weal, and this is one of them. It is also true that the case here presented exhausts the possibilities of proofs, whatever might be the circumstances.

411 The special interests which seek to coax or to lure a public servant into their camp do not commit the folly of making vulgar propositions. The most that can ever be charged or proved against them is that they place Aladdin's lamp in the hands of the official upon whom they have designs and bid him *greatly* his lust for wealth.

If Mr. Bailey was insensible to the meaning of the extraordinary favors showered upon him by Pierce and his associates can he be safely trusted with the vast responsibilities which rest upon a representative of Texas in the nation's highest parliament? If he devined their purposes and took those benefits with the concealed design to render no reciprocal services, is he longer worthy either of their confidence or of ours?

We cannot shut our eyes to the significance of the fact that the publication of documents in the hands of the attorney general brought the reluctant admission from the general counsel of the Waters Pierce Oil Company, and also from one of the attorneys for the state in the prosecution against it that a large sum of money was paid by the company to that attorney *from* subsequent services.

It is clear from the evidence which has been published that both Pierce and the Standard Oil Company understood that these transactions with Mr. Bailey were based upon his services in behalf of the re-admission of the Waters Pierce Oil Company. The transfer of Mr. Bailey's obligation by Pierce to the Standard Oil Company and the entries made upon the records of that company declaratory of these transactions are proofs indisputable of the underlying motives by which they were both actuated. These records were made

long ago and were not intended for the eye of the public. They are against the interests of both Pierce and the Standard Oil, and it must be assumed that the- speak the truth as far as these
412 parties are concerned. It is urged that Mr. Bailey is not responsible for the transfer of his notes by Pierce to Standard Oil. Very true. But he is chargeable with notice of Pierce's understanding of the nature of the transactions between himself and Pierce. It is difficult to believe that a man of Pierce's experience could have been misled touching a matter of this sort. He was many times a millionaire and did not need to discount Mr. Bailey's notes in order to raise funds. He is not charged by any one with being such a penurious trickster as one *who* would have been who unloaded these obligations upon the Standard Oil upon false pretense, for the purpose of casting a loss upon it which might otherwise have fallen upon himself.

Texas is entitled to a weight and influence in Congress unimpaired by personal embarrassment on the part of either of its representatives. It must be apparent to every candid mind that Mr. Bailey's influence as a senator has gone. His re-election would furnish the enemies of democracy with lamentable proof of our laxity of view with respect to our own shortcomings, but it could not rehabilitate him as a National leader. The best evidence that our national standards are still unsullied is given by the fact that no man can long fill a conspicuous place in the confidence and affections of the people of this country unless he wholly eschews the hunger and thirst for wealth.

Another potent reason why I believe Mr. Bailey's course should not be endorsed is that such actions would be, in effect, a general license to public officials, the evil results of which would not be slow to manifest themselves in the public service. If Mr. Bailey can do these things and escape censure, why should others hesitate to follow his example? Can it be doubted that such a precedent would sow dragon's teeth in every community in this State?
413 Shall we permit a lower standard of conduct to a United States Senator than would be tolerated in a minor official? If a District Judge should quickly pass from poverty to wealth as the result of favors from a syndicate of financiers who had profited by his action on the bench could words express the public indignation which would be felt upon the disclosure of the transactions.

In its broadest phases—as it may affect official conduct and public sentiment in this State, and as it may shape the ideals of the young men who are coming on and must soon take up the control of public affairs—this is a moral issue. I-s disposition is of supreme importance, not only to Texas, but to the republic, because it is the first case since the beginning of the government that such transactions as have been traced to Mr. Bailey, on the part of a United States Senator, have been presented as they are presented here for approval or condemnation by a sovereign state. If upon such an issue Texas should not be found upon the side of sound and whole-

some public morals, well may the thinking Americans tremble for the future of this country.

It is a palpable evasion of the issue to declaim against those who have been instrumental in making these transactions public. The skillful lawyers always expend their indignation upon the witness who has brought his client to the bar, but the intelligent juror, understanding that the quality of the client's act must be measured by a standard that is not varied by the mechanism through which the law travels to its facts. A faithful public servant has no occasion to quarrel with those who turn the calcium upon his inner life, and their reasons are wholly irrelevant to the question whether the acts should be approved or disapproved.

414 There is a graver question here involved than Mr. Bailey's future. His conduct has placed in jeopardy the future of the democracy of the nation. He has, at the national capitol as well as in Texas, defiantly announced that he intends to continue in the course for which he is now arraigned. His re-election is sought as a vindication of his conduct. This puts him without giving full and emphatic approval to all that he has done, and in view of his attitude with respect to the matter, who can doubt that he would so construe a re-election? To give him a clear acquittance is to make a jest of every sentence touching unlawful trusts and public morals that will be written in democratic platforms in the next national campaign. It would make Texas and Bailey the fruitful theme of every Republican orator who should take the stump against Bryan in 1908, from Maine to California, and we delude ourselves if we imagine the effect would not be serious to the party. Will such an example tend to invite the confidence of thoughtful voters in doubtful states? Can the democracy of the nation point to the senate unabashed with Mr. Bailey there? This question, it should be remembered, will not be answered by personal friends and partisans, but by the millions of silent voters of the land who hold no briefs for any leader, but who in the quiet of their homes, mindful of no influence save God and country, take counsel with their own consciences.

Beyond all questions of party stands out plain and luminous the fact that we cannot approve Mr. Bailey's conduct without approving the wrong for which no penance has been done and no apology has been made. The personal affection which now seeks with all its arts and power to shield him is almost as magnificent as a mother's unquenchable love. He must be dead indeed to the richness of

415 human friendship who can witness without a throb of sympathy the enfolding kindness which it now throws around Mr. Bailey—a touching witness to the greatness which he has so recklessly sacrificed. But while this spectacle challenges our admiration, in the silence of the night, when God reigns and conscience speaks, there stands out luminously this admonition written across the face of the heavens: "For unto whoms-ever much is given, of him much shall be required."

Respectfully, E. G. SENTER."

Defendant next introduced in evidence the headlines to and a portion of an article from the Austin Daily Tribune of date Sunday, December 30, 1906, as follows:

"Travis Democrats Oppose Bailey.

Many Prominent Speakers Make Addresses at Friday Night's Meeting.

Very Much Enthusiasm.

Appeals Were Made for United Action on the Part of Every Voter in the County.

"Purity in politics prohibits public men from taking advantage of their influence for gain or retire them, was the sentiment of about sixty-five representative men of Austin and Travis County who gathered at the anti-Bailey Democrats' club headquarters Friday
416 evening and yesterday afternoon assumed a stronger opposition to Mr. Bailey's continuance as United States Senator. Much enthusiasm prevailed and each address was the occasion of intense interest. The speakers were roundly applauded. Strong statements that were convincing and vigorous appeals for united action on the part of every voter features each address, and the speakers themselves were men of prominence in the political eye.

The opposition to the Senator is growing each day and added effort on the part of those interested to place the matter under the consideration of the voters is being put forth.

Jingling the Silver.

"God forbid the time when a nomination could not be called when the nominee was found to be so unworthy," said Hon. T. S. Johnson, formerly office assistant attorney general under Attorney General T. S. Smith, and who formerly resided in Hill County.

Judge Johnson called attention to the many political occur-ences and the position of the Senator. The refusal on the part of the executive committee to place the name of Mr. Bailey on a new primary was also criticised. The numerous "loans" granted the senator Judge Johnson condemned in strong terms and without hesitation.

He stated that he was present in the committee room during the process of investigation by the Legislature of Bailey and that the senator had, before the committee, made a clean breast of it all. Judge Johnson stated that he sympathized with him at the time, but it had developed since that he was jingling $7500 of the Waters Pierce Oil money at that very time.

Was Once a Bailey Man.

In response to a question Mr. Johnson stated that at the time he believed in Mr. Bailey he was office assistant attorney
417 general under T. S. Smith. The Waters-Pierce Oil Company was re-admitted to transact business in Texas during the time Mr. Smith was attorney general.

He appealed to his audience for unity of action in the campaign and urged that a strong organization be effected in Travis County and carry it in a whirl against such an official as Mr. Bailey.

What Outburst Means.

"If Pierce didn't have Bailey ride with him in his private car, Pierce was ungrateful," said E. T. Moore, Sr., a prominent lawyer and former member of the Legislature, who was the next speaker. His address was forcible and straight to the point. He dodged no issue and treated the subject vigorously. The meaning of this instantaneous activity and outburst among the people where there had been no opposition or invitation he inquired and emphasized that the people of Texas demanded purity. To one who bartered their rights they would retire him from public life.

That Texas had been outraged, Mr. Moore pointed out, greatly to the amusement and approval of the audience. He called attention to how regardless of the fact of the banishment of the Waters Pierce Oil Company by all of the Courts, when Bailey was convinced of its injustice, he raised the ban and brought them back, at the expense of the citizens.

Did Not Vote for Bailey.

Continuing, Mr. Moore said: "I was a member of the Legislature which investigated and elected Bailey, and although he was without opposition, I knew better and I did not vote for him." He criticised the senator for the re-admission of the Waters Pierce Oil Company regardless of the fact that the Courts outlawed them. He re-
418 ferred to the loans after a mere letter of introduction."

* * * * * * * *

Defendant next introduced in evidence the following article which appeared in the Austin Daily Tribune of date Thursday, January 3, 1907:

"Why All Democrats Should Oppose Bailey.

"It is the plain duty of every democrat that loves his country on next Saturday to attend the primary and by his ballot vote against Senator J. W. Bailey, whose actions while in the Senate have been contrary to the principles of democracy and against his own people. It is the bounden duty of the good citizenship of Travis County to register its will, and that will against him, for during his incumbency he has been the paid agent of the trusts and monopolies, the enemies of the people that have constantly preyed upon the rights of the people ever since free government was established.

The people trusted him and imposed their implicit confidence in him and in the critical hour, when they needed the help most, when Texas had driven the Waters Pierce Oil Company from its borders, one of the most gigantic trusts and monopolies in the United States, what did he do. He betrayed the people, took Pierce's gold, and represented this trust, the arch enemy of the people, and by his action re-instated it in Texas, depriving the people of a great victory and turning it into a humiliating defeat. Every democrat should be diametrically opposed to him and his return to the United States senate, because of the following reasons:

419 First. He betrayed the interests of the people for Standard Oil Gold.

Second. Because he advised the Waters Pierce Oil Company how, by indirection, it could defeat the will of the law and the people of Texas.

Third. Because he violated the plain letter of the Constitution, to-wit: "Perpetuities and monopolies are contrary to the spirit and genius of free government and shall never be allowed." Under his oath he swore to uphold the constitution and vindicate the law, and at the critical point he betrayed his people, spat upon the law and put the constitution under his foot.

Fourth. He is the paid agent of H. Clay Pierce and holds a power of attorney coupled with an interest in $13,000,000 of corporate trust property in the State of Tennessee, and when this interest came up before the senate he assumed to represent the people and this corporation at the same time.

Fifth. He has undertaken to serve two masters by bowing down and worshipping the golden calf.

Sixth. He has sought by suppression and misrepresentation to keep the facts concerning his relations to the trusts of this country from the people, the very people he said at Dallas were the best people in the world.

Seventh. His evidence before the investigating committee in the Legislature and his subsequent statements are conflicting and in direct opposition to each other upon the same points. He convicts himself by his own statements and admissions.

Eighth. Because the evidence now in the possession of the Attorney General of Texas convicts him, and by reason of Bailey's admissions and confessions he stands convicted of treason beyond a reasonable doubt.

In the great fight between the Waters Pierce Oil Company
420 and the State of Texas, the people were arrayed on one side opposing this gigantic monopoly which had been preying upon them for so many years, and when the people had won and this corporation had been put out of Texas Mr. Bailey by reason of his position under oath to serve the people of his State, betrayed them, and for Standard Oil gold and went over to the Waters Pierce Oil Company and defeated all the work that had been done, and by his advice to those enemies to free government and the rights of the people, rendered ineffective the decree of our courts and put this giant freebooter and trust monopoly back in Texas.

He ran for the Senate on an anti-trust plank and what does he do? He serves the trust while in Congress and on the stump tells the people that he has always guarded their interest.

The Bailey people are fighting the primary because they know that he is guilty, and although the people have been fooled once, still you know they can not be fooled all the time. Do not let them fool you. They will tell you that Bailey is a great man. If so, what of it? So was Benedict Arnold great but by his acts he betrayed the people of this country and went over to the enemy, for which he has been by the people held in eternal execration. Bailey, might have been great but he left his people and went over to the Waters Pierce Oil Company, the enemy of the people, and he should

be held in execration by the people of Texas and driven from the senate."

421 Defendant next introduced in evidence portions of an article from the Austin Daily Tribune of date Friday, January 4, 1907, as follows:

* * * * * * *

"There was vinegar and vitriol in the addresses on both sides of the Bailey controversy which consumed several hours last evening in a joint debate participated in by Hon. A. W. Terrell, representing the opposition to Senator Bailey, and Colonel Richard M. Wynne of Fort Worth, in the Fifty-third District court room at the Court house. The room was filled to overflowing with people and standing room was at a premium. Both the antis and those supporting Senator Bailey were present and enthusiasm ran at a high rate when the speakers introduced strong points in argument of the question."

* * * * * * *

"Bailey Too Inconsistent.

"Judge Terrell declared that a poor man can now go to the United States Senate and get rich in six years. "I don't want men to get rich too quick in public office," said Judge Terrell. He spoke of Chauncey Depew, and the manner in which he became rich. Bailey doesn't explain how he got rich quick and yet people call him "Honest Joe." He spoke of H. Clay Pierce and the indictment for perjury, and said that "he should be wearing stripes for the offense." Of Bailey- request to inspect the papers, Judge Terrell said in reply that any time that he said that he didn't borrow money from Pierce the attorney general would allow him to inspect those papers.

Judge Terrell also spoke of Bailey giving the Waters Pierce Oil Company assistance in being re-admitted into Texas. He declared that Pierce didn't want lawyers, but he wanted influence. Bailey said I am not practicing influence, but just loan me $3300.

422 About Bailey's Homecoming.

Judge Terrell declared that Bailey returned to Texas to fight the Drennan Bill, which makes corporations responsible for their debts, and the McFall Bill, which can take away the permit to do business in Texas. At this time Judge Terrell said that Senator Bailey wrote a letter to Pierce and said:

"My Dear Pierce—Send me $1750 New York exchange so it won't be necessary for me to indorse it. Send it at once for I should have had it several days ago."

The voucher was marked "account legislation," which bears out the judge's statement.

This was in April, continued Judge Terrell, about the 9th and the Senate had reported the bills favorably, and it was sent back to the House where it was defeated. "It was assas-inated by the influence of a United States Senator," he added.

This was the most convincing point of argument in Judge Terrell's address, in which he showed by facts that Bailey came back to Texas to lobby for the Waters Pierce Oil Company.

There is Wool in His Teeth.

Judge Terrell called attention to the cartoon in Collier's Weekly, which he contended shows that the impartial press, who had no interest in the outcome of the controversy, had condemned Bailey for his actions. Judge Terrell then gave his reasons and objections to always voting for the party nominee, and said that if he found a man unworthy he would see him in a mighty warm place before he would vote for him. "I don't wear an inscription under my collar, some great man's dog," he said."

He gave as an illustration a story of a dog that he once owned who was accused by his neighbor of having killed a sheep,
423 the tracks of the dog having been traced up to the home of Mr. Terrell. In addition to the evidence of the tracks of the dog, his teeth were found to be full of wool. The neighbor said, "Suspicion barks at his heels, Judge, and there is wool in his teeth, he must be shot for he is guilty." Continuing Judge Terrell said: "Suspicion barks at the heels of Joseph Weldon Bailey and there is wool in his teeth."

Judge Terrell was given at great ovation at the conclusion of his address."

The defendant next introduced in evidence the headlines to and portions of, an article appearing in the Austin Daily Tribune of date Sunday Morning, January 6, 1907, as follows:

"Sterling Democracy of Travis County Repudiates Senator Bailey.

Majority of Voters Declare Themselves Unalterably Opposed to His Return to Senate.

"The democracy of Travis County, or at least that portion of it which places the issues above the man, and demands clean, unassailed and unimpeachable records at the hands of its public servants, spoke in no uncertain terms yesterday, declaring its unalterable opposition to the return of Joseph Weldon Bailey to the United States senate.

By a vote of 1042 against 946 for the return of the Senator, the result of the primaries was known at an early hour last night, and while sixteen boxes were still unheard from at a late hour, it was generally conceded that the final returns would affect the result but little.

Brief in the time allowed for activity, but bitter in its
424 intensity and fiercely waged by opposing factions from start to finish, the whirlwind campaign was in many respects one of the most remarkable in the political history of Travis County. There was no celebration of victory last night, for it was a victory tinged with sadness that one so long beloved and idolized by his people should be branded as recreant to the high trust imposed in him.

But the voice of true democracy has spoken—"No man can serve two masters; either he will forsake the one and cleave to the other, or else he will love the one and despise the other."

* * * * * * *

"Triumph for the People.

"This election is a triumph for the people," declared J. Gregg Hill, chairman of the executive committee of Travis County anti-Bailey Club, "and shows very plainly that the people of this county do not endorse Bailey's connection with the Waters Pierce Oil Company." Mr. Hill expressed satisfaction at the results, which he said last night did not come as a surprise."

* * * * * * *

"Down with rascality, the honest vote has won," declared Judge A. W. Terrell, when advised over the telephone. The learned Judge stated that he wished to congratulate the committee on the work done."

* * * * * * *

425 " Victory Over Slush Fund.

" The fight is over in Travis County. It was one of the people against Waters Pierce and Standard Oil.

It was very plain these big oil companies were spending money. There is no denying the fact that some of the slush fund was being furnished by Waters Pierce. Men drawing big salaries from the Waters Pierce Company could be seen driving from one voting place to another, and boosters could be seen and were working with money to get votes for Bailey.

The people voting against Bailey yesterday did so knowing that they were slapping the oil trust and its hired attorney, Joseph W. Bailey.

It is a victory over slush funds and corporate power headed by Joseph W. Bailey, who not content with making two speeches in Austin and one in Manor, in which he denounced the good name of those who have the manhood to oppose his self confessed grafting, but had imported into this County his henchmen to work at the polls to change the voters.

People Congratulated on Their Victory.

While the fight was among democrats, one side was fighting for the principles of true democracy, while on the other side headed by Joseph W. Bailey and his henchmen, the fight was for the success of machine politics with no argument to stand upon but that that Joseph W. Bailey is the nominee." .

Defendant next introduced in evidence the headlines to, and a portion of an editorial appearing in the Austin Daily Tribune of date Wednesday, January 9, 1907, as follows:

426 "The Legislature's Paramount Duty."

* * * * * * *

"Criticism has at time- grown violent. Attorney General Davidson has been designated as a hydra-headed monster, who, through the influence and machinations of sore-headed and conscienceless politicians, has made allegations which he will not be able to sustain at the critical moment. Prominent partisan newspapers of the State have striven to detract from his efforts to prosecute the Waters Pierce Oil Company, and have asserted that the suit against this blood-sucking corporation was inspired solely through a base desire to defeat Senator Bailey for re-election."

* * * * * * *

Defendant next introduced in evidence the headlines to, and portions of, an articles appearing in the Austin Daily Tribune of date Thursday, January 17, 1907, the portions introduced being as follows:

" Written in Scarlet.

" Written in Scarlet!

" By the shades of the white hosts of democracy marching on before, and the sainted memories of the immortal Houston and the peerless Reagan!

Has it chanced in this day of insiduous corruption that one in whom the people imposed the highest trust and confidence should brand the brow of Texas for all time with the crimson scar of Shame?

427 " Written in Scarlet!

Ay, and in bold, clear unmistakable chirography, opposite the word " republish " in the telegraph-code book of the Waters Pierce and Standard Oil Company, both in one, the name of J. W. Bailey, United States Senator for a state which never before in its history has known a blur on its escutcheon.

Such was the evidence given the House of Representatives yesterday by Attorney General Davidson in substantiation of certain charges which have been hitherto declared false and backed by a purpose blacker than hell itself." * * *

"* * * Why should the name of a senator from Texas be included in the secret code of such a thousand-tentacled, million eyed octopus as the Waters-Pierce-Standard Oil Company, if not for the sole reason that he was a party to certain transactions of such a nature that they could ill afford to bear the fierce white light of public inspection?"

* * * * * * *

Defendant next introduced portions of the charges filed before the Legislative Investigating Committee by William A. Cocke, against Joseph W. Bailey charging Bailey's connection with certain transactions with the Waters Pierce Oil Company, as such charges appeared printed in the Austin Daily Tribune of date Sunday, January 20, 1907, and the headlines in said paper preceding said charges, the portions introduced being as follows:

428 "Specific Charges Filed by Representative Cocke.

"Alleges That Bailey Received Additional Sum of Hundred Thousand Dollars from Waters-Pierce Oil Company of Missouri.

"Representative William A. Cocke of Bexar County last night filed the following specific charges against Joseph W. Bailey in connection with certain alleged transactions with the Waters Pierce Oil Company:

"STATE OF TEXAS, *County of Travis:*

*Investigation in re J. W. Bailey pending before the Investigating Committee of the State Senate and House of Representatives of the Texas Legislature.*

To said Honorable Committee:

Now comes William A. Cocke, a member of the Thirtieth House of Representatives, Texas Legislature, and, upon information and belief, alleges and charges J. W. Bailey as follows:

* * * * * * *

"Second. That during the early months of the year 1900, J. W. Bailey entered into an agreement with one John Francis, brother of David R. Francis of Missouri, as well as with said D. B. Francis and one Joseph Sibley of Pennsylvania, together with H. C. Pierce of the Waters Pierce Oil Company of Missouri (in consideration of which agreement and conspiracy and the services to be rendered thereunder by the said J. W. Bailey he was to be assisted in the purchase of the Gibbs ranch in Dallas County, Texas), whereby the said J. W. Bailey undertook to use his personal, official and political influence and standing with his lifetime friend, Hon. Thomas S. Smith, then Attorney General of Texas, and with other state
429 officials, to the end that the Waters-Pierce Oil Company, then and now, a subsidiary company of the Standard Oil Company, might defeat the ouster judgment which had been rendered against it in favor of the State of Texas, by which said Waters-Pierce Oil Company would be enabled to re-enter the State of Texas in violation of law.

"Third. That in pursuance of said agreement aforesaid, and the conspiracy thereby created, the said J. W. Bailey on or about the 25th day of April, 1900, called upon H. C. Pierce in the City of St. Louis and then and there conspired with the said Pierce on behalf of the Waters-Pierce Oil Company and the Standard Oil Company to defeat the aforesaid judgment of the courts of Texas, as affirmed by the Supreme Court of the United States.

"Fourth.—That the said J. W. Bailey well knew, or by the exercise of that patriotic prudence which should characterize the trusted representatives of the people, should have known that the Waters Pierce Oil Company was an intra-state trust and an outlaw of the State of Texas; and that the said H. C. Pierce and other representatives of said Company were under indictment in the District

Court of McLennan County, Texas, for violation of the anti-trust law of the State.

"Fifth. That notwithstanding said knowledge, the said J. W. Bailey on the date aforesaid, and in pursuance of the conspiracy hereinbefore alleged, accepted employment from the Waters Pierce Oil Company and the said H. C. Pierce, and then and there did accept and receive the sum of at least $3,300 as a retainer fee for said services (pretending, however, that the said $3,300 was paid in the form of a loan); that said $3,300 was in fact and in truth, financial compensation, or a fee, for his personal, political and official influence in the premises.

"Sixth. That said J. W. Bailey's official duties then re-
430 quired his presence in the city of Washington; notwithstanding which, he returned to the State of Texas, in company with said H. C. Pierce and one J. B. Johnson, general attorney of the said Waters-Pierce Oil Company; that while en route to Texas the said J. W. Bailey conspired with the said H.C. Pierce and the said J. B. Johnson, not only to secure the fraudulent re-admission of the Waters-Pierce Oil Company to the State of Texas, but also conspired with the parties aforesaid to the end that certain penalty suits against said company, then pending at Waco, Texas, and the indictment and litigation herein above alluded to should be compromised and dismissed on the best possible terms; that in pursuance of said conspiracy the said J. W. Bailey while en route to Texas telegraphed to one Oscar L. Stribling of the law firm of Henry & Stribling of Waco, Texas, associate counsel for the State of Texas in the penalty suits aforesaid, to meet the said J. W. Bailey and his co-conspirators at Hillsboro, Texas, as they were en route from St. Louis, Mo., to Austin Texas; that said Stribling did not meet said parties at Hillsboro, as requested by said telegram from the said J. W. Bailey to *to do*; that the said J. W. Bailey and his co-conspirators failing to see said Stribling at Hillsboro came on to Waco, Texas, and there conferred with local counsel for the Waters-Pierce Oil Company, to-wit, George Clark, and Henry & Stribling, the latter firm being at that time associate counsel for the State of Texas, and with the District Judge before whom said penalty proceedings and indictments were then pending; that the purposes of said conferences was to arrange a legal disposition of the litigation aforesaid; that the said J. W. Bailey and his co-conspirators refrained at the time in question from calling upon one Cullen F. Thomas, county attorney of McLennan County, who then represented the State of Texas in the litigation pending at Waco, for the reason that the said Bailey and his
431 co-conspirators deemed it wise to arrange with other interested parties, including Henry & Stribling, before they should approach the said Cullen F. Thomas in the premises.

"Seventh. That the said J. W. Bailey, H. C. Pierce and J. D. Johnsen, then continued their journey to Austin, Texas, where the said J. W. Bailey exercised his political and personal influence with Thomas S. Smith, whom he had known and who had been his friend from boyhood, to induce the latter as the acting attorney general of Texas to consent to a compromise of the ouster judgment

against the said Waters Pierce Oil Company; failing in which the said J. W. Bailey then exercised his like influence with the said Thomas S. Smith to induce the latter to advise the Secretary of State to issue a new permit to the Waters-Pierce Oil Company upon its fraudulent dissolution and re-incorporation proposed by said J. W. Bailey to be had and without the necessity of mandamus proceedings; that the said J. W. Bailey likewise, and at the same time, to-wit, on or about the first day of May, 1900, exercised his personal, political and official influence with D. H. Hardy, then Secretary of State to induce the latter to issue a permit to the said Waters Pierce Oil Company to do business in Texas upon the fraudulent dissolution and fictitious re-organization aforesaid, thus avoiding the necessity of said company mandamusing said Hardy and judicially determin-g its right to re-enter Texas.

"Eighth. That the said J. W. Bailey and his co-conspirators thereupon returned from Austin, Texas, to Waco, Texas, and resumed negotiations looking to the dismissal of the litigation and indictment there pending and hereinbefore described; that the said J. W. Bailey on or about the second day of May, 1900, at the City of Waco, Texas, used his personal, political and official in-
432 fluence and prestige in an effort to secure the dismissal and compromise aforesaid and to that end did approve and endorse a proposition to pay to Henry & Stribling a sum of money about five times larger than there were entitled to by law under the proposed compromise with the State of Texas, and used said illegitimate offer as an inducement to the said Henry & Stribling, associate counsel for the state, to induce them to make an illegitimate dismissal or compromise of said litigation; that said J. W. Bailey at the time and place last mentioned used his personal, official and political influence with the District Judge before whom the litigation was pending in an effort to influence said official in the premises; that said J. W. Bailey and his co-conspirators did at the same time make an unsuccessful effort to secure the approval of Cullen F. Thomas of the illegitimate settlement sought to be had.

"Ninth. That during the month of June, 1900, said J. W. Bailey in furtherance of the conspiracy hereinbefore alleged participated in, endorsed, approved or connived at the payment to Oscar L. Stribling of the firm of Henry & Stribling aforesaid, the sum of $1500 as "hush money" to induce the said Stribling of the said Henry & Stribling to refrain from discharging their official duties by exposing the fraud involved in the re-admission of the Waters-Pierce Oil Company to the State of Texas on or about the thirty first day of May, 1900, and from prosecuting the litigation then pending against said company; that said J. W. Bailey had been advised by the public press of the State that the re-admission aforesaid was openly charged to be fraudulent and in violation of the rights of the State of Texas, and that he was also advised thereof by correspondence passing between himself and J. D. Johnson, or himself and H. C. Pierce, or himself and George Clark, which facts were well calculated to put said J. W. Bailey upon notice (although

it is here alleged that he already well knew the fact) that he
433 was representing interests adverse to those of the people of his state; that the $1500 "hush money" aforesaid was falsely styled a "personal loan" in an effort to cunningly conceal the real nature of the transaction in the event of its subsequent disclosure, as was also the case with the $3300 paid direct to said J. W. Bailey by said H. C. Pierce on April 15, 1900; that notes were executed for the said $3300 and the said $1500 in furtherance of this adroit advice to deceive the people of Texas as to the actual character of their monetary dealings."

* * * * * * *

"Eleventh. That the said J. W. Bailey, during the month of November, 1900, received of H. C. Pierce for the account of the Waters-Pierce Oil Company the sum of $200 after being fully advised of the illegal and fraudulent status of said company in the matter of its re-admission to the State of Texas; that during the year 1900, said J. W. Bailey likewise had other and further financial dealings with the Waters-Pierce Oil Company, of which your informant is not advised, but which should be investigated.

"Twelfth. That some time after the re-admission of the Waters-Pierce Oil Company to the State of Texas and the fraudulent dismissal of the litigation then pending against said company, and its officers at Waco, Texas, said J. W. Bailey had used his personal, political and official influence to "quiet all Texas parties," he, said J. W. Bailey, received from the Standard Oil Company of New Jersey, or the Waters-Pierce Oil Company of Missouri, the additional sum of $100,000 as compensation to said J. W. Bailey for the exercise of his influence aforesaid, notwithstanding said J. W. Bailey, under oath, in the month of January, 1901, and many times thereafter, denied that he ever received any money from the
434 Standard Oil Company, or the Waters Pierce Oil Company."

* * * * * * *

"Eighteenth. That during the month of March, 1901, the said J. W. Bailey left his official duties in Washington and returned to the State of Texas for the purpose of using his personal, political and official influence and prestige with the Legislature of Texas to defeat the Senate bill No. 164 introduced into said body by Senators Grinnan and Davidson, which act affected adversely the interests of the Waters-Pierce Oil Company, and to defeat House bill No. 422 introduced by Representative D. A. McFall, seeking to revoke the alleged fraudulently acquired permit to do business by the fictitiously re-organized and re-admitted Waters-Pierce Oil Company, secured on the 31st day of May, 1900."

"Nineteenth. The said J. W. Bailey in furtherance of his political efforts and official influence just described, wrote to H. C. Pierce on the 25th day of March, 1901, for the sum of $1750, which he now claims was a part of the $8000 hereinabove alluded to, but which was in fact also used by said J. W. Bailey to influence legislation in Texas, or was appropriated by him as compensation for services so rendered, although the said J. W. Bailey has since falsely claimed

that the said services were rendered gratuitously because he deemed their passage of such legislation a reflection upon his official character and standing."

* * * * * * *

Very respectfully submitted,

WILLIAM A. COCKE,

*Member of House of Representatives Thirtieth Texas Legislature.*

435 Defendant next introduced in evidence the following article from the Austin Daily Tribune of date Sunday, February 17, 1907:

"The Sequence and Consequence.

1900.

May 31. Waters-Pierce Oil Company re-admitted.

June 5. George Clark writes Johnson, "Hell broke loose in Texas. Stribling threatens receiver. Have Bailey make some suggestions to him."

June 12. H. C. Pierce wires Finlay from Lake Nabogoman, "If Johnson approves, authorize Bailey to loan Stribling $1500 on his note. Bailey should quiet all Texas Parties. Tell him I will see him soon."

June 13. J. W. Bailey reaches Gainesville from Washington. Draws draft on H. C. Pierce for $1500.

June 15. Waters-Pierce Oil Company issues voucher for $1500 to Henry & Stribling.

June 16. Johnson writes Clark he has succeeded in satisfying, for the time being at least, Henry & Stribling. This is strictly confidential.

Nov. 5. Waco, Texas, penalty suits dismissed by district Judge about this date.

Nov. 9. Clark writes Johnson confidential letter regarding same.

Nov. 12. Johnson writes Clark it is better for Stribling not to come to St. Louis, that if he insists on seeing him now that he will arrange to meet him at some convenient point—to tell Stribling so, and if necessary he will write Stribling a letter direct, under cover to Clark.

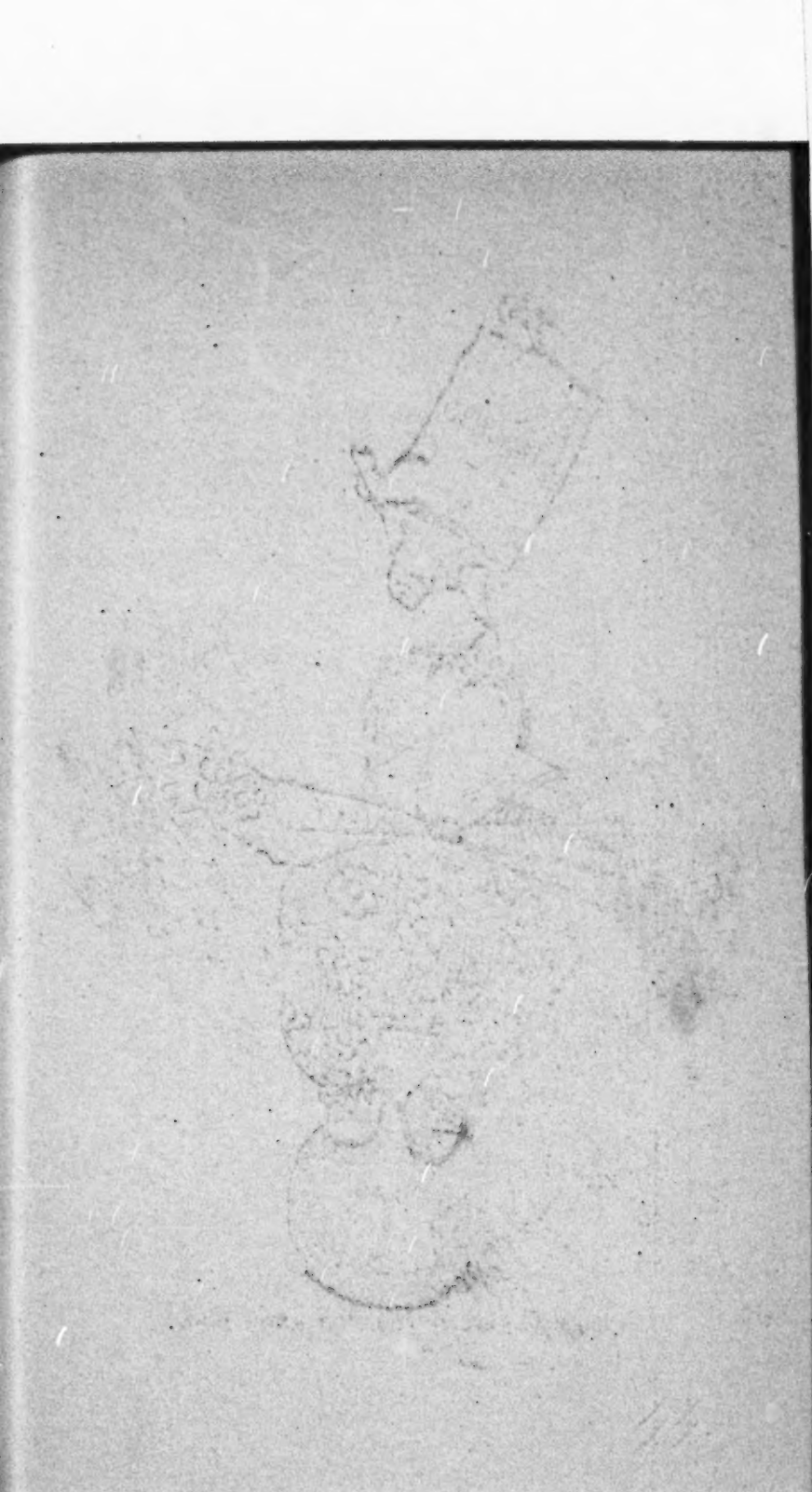
436

Nov. 15. Clark writes Johnson that he had been unable to convince Stribling; that he would leave there on the following Monday for St. Louis.

Nov. 17. Clark's letter reached St. Louis, and notation made on Henry & Stribling's voucher that the draft had been that day delivered to H. C. Pierce by Mr. Gruet.

Nov. 19. Stribling reaches St. Louis.

Nov. 20. Waters-Pierce Oil Company issued voucher to H. C. Pierce for $3100, paid to J. D. Johnson, on account of Waco, Texas, penalty suits, which was explained as being an expenditure to renovate a car on account of small pox in May proceedings. * * * Mr. Stribling has said it was paid to him to lobby some prospective legislation.



JUST AS EASY—IF YOU ONLY KNOW HOW.

Dec. 22. David R. Francis wrote to Pierce enclosing his Personal check for $4800 to pay Bailey's indebtedness to said Pierce, and requested to be advised if Bailey was due anything further. On same day Francis wrote Bailey, stating what he had said to Pierce, and enclosing Bailey's receipt for $3300 and also Bailey's sight draft drawn at Gainesville, Texas, June 13, 1900, for $1500.

NOTE.—It is a shame that D. R. Francis should get things so mixed up, because Senator Bailey in his letter to the Attorney General, dated December 6, 1906, said that he had paid back that $3300 himself, when he sold his horse, which he did in the summer shortly after the adjournment of Congress. Also a shame about the draft, because he said he had never heard of any such draft and would resign his seat in congress if anybody would produce same; that the whole transaction was a forgery.

437 In a speech at the Opera House at Austin, Senator Bailey stated that he had no more to do with the $1500 draft or that transaction, than Charles Fred Tucker had to do with the salvation of immortal souls."

Defendant next introduced in evidence the following cartoon as same appeared printed on page 1 of the Austin Daily Tribune of date February 24, 1907:

(Here follows facsimile marked p. 438.)

439 Defendant next introduced in evidence the headlines to, and portions of, an article appearing in the Austin Daily Tribune of date Friday, February 8, 1907, which were as follows:

"Trusts are Plundering the People of Texas.

Attorney General Davidson Declares that Certain Trusts are Operating in State and that Powers of His Office are Inadequate."

* * * * * * *

"To the Honorable Speaker and Members of the House of Representatives, Austin, Texas.

GENTLEMEN: I beg to acknowledge the receipt of the resolution adopted by the House of Representatives on January 17, 1907, which is as follows:

* * * * * * *

"The Oil Trust.

"The State had filed a suit in the District Court of Travis County against one of the branches of the Standard Oil Trust—the Waters Pierce Oil Company. That company is the retail distributing branch of the Standard Oil Company for the Southwest and the Republic of Mexico. The Standard Oil Company is not doing business in Texas under that name. No permit has been issued to any corporation by that name to do business in Texas. We believe it owns other corporations in Texas, such as refining companies, pipe line companies and producing companies, and have secured some testimony to substantiate our opinion. Each concern is maintained independently of all the others, yet dominated from a central
440 organization. The methods of Standard Oil are more secretive than all the other trusts combined. The stock of some of these corporations owned by the Standard Oil Company stands in the name of a half dozen intermediate corporations before it is finally lodged at 26 Broadway. For illustration: The controlling interest of the Jones Oil Company of Texas will be owned by the Brown Oil Company of Indiana, which in turn is owned by the Smith Oil Company of Ohio, which latter corporation will be owned by the Standard Oil Company of New Jersey. A suit filed against the Jones Oil Company in Texas for being a member of a trust must be traced through Indiana and Ohio to New Jersey by competent legal testimony before you can show its relation with the parent of the trusts. The records of the office of the Secretary of State would probably show that John Doe, Richard Doe, and Bill Smith owned the stock."

* * * * * * *

Defendant next introduced in evidence the headlines to, and portions of the proceedings had and testimony taken before the Legislative Investigating Committee in the Bailey Investigation, as same

were reported by and appeared in the Austin Tribune of date Tuesday, January 29, 1907, as follows:

"Vouchers not Forgeries Gruet Tells Committee.

Former Secretary of Waters-Pierce Subjected to the Keenest Cross-Questions Last Night—Naudain Testifies.

441 "Given to him to be kept from the general files of the office as confidential matters, according to his testimony, the vouchers in the possession of the Attorney General were explained thoroughly last evening before the Investigating Committee by J. P. Gruet, who has been the most conspicuous figure in the present controversy over Senator Bailey. "I turned the papers and vouchers over to the Hearst papers because of the attitude of Mr. Bailey towards me in his speeches in Texas during the campaign," was the answer given by Mr. Gruet when asked why he gave that long two-page interview to the Chicago Examiner. Detailed explanations were given to the papers in turn as they were exhibited by Mr. Crane to Mr. Gruet, and his testimony has been the most damaging of any given before the committee. He made no attempt to deny or conceal the fact that he gave his interview because of Mr. Bailey's numerous attacks upon him in speeches made in the State. He occupied the stand during the entire time of the evening session, and submitted to a searching cross-examination by Mr. Odell.

Testimony Not Hearsay.

Mr. Gruet gave his testimony not from hearsay, but from knowledge secured by several years' experience with the Waters-Pierce Oil Company. His employment as secretary of that company during the time in which they had an agreement with the Standard Oil trust and his duties were recited by Mr. Gruet together with the method of corresponding with the head office at 26 Broadway, New York. He stated that each branch of the Standard Oil Company sent a representative to convene at 26 Broadway. Mr. Odell objected to the testimony as being irrelevant and Senator Looney asked Mr. Gruet if his testimony was based on actual experience or hearsay. Mr. Gruet replied that he had attended those board meetings. This testimony was given to show the relation
442 of the Waters Pierce Oil Company with the Standard Oil Company.

Vouchers Not Forgeries.

When asked to explain the $3300 voucher, Mr. Gruet said that he approved it for payment and that Mr. Pierce signed it. "I put in the voucher the words, 'on account of Texas cases' by Mr. Pierce's instructions", he added. "I don't know whether it was before or after it was audited."

In reply to a question asked by Mr. Crane, Mr. Gruet said that he took possession of the vouchers at the request of Mr. Pierce. He was asked if Mr. Pierce ever stated why he wanted them kept

by him. Mr. Gruet replied that Mr. Pierce never explained any further than to say that they were confidential matters and he wished them kept in his (Mr. Gruet's) private files.

"Fees in the Waco civil cases", written on the Henry & Stribling voucher was explained by Mr. Gruet as being the handwriting of Mr. Finlay. He said that the receipt for the $1500 was in his and Mr. Pierce's handwriting and that it indicates on the face of it that the Waters-Pierce Oil Company paid Mr. Bailey $1500 on account of Texas cases.

Audited by Standard Oil Man.

Mr. Gruet's attention was called to the letter written by Mr. Bailey at Gainesville, Texas, and at this point he was asked who H. H. Stein was. He replied that Mr. Stein was auditor for the Standard Oil Company. The witness stated that he wrote the $3100 voucher except the notation as to what it was for, and that was written by his son. The voucher for $200 was made by the witness according to instructions from Mr. Pierce. It was receipted by Mr. Pierce and audited by Mr. Stein of the Standard Oil Company.

443 With regard to the letter from Mr. Pierce to Mr. Bailey, the witness stated that it was signed by Mr. Stewart, the stenographer of Mr. Pierce. He stated that he had no other authority for issuing the voucher and there was no complaint made because of it. He stated that he had the cashier make out the exchange for $1750 and sent it to Mr. Bailey at Gainesville. Mr. Gruet stated that the note dated March 1, 1900, was carried by voucher which he made out. Mr. Pierce had sent the money to Mr. Bailey. It was audited by C. W. Norman, a Standard Oil auditor.

Mr. Crane asked if these transactions were included in the reports made to the Standard Oil Company. Mr. Gruet replied that they were not specialized. He said that Wade Hampton was in charge of the Standard Oil Company auditors.

"These transactions were charged up to profit and loss," said Mr. Gruet, "and I know it, because I worked up all of the finals of the profit and loss account."

Mr. Gruet recired all of the transactions he had with Mr. Pierce in connection with the Tennessee Construction Company."

* * * * * * *

"Naudain's Testimony.

"H. Naudain, auditor of the Waters-Pierce Oil Company, occupied the stand yesterday afternoon. Mr. Naudain's mission here was to say whether or not the papers introduced into the cases were originals or otherwise, although the Bailey people admit that they are original.

Mr. Naudain stated that he had been with the Waters-Pierce Oil Company for thirteen years in the capacity as auditor. He testified that the voucher for $3300 under date of June 30, 1900,

444 was made out in the handwriting of J. P. Gruet. He testified to the proper auditing of the telegram and the voucher.

He said that the voucher dated November 23, 1900, and marked "account of Texas cases," appeared to be genuine.

It was suggested at this point that the books throughout should not be examined, as they represented private transactions, and that only the matters touching Mr. Bailey should be looked into.

The further testimony was a repetition of the testimony Mr. Naudain gave a few days ago before the assistant Attorney General, and was merely a general identification of the genuineness of the papers."

* * * * * * *

The defendant next introduced in evidence the headlines to, and a portion of the report of the proceedings had and testimony taken before the Legislative Investigation Committee in the Bailey Investigation, as same was published in the Austin Daily Tribune of date Wednesday, January 30, 1907, as follows:

"Testimony of the Younger Gruet Proves Voucher Entries Correct.

Evidence Given by His Father Fully Corroborated Before the Committee Today—Explanations of Flateua Letter Given—
Bailey Makes Sensational Play Last Night.

"The prosecution in the investigation of Senator Bailey have now established the proof of their contention that his dealings which are shown in the vouchers were with the Waters-Pierce Oil Company. The name of Mr. Bailey is in the voucher in con-
445 nection with the supposed loans and the writing has been identified. The attorneys for Mr. Bailey have tried in vain to prove that the alterations were made by Mr. Gruet after he had left the employ of the company, but without avail. In the testimony of J. P. Gruet, Jr., which was taken at the session of the committee in the morning, the testimony of his father, J. P. Gruet, Sr., was corroborated in every detail."

* * * * * * *

The defendant next introduced in evidence the headlines to, and a portion of an article concerning, and a portion of a resolution introduced in the House of Representatives of the Texas Legislature for the purpose of ordering an investigation of Senator Bailey, as same appeared and was reported in the Austin Daily Tribune of date Wednesday, January 9, 1907, as follows:

"Resolutions Demand Full Investigation of Bailey.

Many Legislators Will Insist Upon More Light on the Recent Charges Against Senator.

"Resolutions demanding the investigation of the conduct of Senator Joseph W. Bailey in his deals with H. Clay Pierce, signed by twenty-seven members of the house, were filed about the time the motion to take a recess was being put to-day in the house of

representatives. The signatures of the twenty-seven members were secured within an hour's time, and a number of others are expected to add their names to it at the first opportunity. The resolution is as follows:"

* * * * * * *

446 "And that notwithstanding the said Waters-Pierce Oil Company secured its re-admission and a new permit to do business in Texas through fraud and perjury, and notwithstanding the said company has thence until now been continuously violating the anti-trust laws of the State, driving out, destroying, or absorbing all competition so as to oppressively and arbitrarily dictate the prices of oil and all products dealt in by said company in the State of Texas, that the said Joseph W. Bailey was continuously from that time engaged in large financial transactions with the said H. Clay Pierce, President of said Company, and has used his senatorial and personal influence in the State of Texas to secure and protect the said Waters Pierce Oil Company in its aforesaid violations of the Texas anti-trust laws and in its method of destroying and removing competition and in establishing and maintaining a monopoly of the business embraced within the charter of said corporation;"

* * * * * * *

The Defendant next introduced in evidence the following article published and appearing in the Austin Daily Tribune of date Sunday, December 23, 1906, viz:

"The Trail of the Octopus.

(A modern melodrama of frenzied finance in two acts. Especially adapted for the use of captains of industry and professional politicians. Too heavy for amateurs.

447 *Cast of Characters.*

H. Clay Pierce, one of the tentacles.

David R. Francis, the mysterious Missourian.

Act. I.—Palatial home of H. Clay Pierce. Curtain rises disclosing the oil magnate seated in his sumptuous library, chewing a black cigar in great agitation.

(Enter David R.)

Francis.—You sent for me?

Pierce—Yes, David, old fellow; I am up against the real thing in Texas.

Francis.—Too bad. What's the matter?

Pierce.—Matter enough. My company, the Waters-Pierce, is forever enjoined from doing business in Texas.

Francis.—I am very sorry to hear that.

Pierce—Yes, and the worst of it is I am indicted by a Grand Jury at Waco, Texas.

Francis—That is too bad. Who were your attorneys, and did they know their business?

Pierce.—We had the best lawyers money could obtain, and they fought a good fight and lost, and I have no complaint to make at their efforts or abilities, and so satisfied are we with their legal attainments that we have employed them by the year to attend to all our legal affairs.

Francis.—Pierce, you have been going at this thing wrong. You don't need law nor lawyers; you need influence and need it badly.

Pierce.—Well, David, you have been recommended to me as the proper person to see about this influence business, and I have been told that you know a great many people in Texas, and as I am a stranger you can advise what to do.

Francis. Pierce I can put you in touch with a live wire that can do the very work you need, but it will be somewhat expensive.

448 Pierce.—We care nothing for expense. You see, David, we make about 700 per cent. profit and expense is no object.

Francis.—Do you know Senator Bailey?

Pierce.—No, I have never had the pleasure of meeting him.

Francis.—You must meet him. He is the very man; he is a fine looking fellow, possessing a very pleasing personality.

Pierce.—Can a fellow talk to him about confidential matters?

Francis.—Yes—when there is money in it.

Pierce.—I understand you, David; but how am I to see him?

Francis.—I will give you a letter of introduction. You see, the Senator and I are bosom friends, and he will talk to you more freely with an introduction coming from me.

Pierce—Whatever is done in this matter must be done right away. We have but a few days more of grace in Texas. How am I to see the Senator to give him the letter of introduction Can you suggest a plan?

Francis.—Yes, I will telegraph him to come to St. Louis at once.

Pierce.—Write out the telegram and get it off.

Francis.—(Writes) Senator Joseph W. Bailey, Gainesville, Texas. Come St. Louis first trian. Big fee to you and no work. David R. Francis.

Pierce.—Look here, Francis, can I really approach the Senator?

Francis—Yes, but you must go about it in a gentle way. You see, Pierce, Bailey is loved by the Texas people, and there is not a man in Texas who can head him off on gab. He is one of those fellows that always lines up in Congress, making big speeches in the interest of the people, but he is smooth enough to never introduce and get passed a law in the interest of the people. Confidentially, he is a good man for the corporations, for by his long speeches

449 he helps to delay legislation. So you need not be afraid; I am steering you against the real thing, and he will do the work.

Francis.—Before you see him I will tell him that everything is all right; that I have given you a letter and you want him to help you.

Pierce.—Must I offer him *to* pay to do this?

Francis.—Certainly. He will most likely refuse to accept, but in

lieu will request of you a loan. You must favor him and he can pay the note in services to be rendered, you understand.

Pierce.—The very thing. Why haven't we thought of this before?

Francis.—Yes, Pierce; you have been working the wrong way. It is not law you need in Texas—its influence, and a good deal of it.

Pierce.—David, do you think Bailey is the man to work the game?

Francis.—Yes. He is the only man in Texas who has the influence that has the nerve to go against the proposition, and besides, Bailey is supposed to — one of the plain people. You see, when he first entered Congress he refused to even dress in any but the plainest of clothing, and made speeches in the interest of the people, and would not accept pay for the days he was absent from his seat in Congress, and he was very particular to see that his speeches were published and that his refusal to accept pay for the days when absent from roll call, all of which has endeared him to the people of Texas, and they will not suspect him of doing them any harm.

Pierce.—He is the man I want. I could give such a fellow as that employment the year 'round."

Francis.—The senator will be here tomorrow. You can arrange with him, and my word for it, he will have the whole thing
450 running smoothly for you in Texas within thrity days.

Pierce.—Francis, I am very grateful to you for the information given, and will be glad to report success to you later.

Act II.—Some months later. Scene, same as in the first Act. Francis and Pierce discovered seated.

Francis.—Well, Clay how did she work?

Pierce.—Say, David that fellow Bailey is a peach. Talk about a pull! He's got it in Texas.

Francis.—Pierce, did you pay him in a loan or a fee?

Pierce.—Loan, of course. You see, the senator is a little shy about calling it fees, but he is great on the loan proposition.

Francis.—What is the difference to you?

Pierce.—None. I am not kicking, but say, Francis, when is he likely to quit striking me for a loan?

Francis.—Don't be afraid of Bailey. You let him have a loan every time he asks for it. You will need him to help you out all along.

Pierce.—Yes, you are correct. I can use him to advantage in the future. My experience in this Texas matter has taught me that it is a pull you need, and not law, and Bailey fills the bill and I am satisfied."

451 *Agreement of Counsel.*

It was here admitted by both sides that about January 31, 1907, it was published in the local papers, both the Austin Statesman and the Austin Tribune, and in the Houston Chronicle, that in the Investigation before the Legislative Investigating Committee, the witnesses J. P. Gruet, Sr., H. Naudain, A. M. Finlay and A. J. Hutchinson, had testified to the genuineness of the vouchers and other papers described in the letter from Attorney General Davidson to

Hon. J. W. Bailey, dated Austin, Texas, December 7, 1906, as published in the Austin Dailey Tribune of Sunday, December 9, 1906, which letter, as published has already been read in evidence; and that such local papers and the Houston Chronicle further stated in the issues about January 31, 1907, that said documents described in said letter had been introduced in evidence before said Legislative Investigating Committee. And further, that said local papers and the Houston Chronicle, in issues about said January 31, 1907, published that J. P. Gruet, Sr., testified before said Legislative Investigating Committee that said vouchers had been audited by auditors of the Standard Oil Company.

It is not meant by this agreement to withdraw any testimony which has heretofore been introduced, but simply to cut off further inquiry into matters introduced before that Legislative Investigating Committee.

It was here admitted by counsel for both the state and defendant that the various copies of the Austin Statesman, Austin Tribune, Houston Chronicle, and K. Lamity's Harpoon, portions of which had been introduced in evidence by defendant and showing the publication therein, respectively of the various articles above set out, were true copies of such papers of the respective dates named, as published and circulated.

452 J. GREGG HILL, for the State, testified as follows:

My name is J. Gregg Hill, and I am engaged in the real estate business in Austin. I have been engaged in that business four or five years. I have lived in Austin since 1887. I am fairly well acquainted with the people here. I heard this case discussed to some extent during the campaign in regard to the election held here in January to instruct our representatives whether they should vote for or against Mr. Bailey. That was in connection with Senator Bailey's alleged participation in the affairs of the Waters Pierce Oil Company. I have not heard any independent discussion of the merits of this case or the issues involved in this case outside of Senator Bailey's connection with it. I have not heard the matter discussed with reference to whether or not the defendant in this case can get a fair and impartial trial. I have not heard any reason given or any views nor any opinion stated to the effect that the defendant can not get a fair and impartial trial. I do not know of any reason why the defendant could not get a fair and impartial trial of this case in this county; I think they should be able to do so. I have been summoned as a witness in this case; I was summoned by the defense, is my understanding. From what I have heard of this case, I think the defendant can obtain a fair and impartial jury among the jurors of this county without any trouble. I could try this case fairly alike to both sides on the evidence and the law as given on the trial of the case.

Cross-examination:

As to my belief in reference to whether or not the Waters Pierce Oil Company is guilty, I don't know anything about the case
453 further than I heard discussed in the Bailey campaign. It is a fact that I was very active in my opposition to Senator

Bailey. As to the basis of my opposition to him, I thought that he had lied to his constituents, and I don't think any man in his position, trying to represent the people, should turn around and represent an interest whose acts might have to be passed on by legislation in which he might have to take part. I did not know anything about whether the Waters Pierce Oil Company was a trust or not. From what I had read in the newspapers I thought it was a trust, and believe so now. I believed at that time that its admission into Texas was procured by fraud, and that Senator Bailey did it. If I were taken on the jury I would go into the jury box with that belief, but at the same time I could give them a fair trial, as any honorable man should do. That statement is based on my idea that any fair and impartial man can, in a case of this kind, lay aside any preconceived opinion and render an impartial verdict; in a good many cases he might not do so. I make the distinction because in some cases it might be that a man's friends or relatives were involved, but not in this case. My idea is that if a man were not interested in it, no matter how thoroughly convinced he might be, he could lay his opinion aside and go into the jury box, though he might not be able to do so. I believe it is within the range of possibility for a man to do that, and I believe it is within the range of probability. In reference to whether or not I could go into the jury box and consider the testimony of H. Clay Pierce and other officers of the company as fairly as if I didn't have any preconceived opinion with reference to this case, I would take the evidence and the law and give them what I thought to be absolute justice. If the evidence showed otherwise, I would not believe that absolute justice would mean to shut the defendant out of the State of Texas. I would be governed by the law and the evidence. Unless the evidence showed otherwise, I would shut them out, and so would any other sensible man, I think.

454 During the six months that this matter has been under consideration I don't remember of having heard one man undertake to justify the Waters Pierce Oil Company or speak a good word for it in this county. While I have not heard hundreds of men denounce the Waters Pierce Oil Company as a trust, I have heard quite a number do so; I heard dozens in the city denounce it, but I would not say that I heard dozens from other portions of the county do so. As I said a while ago, in connection with the Bailey election, I did hear it denounced. I don't remember the date when the violent opposition in this county to Senator Bailey developed. Personally, I had not fully made up my mind as to how I stood in the Bailey matter until after Senator Bailey stated that he had not done certain things, and afterwards admitted that he had done them; from that time on I opposed him. I read Attorney General Davidson's letter to Senator Bailey in which he discussed the Waters Pierce Oil Company and said that Senator Bailey had wrought great oppression on the people of this State and that for six years the people of Texas had lived under the shadow of a great wrong brought about by Senator Bailey. I don't know whether that leter was read generally in the city of Austin or not. I don't know wiether the letter was published in both the newspapers of Austin or not, but I read it in the "Statesman." I could not say whether it was published in the

"Tribune" or not. I think that a great many people who read newspapers, not only in this county but all over the State, have formed their opinions and believe that the Waters Pierce Oil Company is a trust. I don't know whether or not a majority of the people of this county believe it is a trust, as I have not talked to them about it. I have expressed the opinion that the defendant can get a fair trial here because I believe the people of the county are just as fair and intelligent as in any other county. I can lay aside my opinion and weigh the evidence of Mr. Pierce and other officials of the company like I would that of any other witness, and would give them what I thought to be fair and just in the matter. In arriving at the credence I thought should be given to their testimony, if I were on the jury, I would not be governed by the fact that a man had done something before, because I would have to be governed by the evidence. I know that I can blot out everything in my mind; it would not be a sudden transformation, but just my desire and willingness to do justice in the case. I would not prefer to see the Waters Pierce Oil Company defeated in this case; I would expect to see them get justice. I don't know that my idea is that the defeat of the company in this case would be justice, because I don't know what the case would be. If they deserve to be run out, they should be run out, like any other trust or anybody else; if they are innocent, they should be defended, like any one else. As to my reason for believing the defendant can get a fair trial of this case in this county, I think there are hundreds of people in Travis county who have no prejudice one way or the other. I have not talked to very many; I have heard expressions from a dozen or two, but not hundreds.

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I attended the speaking here in the court-house when Colonel Wynne and Judge Terrell addressed the people during the Bailey campaign preceding the election held in January last. Judge Terrell in his speech very bitterly denounced the Waters Pierce Oil Company and Senator Bailey for his connection with it, but I did not applaud his speech. He was applauded when he denounced the Waters Pierce Oil Company and Henry Clay Pierce. He also denounced Senator Bailey. The Court-room was full at the time. The sentiments Judge Terrell expressed met with general approval of the audience, but it was for this reason: The Bailey people had a meeting elsewhere, and those who came to hear Judge Terrell were in sympathy with his side of it. I am acquainted with Judge Terrell. He has lived in this county for a great many years, and I believe he was once District Judge here, but that was before my time. I know that he has been State Senator and also a member of the House of Representatives, and he was Minister to Turkey during President Cleveland's administration. Judge Terrell is and has been for many years a man of very strong influence in Travis County. I also heard Taylor Moore speak here and at Manor. Mr. Moore in his speech here very violently denounced the Waters Pierce Oil Company, Henry Clay Pierce and Senator Bailey for his connection with the company. The house was full at the time; I don't remember whether there were any people standing up or not that night, but there was a good crowd. The sentiments expressed by Mr. Moore

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were roundly applauded by the audience. As to whether or not Mr. Moore is a master at vituperation, he seems to understand his business very well. His speech at Manor was delivered early in the morning. He had a very poor audience at Manor, only about forty people being present. He discussed the Waters Pierce Oil Company and denounced it down there; he declared that its admission into Texas was procured by fraud, and he denounced Mr. Bailey for his alleged connection with it, along the same lines as in his speech in Austin. His speech at Manor was not as roundly applauded as the one here, but it was applauded to a certain extent. I went from here to Manor with Mr. Moore in a buggy. I was doing all I could against Senator Bailey. The only speeches I heard were here and at Manor. I did not hear Mr. Cocke make a speech here. I would have liked to hear his speech. The only speeches I heard were at Manor and the one here at the Court house and Senator Bailey's speech at the opera House. I helped send out literature during that campaign, charging the Waters Pierce Oil Company with be-
457 ing a trust. I don't think we charged that its admission into Texas was secured by fraud; I don't remember exactly. We tried to get literature into the hands of every voter in the county. The literature we sent out denounced the Waters Pierce Oil Company and Senator Bailey. I don't think it was violent in its terms; we had to restrict ourselves. As to Mr. Bailey, I would not consider any language violent; as to the Waters Pierce Oil Company, such is not the case. I consider the Waters Pierce Oil Company some better than the Senator. I was Chairman of the Anti-Bailey campaign committee in Travis County, and all of the literature was sent out under my supervision. We made other charges against Mr. Bailey than his connection with the Waters Pierce Oil Company, but that was the main thing. I don't reme-ber exactly how much money we spent in that campaign; it was somewhere between five and six hundred dollars. That money was subscribed by people in the city of Austin. It was not a very large list of contributors to the fund, because we had some men who contributed liberally to it. I contributed to the fund. I don't know just how much that election cost me; perhaps forty or fifty dollars. I did not spend that money to prove that the Waters Pierce Oil Company was a trust and that Senator Bailey was representing them; we were fighting Senator Bailey for his connection with the Waters Pierce Oil Compnay and for misrepresenting the facts to the people. If I had not thought the Waters Pierce Oil Company was a trust and operating in violation of the law, as to whether or not I would have opposed Senator Bailey, I will say: I would oppose any man who would say one thing and then turn around, in other words, I will fight any politician who lies to the people, I don't care who he is.

In reference to whether or not I am still willing to swear that the defendant can get a fair trial in this county, there are as
458 many Bailey men as anti-Bailey men in Travis County. I think every good citizen wants to see the defendant gets justice. As to whether or not I would disqualify myself if called as a juror, that would depend on the questions. If I were called as a juror and the question were asked me, "Mr. Hill, have you any bias

in favor of or against the Waters Pierce Oil Company?" I would have to say, frankly, from what I have read in the papers regarding their actions, I am biased against them. I do not believe I am prejudiced against the Waters Pierce Oil Company. As to whether or not I understand the word "prejudice," it has different meanings. I mean in the sense of hostility or enmity. If it means prejudgment, I would say that I don't know enough about the case to be able to judge. With the statement that the issues in the case are that the defendant is a trust, that it is operating in violation of the law, and that it was brough- into the State by fraud, I will say that it was brought into the State — those issues. Regarding trusts, I think a trust should be made to obey the law. I know that trusts are denounced by the laws of Texas and other States. I know that all corporations are not trusts. What I mean is this: I believe that railroads and oil companies and telegraph companies are necessary, but I don't believe it is right for any of them to enter into combinations to control things. I don't know whether the defendant is a trust or not.

Redirect examination:

I think that, notwithstanding what I have heard and read, I can qualify as a juror and give the defendant a fair trial. From what I know *th* the people of this county, I don't see any reason why you should not get many fair jurors.

With reference to the speeches made in the campaign, there
459 were some very warm speeches made in behalf of Senator Bailey. I heard Col. Dick Wynne of Fort Worth make a speech in the interest of Senator Bailey here. Senator Bailey also made speeches in his own interest. I heard him speak at the opera house. He denounced the Attorney General and nearly everybody else that was against him. Mr. Bailey himself is not a novice at vituperation. I did not hear Mr. Bailey's speech at the skating-rink. As to how many people the "Statesman" said were out to hear him at the skating-rink, the headlines said there were several thousand, and said that his speech was well received by the audience, and I heard on the street that the people there went wild. His vituperation was well received by the audience at the opera-house. I think a great many people who received letters sent out by our committee and by the other side simply pitched them into the waste basket, and many people who read the newspapers don't read the political news. As to the number of contributors to the Anti-Bailey fund, I should judge that there were not more than twenty-five; that is making a rough guess. It was hard for us to raise money in that campaign, and we have a bill hanging over us to-day, although we had two or three committees working. There were more men refused to contribute than did contribute. Our committees worked parts of two or three days trying to raise money. I don't know whether there was a Bailey fund raised in this county or not, but I know there was some money disbursed by them, because I could see them at it. I tried to find out how much money was disbursed on the other side, but could not. During the campaign I heard some discussion as to

the Waters Pierce Oil Company's being a trust. I did not hear it discussed by one party on one side claiming that it was a trust and by some one else claiming that it was not. I have not heard any discussion of what the State expects to prove nor of what the
460 defendant expects to prove as its defense in this case.

Recross-examination:

I have not kept any of the campaign literature we used; I think it has been destroyed. If we sent out any copies of a document issued by the "Good Government Club" at Houston and entitled, "The Shame of Texas," or something like that, I don't remember it. There were a few of those sent us here, but whether or not they were circulated I don't know.

WILL NEHRING, for the State, testified as follows:

I reside in Dessau, in Travis County. Dessau is about twelve miles North of Austin. I was summoned as a witness for the defense in this case, I think. I am Democratic Chairman at my voting box. I have resided there twenty-nine years. I am fairly well acquainted with the people living at Dessau and at Pflugerville and around there down as far as Manor. I have heard very little discussion concerning the Waters Pierce Oil Company among the people out there; it was mostly regarding Senator Bailey. I have heard mighty little discussion about the Waters Pierce Oil Company or the issues involved in this case independent of the Bailey matter. There was a great deal of discussion concerning Senator Bailey during the campaign. From what I have heard among the people of my section and the citizens of Austin, I believe the defendant can get a fair and impartial trial. As to how many men I think could be obtained at my box that would try this case fairly and impartially to both sides, I have not heard any of them discuss the matter. I think I could go into the jury box and try this case fairly and impartially.
461 I have no doubt on that subject. I could set aside my impressions and try the case on the evidence and the law.

Cross-examination:

I heard a great deal of discussion about Mr. Bailey when it first came out about him and the oil company; I mean the Standard, combined with the Waters Pierce. They were talking about that money that Mr. Bailey got that ought to have gone to the State, is the way I heard them talk about it. What I heard them talk about, they didn't think it was his place to work for the oil company; that's the way I understood it. I don't know whether the people thought the Waters Pierce Oil Company was a trust and that Mr. Bailey had been working for it knowing it was a trust or not, as I never heard them say. I heard them talking that the money Mr. Bailey got ought to have gone to the State—that it was money that belonged to the State and he put it into his pocket instead of paying it into the State Treasury; I think that was it, as well as I understood it. I think the defendant can get a fair and impartial trial in this county. I can't say whether or not the State ought to win in this case, as I

have not heard any evidence. I don't go by what I read in the papers nor by what I hear people say; I think I have to hear the evidence first. I voted against Mr. Bailey. There was mighty little interest taken in the election at my box. I think there were just fifteen votes there. I think there were five votes for Mr. Bailey and ten or eleven against him. I voted against Mr. Bailey because I thought he was not the man for the place, from what I had read about him. I didn't know what he had done with the money he got. I thought the Waters Pierce Oil Company was a trust. I don't know whether it ought to be put out of business in Texas or not. I don't know whether the most of the people out my way believe it is
462 a trust or not; I have not heard them say.

Redirect examination:

There are about fifty qualified jurors out there.

B. F. CAGLE, for the State, testified as follows:

My name is B. F. Cagle, and I live about three miles North-east of Austin, out here on the Manor road, in Travis County. Pecan Springs is my voting box. I moved to Pecan Springs last December a year ago. I lived down at Del Valle about twenty years, and am well acquainted with the people there. I am very well acquainted with the people in the Pecan Springs neighborhood, and have been for years. I don't think I heard much discussion at Pecan Springs or other points in the county about the Bailey Controversy, other than what I read in the papers. I did not hear much discussion concerning it, because I am at work all the time. There is no store near me; there is one at Fort Prairie, and stores here in Austin. I don't think I heard any discussion until I came here Monday morning as to whether or not the defendant can get a fair trial or not. The most I have heard talking about it said they thought they could get just as fair a trial in Travis county as anywhere in the United States or the State. I am a qualified juror. I think I could qualify as a juror in this case and try it fairly and impartially. I have no such opinion concerning this matter as that I could not go into the jury box and give the defendant a fair trial.

Cross-examination:

As to what I think of the Waters Pierce Oil Company, I don't know as I have ever given it any study or paid any attention whatever to it, because I have business to attend to at home and
463 we have legislators to attend to that. I may read articles, and give them a little thought, and go on. I am studying about my own business, that's the way I stand on it.

Redirect examination:

I never did ask by which side I was summoned as a witness in this case. I asked Judge Penn yesterday to use me so I could go.

Recross-examination:

I had heard no discussion about this matter until I came around the court-house, except that John Shelton one day asked me what

I thought about it and I told him, and he asked me if I thought Pierce could get a fair trial in this county, and I told him I thought he could, or any other man.

T. E. CATER, for the State, testified as follows:

I live at Fairview, about thirty miles up the river. I think there are about forty-eight qualified voters and qualified jurors at my box. I have not heard any discussion of the subject of whether or not the Waters Pierce Oil Company can secure a fair and impartial trial in this county nor as to the character of business in which it has been engaged in Texas. I did not hear any discussion of the Waters Pierce Oil Company, but I did hear discussion of Mr. Bailey during the Bailey controversy. I have not heard any discussion of Senator Bailey in connection with the re-admission of the Waters Pierce Oil Company. From what I have read and heard, I think the Waters Pierce Oil Company can get a fair and impartial trial in this county, I would not want to serve on the jury, but if I had to, I could qualify as a juror and try it on the facts and the law. I don't know anything about the issues in this case and I would be governed by the law and the facts.

464 Cross-examination:

I would not like to sit on the jury, from the simple fact that I have heard so much lately in regard to Mr. Bailey's being connected with it; it is just lately I have heard it. I don't mean that I would be afraid that I would not be able to do the right thing. That would be one reason, and there are other reasons, but I don't like to state what they are. I don't know whether the Waters Pierce Oil Company is a trust or not. I have heard the name of the Waters Pierce Oil Company, but don't know whether there is any such institution or not; if I ever came in contact with it, I didn't know it. I have heard Mr. Bailey discussed in connection with the people and Congress—that he was serving two masters at the same time—that he was serving the people in Congress and receiving money from a corporation when his time was due in Congress. As to what corporation it was, I don't know, but supposed to be the Waters Pierce Oil Company, and I never heard of his denying it. I accepted what I heard about it, and voted accordingly. As to what I mean by a fair trial, I would lay aside any prejudice that I might have against any company or any one else and try it on the evidence. If I had any prejudice I would not necessarily lay it aside; while the case was going on I would have no prejudice; when I was taken as a juror I would discard it, and take it up again after the case was over, just like my tobacco—quit once and commence again. If I were taken on the jury I would feel friendly to both sides. I have heard the name of H. C. Pierce, and heard him discussed in connection with Mr. Bailey; his name was discussed as president of the Waters Pierce Oil Company. I can't say that I have formed an opinion about it.

465 I have not heard it discussed as to whether Mr. Pierce's oil company was readmitted to do business in Texas through fraud or not. I never heard any mention of the fact that his company was put out of business here. I heard that he had been in-

dicted for taking money—not Mr. Pierce, but Mr. Bailey; that's the information I got. I don't say that I voted against him, and did not say it a while ago. I didn't vote in the last election at all; I voted in the general election last year. I mean by the last election the one they had to vote either for or against Bailey. I did not cast my vote then. I saw the tickets voted at that election. I was one of the judges at the election, but did not vote. There were four votes polled at my box in that election, and we had three judges at the election. I did not express my opinion about it there; I was too sharp for that, because I had other reasons for it. I- regard to my objections to expressing my opinion, I don't know as that would cut any ice here; I don't know as that would have any effect here. I don't think it would affect this case an iota, and it is a private matter that I don't want to disclose. That is my reason for not voting. It is a private reason, but I might use it publicly some other time. I refuse to use it now unless I have to do so. It would not pertain to this case or any other case in which I might be accepted as a juror. I was there all day at the election. I believe I was mistaken in saying that Mr. Bailey was indicted, but these accusations were brought against him. I don't really know that either Pierce or Bailey was indicted; I am not sure about that. As to how I came to hold the election, one of our judges up there came over and asked me to assist him.

Redirect examination.

There were four votes cast at our box at that election, and we had three judges. We have about forty-eight voters at that box.
466 The Waters Pierce Oil Company was not mentioned up there the day before the election, and there didn't seem to be any excitement about the Bailey question, and there has not been any since then.

THEODORE BOHLS, for the State, testified as follows:

I reside at Bee Cave, about fifteen miles Southwest of Austin. I was summoned here as a witness, but I don't know whether by the defendant or the plaintiff. I come to town pretty often sometimes, and attend to my business and go back home. I don't think we had any election on the Bailey question at Bee Cave. The papers were brought to me to hold the election, and I refused to hold it. I have heard the Waters Pierce Oil Company and the Bailey controversy mentioned once in a while, but paid no attention to it, and I don't remember whom I heard talking about it. I did not hear any discussion of the subject when I would come to Austin. I live in about the most thickly settled portion out there. There was no general discussion of the Waters Pierce Oil Company among the people out there. There was some talk about Mr. Bailey a few months ago out there. I glanced at some newspaper accounts of the matter at that time. From the attention I paid to it and from what I have heard, I think the Waters Pierce Oil Company can get a fair and impartial trial in this county. Fair and impartial jurors can be obtained around Bee Cave to try this case. I think I could go into the jury box and try this case with fairness and impartiality to both sides.

Cross-examination:

I suppose it is the case of the Waters Pierce Oil Company they are talking about that I could try fairly. I have never read enough to understand the foundation of it. I believe the talk was that
467 it was a trust. In passing by I might have heard it discussed. I never did ask anybody about it and never stood and listened to the arguments about it. There was more or less stir going on about it, but I took mighty little interest in it, because it was not concerning me. I heard them talking about the oil company, and I never paid heed to it nor read the papers to know what it was about—it didn't interest me enough to know. I said that I believe the defendant can get a fair trial here. I say that because I think we have honest men here that can be selected to try the case, as well as anywhere else. I did not know that a former case against this company had been tried until I heard it here; I don't remember of hearing of it before. In regard to the election held in this county last January, I knew about it three days before the papers were brought to me; I read it in the Galveston News. I know that the Legislature met last Winter and that they had an investigation growing out of the oil business, and that it lasted five or six weeks. I did not know until I came here yesterday that Mr. Pierce had been indicted; I heard it discussed here, that he had been tried here before; that's all I heard about it. I have heard some people say that they thought the Waters Pierce Oil Company was a trust, but I didn't hear much discussion of the subject. I did not hear them say they thought the company ought to be driven out of the State and prevented from doing business. I just heard them say what I have stated, as I was passing by and I didn't pay any attention to it, and didn't even know what the foundation of it was. I did not hear those people say the company was doing business in this State in violation of the law. I have been subscribing for the Galveston News for the last twenty-five or thirty years. I don't take any of the local papers. The Galveston News has contained a great deal about this matter the last few months, but I didn't pay any attention to it, because it didn't concern me.

468 Redirect examination:

I was sitting here in the room yesterday when Mr. John E. Shelton was testifying but could not hear what he said and did not understand it. If Mr. Shelton spoke to me with reference to this case some days ago, I don't remember anything about it.

CHARLES THIELE, for the State testified as follows:

My name is Charles Thiele, and I reside four miles North of Austin. The voting box out there is at my place and I am Chairman there. I have been Democratic Chairman there the last twelve years. I think I was summoned as a witness for the Waters Pierce Oil Company in this case. I agreed to hold an election at Thiele's Residence last January in the Bailey controversy, and the stationery was sent out there, but we didn't hold any, as nobody came. There was no interest taken on that issue that day at my place. I have not during

the last six months heard discussion with reference to that matter among the people of my community or here in Austin. I was at home at work and did not hear the speeches. I did not hear any discussion among the people while that campaign was going on nor while the investigation was going on in the Legislature. I took the "Statesman," and that is all I read. I heard the people discussing that question but very little. I did not hear it to any extent that I know of. I come to Austin about once a week, and always very late in the evening. I have some relatives here in the city. I heard very little discussion among my relatives and other people before the election last January. My relatives came to see us sometimes, and they are the only persons I expressed myself to. I told them that this
county was going to hold an election, that I would not object
469 to holding one, and if there was any truth in what I read in the "Statesman" and so forth, I though- they ought to hold one. When I came here yesterday it was my opinion that the Waters Pierce Oil Company could obtain a fair trial in this county, and when I went to dinner yesterday I stopped in a store up here and there were four or five men there; one was a drummer, who goes from house to house, and I put the question to them if they thought Travis County could produce twelve men as jurors to give an impartial verdict in this case and they almost unanimously answered that they though- so. My opinion is the same now as yesterday; I have not changed it. I do not know of any reason why the Waters Pierce Oil Company can not get a fair and impartial trial of this case in this county. If I were summoned as a juror in this case I think I could qualify and try this case fairly and impartially on both sides. I have no doubt on the subject. I don't know any of the facts in the case, and I would have to go accoraing to the testimony and the evidence. I have not heard the facts of this case discussed to amount to anything.

Recross-examination:

Those people I was talking to yesterday said they would feel sorry if this county could not produce twelve men who would give an impartial verdict in this case. I also asked them if they thought there — any prejudice in this county against the Waters Pierce Oil Company, and they said No, it didn't amount to anything—somebody would talk about it who had never heard any of the facts. My idea of a fair trial in this case is that twelve men can be found in the county who will say that they will give the defendant a fair and impartial trial. There might be a case come up where a fair trial
could not be had in this county, but it would be a sorrowful
470 thing. I think there certainly ought to be twelve good men among six thousand.

ROBERT WOLF, for the State, testified as follows:

I reside at Manor, and am Justice of the Peace down there. I have lived there eight years. I understand that I was summoned as a witness for the defendant here. During the last six months I have heard a general discussion concerning the Waters Pierce Oil Com-

pany. I have read a whole lot about it; I have read two or three different ways, though. From what I have heard and read, I am sure that the defendant can obtain a fair and impartial trial of this case in this county. It can receive a fair and impartial trial of this case in *can in* any other county in the State. If I were summoned as a juror in this case I could try it fairly and impartially on the facts.

I remember having a conversation recently with John E. Shelton concerning this case. I did not tell Mr. Shelton that the defendant could not obtain a fair trial of this case in this county. I had been down to Atlee and had come back and got on the noon train going to Manor and was sitting with some friends in the car, we had seats facing one another, and Mr. Shelton came in; he said, "You fellows are about to get in trouble up in Austin," and one of them said, "Well, no, not as long as we have got the Judge with us"; Mr. Shelton said, "You are the very Judge I want to see," and he called me back to the smoker and he asked me about the prohibition question, and I answered him; then he said something about Bailey, I don't know what, and he asked me, "What about this Bailey business?" I told him I didn't think much of it, it was so little thought of or so little interest taken in it after it was quashed, and
471 he said, "You know they have instituted suit against the Waters Pierce Oil Company and also against H. Clay Pierce." I said, "Yes, I have heard about it." He said, "They are trying to get a change of venue. Don't you think it will be a hard matter to get a jury in Travis County to indict them or give them a fair trial?" I said, "Well, it might be hard, but no harder than in any other county," as all the papers had been advertising and writing it up, and I told him that I believed that the Waters Pierce Oil Company could get a fair and impartial trial in Travis County; I told him it might be that they would have to summon a good many jurors, but that they could get a fair trial. I had no prejudice against the company personally.

**Cross-examination:**

I have lived in Travis County about eighteen years. I am twenty-eight years of age. I believe that we have enough conscientious men in this county to give the defendant a fair trial. I believe that with reference to any case, without reference to its publicity. I believe that conscientious men will do right if they take the oath as jurors. I don't believe that all men will do it. Now, in a murder or rape case, or something like that, I think there would be trouble in getting jurors, but not in a civil suit like this. I know that during the investigation in the Legislature this matter was discussed for a month or more and public speeches were made nearly every day in this county during the campaign. I know that a suit against the old Waters Pierce Oil Company was tried here some years ago and judgment was rendered against the company and it was put out of business. I also understand that it is charged that its coming back into the State was a fraud on the laws of the State, but it has not been
472 found guilty of it. I know that when this suit was filed it provoked a political contest in Travis county; I considered

it a political scheme. With reference to whether or not the newspapers have given more notice to this case than to any other case, civil or criminal, that has ever come under my observation in this county, I think the Burt murder case and others received about as much notice. Perhaps the newspapers have published a dozen times as much about this case as they did about the Burt case. I know that there are many counties that did not hold any election at all in regard to the Bailey controversy and I know that Travis county is the county where the Legislature meets and the investigation was had. I do not see why in some county other than Travis there would be less pre-judgment of the case than in this county. I do not believe the people here could say straight out that they have their minds made up as to the issues in this case. There were a good many circulars and pamphlets sent out during the Bailey campaign. I think a few people in this county have formed opinions growing out of the discussion of this matter.

Redirect examination:

The literature sent out over the county during that campaign and the legislative investigation related more especially to Mr. Bailey. The primary election held in this county last January called out a comparatively *like* vote. So far as I know very few people read the pamphlets that were circulated; I did not read them. I stated that I thought the Burt case and other cases that have been tried in this county had received as much notice as this case. I have not heard any of the facts of this case discussed by the people, only the re-admission of the Waters Pierce Oil Company to the State.

473 Recross-examination:

I have heard people say they thought its re-admission to the State was a fraud. The expressions I have heard regarding Senator Bailey related to his alleged connection with the Waters Pierce Oil Company and other things as well. The majority of the people believed that Senator Bailey had received money from the Waters Pierce Oil Company, and some of them claimed that he should not have taken it at all, being as he was drawing a salary from Texas. Others said he had no business working for the Waters Pierce Oil Company because it was accused of being a trust. Some said that Senator Bailey had no business working for them or receiving money from them and denying it and coming back and saying he had got it. As to whether or not anybody was defending the Waters-Pierce Oil Company, that was not discussed very much in my part of the country—Bailey was the one. The people have the idea that the Waters Pierce Oil Company is a trust, but they could not get up and swear that it is.

Redirect examination:

I think you can get plenty of good men in this county to try this case. The charges against Senator Bailey were numerous. His alleged connection with the Waters Pierce Oil Oompany was not the

only charge against him that was discussed. His services to public service corporations, the Security Oil Company, and his race horse farms and everything else were discussed.

Recross-examination:

I was under the impression that the filing of this suit was a result of the Bailey controversy. I was under the impression that the evidence brought out was what caused the suit to be instituted.

Redirect examination:

I heard something about the evidence of Mr. Pierce in Missouri before this suit was filed. The people generally were talking
474 about it.

NELSON HOUSER, for the State, testified as follows:

I live in Manor, in this county. I have lived right in Manor about a year and a half, and have lived in Travis County about thirty years. I have lived within about five miles of Manor and in Manor for twenty or thirty years. I am acquainted with the people in and about New Sweden Kimbro and Decker. During the past six months I have heard discussion of the Bailey and Waters Pierce Oil Company matter—principally in regard to Senator Bailey, and incidentally referring to the company. I have read about it in the newspapers, also. From what I have heard and read, I think the Waters Pierce Oil Company can obtain a fair and impartial trial in this county. If accepted as a juror in this case, I could qualify and give the defendant a fair and impartial trial. All I know in regard to the facts of this case is what I have read in the papers. As to whether or not I have an opinion that would prevent me from qualifying as a juror, I am not taking it so seriously that I could not discard any impression I have. I think some men could be obtained around Manor that would give a fair trial but some could not do so. I was summoned as a witness for the defense in this case.

Cross-examination:

I don't know why some of them would not qualify, only I have heard them talk that way. They said they would not be competent jurors in this case, as they have their minds made up, I suppose. I have my opinion about the case; it is that the Waters Pierce Oil Company is a trust, and if I went into the*y* jury-box I would do so with that opinion, though I am not taking it seriously. While I have not heard the facts of the case, from what I have heard my
475 opinion is that it came back into the State in defiance of the law and through a fraud. Nevertheless, I could give it a fair trial. I think there are other men of the same frame of mind in my community who could do the same. I heard that there was a judgment rendered against the old Waters Pierce Oil Company, but that it came back into the State afterwards, and that was claimed to be a fraud on the State. I suppose everything concerning that matter occurred in Travis County, though I don't really know. I think that, in my frame of mind, I could give the defendants a fair trial.

Redirect examination:

I have sat as a juror in a murder case. I had heard that the man had been killed, before being taken as a juror, but that fact did not affect my verdict. I would go into the jury box and try the case fairly, notwithstanding I have heard that this company was tried once before.

R. E. LEE, for the State, testified as follows:

I reside at Carl, out South of Austin, between Bluff Springs and Creedmoor. I have resided in that section of the county nearly twenty-four years. I know a great many of the people on the south side of the river in Travis County. I come to Austin almost every week, and sometimes twice a week. I buy groceries at Deen & Walling's principally and meet a great many farmers there from different sections. I have heard the Bailey and Waters Pierce matter talked of some, but not a great deal. In the fall I was engaged in gathering my crop, and in the Winter I was doing carpenter work. During the campaign that preceded the election held in January and during the investigation of Senator Bailey, I heard some discussion among the citizens with regard to it. We did not hold any
476 election at Carl in the Bailey controversy. As to the reason for not holding it, in the first place Mr. Barr and I were the judges of the election there, and he had moved out before that time and was not qualified to assist me in holding it. I asked my old clerks who has been holding elections for some years about holding the election, and they asked me whether there was any money in it, and I told them I wasn't sure, I couldn't promise them anything at all, and so they didn't come. I could not get anybody to serve. I left the papers and said, "If there is any one else that wants to hold the election they can get the papers." I think there are between thirty and forty voters at Carl. I have read the newspaper accounts of the Bailey controversy, and the Waters Pierce Oil Company was mentioned in that connection. I read the Austin Daily Statesman, the Daily Tribune and the Semi-Weekly Galveston News. From the newspaper articles I read and the discussions I heard among my neighbors and here in town, I think the defendant in this case can get a fair and impartial trial in Travis County. I think I could qualify as a juror and try the case fairly alike to both sides. I have no doubt about that, any more than I have in any case I ever set on. As to whether or not there is any feeling against the Waters Pierce Oil Company, I never heard the Waters Pierce Oil Company mentioned until three or four days ago. I mingle with my neighbors when I have the time to spare.

Cross-examination:

I think the Waters Pierce Oil Company is a trust. In regard to my opinion as to whether or not its admission into the State after the old company was excluded was a fraud upon the State, I would read one newspaper and it would convince me it was, and then pick

up another and read it and it would convince me it was not;
477 so I don't know. As to whether or not the Waters Pierce Oil Company is a trust, I have not heard that subject discussed until last Thursday, when I heard two men discuss it. From what they said, I think they regard it as a trust. As to the basis of the opposition to Senator Bailey in my community, the people consider that Mr. Bailey is our Senator and that he had not represented the people as he should have done. They believed then, and believe it yet, that he had been working for trusts and monopolies. They believed that the Waters Pierce Oil Company was one of the trusts and monopolies for which he had been working. I think I could qualify as a juror in this case and try it impartially. If the testimony of Mr. H. C. Pierce and other officers of the company were introduced in evidence, I believe I could weigh it as impartially as if I didn't have this opinion. I do not believe I would have any more difficulty in weighing it impartially than if I didn't have the opinion. I would not take the oath as a juror if I thought I could not try the case impartially. I can not speak for any one *by* myself on the question of whether or not I believe that any honest and conscientious man can lay aside any prejudice or prejudgment of the case and try it according to the law and the evidence; I think I can do it, and I have done such things. Where I believed men to be guilty before I went into the jury box, I would acquit where the evidence was such that I could not do other than that. I believed they were guilty, but had no evidence to back it up. I would take the evidence and the charge and return a verdict that I believed to be in accordance with the law and the rulings of the court. I have not heard anybody in my neighborhood speak a good word for the Waters Pierce Oil Company; I have not heard it discussed at all. I did hear it discussed in connection with the Bailey matter, but they
were not blaming the trust for getting Bailey to get them
478 back here. They were opposing Mr. Bailey because he had not been true to us as our Senator. The reason they thought he had not been true was because he had been working for the Waters Pierce Oil Company, and that it was a trust.

Redirect examination:

Senator Bailey just had the people wound up in a ball and rolling them ahead of him; I know he had me, anything he said was all right. I was summoned here as a witness for the defense.

THOMAS CARPENTER, for the State, testified as follows:

I live at Manchaca, in Travis County. I have lived there twenty-four years. I am a cotton-buyer and ginner. I am well acquainted with the people living in the Manchaca neighborhood. I know some of the people at Oak Hill, Roberts and Bluff Springs. I was summoned here as a witness for the defense. I was in the county on the day of the election held in January, and I was here during the Bailey Investigation in the Legislature. I read the newspaper accounts of those occurrences. I have heard discussion concerning the Bailey controversy among the people around Manchaca and the neighbor-

ing boxes and in the city of Austin; it was generally discussed at the time stated. From what I have read and heard, I think the Waters Pierce Oil Company can obtain a fair and impartial trial of this case in this county. I feel sure that fair and impartial jurors to try this case can be secured in and around Manchaca. I could qualify as a juror and try the case fairly to both sides on the facts and the law as charged by the court.

479 Cross-examination:

I do not believe that the Waters Pierce Oil Company is a trust, operating in Texas in violation of the law. I do not believe that it was admitted into Texas by fraud six years ago. I voted for Mr. Bailey in the election last January. From what I have heard, the majority of the people in my precinct consider that the Waters Pierce Oil Company is a trust. I do not know that they think it is operating here in violation of the law, but they think it is a corporation that has something to do with the regulation of the prices of oil. They think it is a trust, and they think any trust is in violation of the law. I don't know that the majority of them also say that its admission into the State of Texas six years ago after the old company was ousted was accomplished by fraud.

I know the people living around Bluff Springs and Roberts and Oak Hill. I do not see very frequently the people that live around Roberts and Oak Hill. From what I have heard, I think the majority of the people out there believe the Waters Pierce Oil Company is a trust. I think the majority of the reading public everywhere believes it is a trust. I heard Mr. Summerrow out at Manchaca undertake to defend the Waters Pierce Oil Company. I think he is the only one I have heard say anything in favor of it. In expressing the opinion that the defendant can secure a fair and impartial trial of this case in this county, I proceed on the idea that any honest, conscientious man when he is sworn as a juror should be able to lay aside any preconceived idea he has with reference to the case and try it according to the law and the evidence.

Redirect examination:

I do not undertake to say to what extent the people have opinions in this matter. As to whether or not a man can lay
480 aside his prejudice or preconceived views of a matter would depend on the extent to which his mind is made up. I base my statement on the idea that the people's minds are not so made up that they could not lay aside their opinions.

JOHN PATTERSON, for the State, testified as follows:

My name is John Patterson, and I am in the fraternal life insurance at present. I have been a school teacher in this county for twelve years. I reside at Manchaca. Manchaca has been my home all the time, although I would be away all the time except in the Summer; I called it my home all the time. I am well acquainted with the people in that community. I know the people at Bluff Springs as well as those at Manchaca; at Oatmanville and at Roberts

I know practically half the people. I was in the county during the Bailey campaign and at the time of the primary election, and I was here during the Bailey Investigating committee's work in the Legislature. I read the newspapers every day and almost everything else I could get hold of, and heard Senator Bailey make a speech. I heard discussions among the people of Manchaca and Roberts and that section at that time. From what I heard and read, I believe the Waters Pierce Oil Company can obtain a fair and impartial trial in this county. As far as any prejudice is concerned, I think I could qualify as a juror and try this case on the facts and the law as charged by the court. I have no prejudice, in the sense that I have no desire to see one side or the other win in the case, and I have no feeling in the case. If I have any views concerning the matter, I can set them aside. I was summoned as a witness for the defense in this case.

481 Cross-examination:

I think, from my general reading, that the Waters Pierce Oil Company is a part of the Standard Oil Company, and think it is a part of the trust. I think it would necessarily follow that the company has been violating the laws of Texas against combinations, trusts and conspiracies in restraint of trade, and I think its admission into the State six years ago was accomplished by fraud. I don't think that all the people out there believe that way. There are some that do not believe the Waters Pierce Oil Company is a trust—or, at least, they have talked so. I have heard such expressions, and have heard others say they didn't know anything about it at all. In the election last January there were sixteen votes against and fifteen for Mr. Bailey at Manchaca. I was an anti-Bailey man. I did not distribute anti-Bailey literature out there. I was opposed to Mr. Bailey for several reasons: First, I did not think he was a good party man before the nomination; I would not have opposed him after the nomination, on that ground. Second, I thought he had misrepresented things to the people of Texas. Third, I did not think it was proper for a United States Senator to *ge* getting large sums of money from the monied interests of the country at the same time he was drawing salary from the State of Texas or the United States government to represent Texas; and lastly and my most earnest reason for it was on account of his language in the city of Austin. I never took any active interest until after his speech at the skating-rink. I used my influence to defeat him, and impressed i*n* on the minds of my friends as far as I could. I heard expressions here in Austin along the same lines. I have not heard any expressions that I can recall since the Bailey election. If I am not mistaken,
482 I heard Judge Penn say we didn't know anything about it—didn't know it was a trust. I think I heard Judge Penn discuss the Bailey matter downstairs on the street. I could not say who was present. If I heard him say anything it was nothing more than the Waters Pierce Oil Company had not been convicted of being a trust, and that we did not know that it was a trust. I have heard others make about the same statement. I do not think a man

would be a competent juror who had said the company was a trust and that it had been fraudulently admitted into the State. I think I could lay aside my prejudice and try the case on the law and the evidence. I have no greater ability to lay aside my opinions than most people.

Redirect examination:

I do not entertain any violent opinions on this subject at all. I went around Manchaca talking against Senator Bailey after I heard him at the skating-rink, but did not take any active interest against the Waters Pierce Oil Company. It was Senator Bailey that we had up and discussed.

A. D. DYE for the State, testified as follows:

I live out at Creedmore. I am acquainted with Calvin Hughes and W. R. Davis. I have lived out close to Creedmore about twenty years. I am very well acquainted with the people in that section. During the past six months I have heard discussion of the Bailey matter, in connection with the Waters Pierce Oil Company. The discussion was pretty general in that part of the country. I go up to the store often, and there was a good deal of discussion there. From those discussions and any newspaper reports I may have seen, I think the Waters Pierce Oil Company can obtain a fair and impartial trial in this county. I could qualify as a juror and try the case impartially to both sides under the facts and the charge
483 of the Court. I have no opinion concerning the matter that would interfere with my duty as a juror. I was summoned here as a witness for the defendant.

Cross-examination:

In the discussion I heard out there the matter was discussed pretty generally. The people I heard discuss the matter expressed the opinion that the Waters Pierce Oil Company is a member of a trust; it is the general belief in the community that it is. I have also heard them talking that the admission of the present company into the State six years ago was accomplished by fraud, after the old company was ousted from the State and the new company organized. From what I have heard about it, I believe that the Waters Pierce Oil Company is a member of a trust. I guess I also believe that the organization of the present company and obtaining its permit to do Texas in Texas was accomplished by fraud on the State. I think I could lay aside this preconceived idea and try the case according to the law and the evidence; I would try to do it. I think I could take the testimony of H. C. Pierce and other officers of the company and give it the same weight that I would have been able to give it if I had not heard all of this discussion and had not formed these preconceived ideas. I think it would be more difficult for me to give credence to their testimony than it would have been otherwise. I guess that would be the natural effect on any man that would go into the jury-box with an opinion. My opinion that the defendant can get a fair and impartial trial is predicated on the idea that an hon-

est conscientious man ought to be able to lay aside his opinion when he is sworn as a juror and try a case according to the law and the evidence.

484 Redirect examination:

I don't know anything about the facts the State expects to prove. I have no opinion that would interfere with my duties as a juror and prevent me from rendering a fair and impartial verdict. My opinion would not influence me in rendering a verdict after I heard the evidence.

Recross-examination:

The Austin Statesman and Tribune circulate out in my part of the county, and I believe the Houston Chronicle does, too. The testimony taken before the Bailey Investigating committee as published in the Statesman and Tribune and other newspapers was generally read and commented upon in the community. I saw copies of the Houston Chronicle or other papers in that community purporting to contain photographic copies of vouchers, letters, etc., in the Bailey Investigating Committee. Those papers were circulated generally in the community.

Redirect examination:

I don't remember as to whether or not the Fort Worth Record and Houston Post circulated around there. I saw the Houston Post occasionally.

485 *Plaintiff's Testimony.*

C. C. BAKER, a witness for the plaintiff, being duly sworn, testified as follows:

I live fourteen miles northeast of Austin; about five miles from Manor. I might say that I have a general acquaintance in that neighborhood; I am acquainted with nearly every man in that part of the country. I have heard very little expression in regard to the case of the State of Texas *vs.* Waters Pierce Oil Company. I have read of it in the papers, and have heard some comment, but not an extensive comment. I do not know of any reason that exists in this county why the defendant could not get a fair and impartial trial here, any more than any other portion of the State where the people read and are posted in regard to the character of the company. That would be my idea about it. I think they can get as fair a trial in Travis County as they could in any other well posted county in the state, that is, where the people read and keep posted in regard to trusts and where there is a general sentiment against trusts among the common people. I know of no special reason why a fair trial could not be had in this county; just the general sentiment against corporations. I think the same conditions exist in other parts of the State and throughout the country. I don't know that I know of any prejudice that exists against this corporation that does not exist

against the others. It might be possible that there is more prejudice against the Waters Pierce Oil Company in Travis County and all other counties in the State than any other trust. I believe the Waters Pierce Oil Company can secure a fair and impartial trial in this county, but it would depend upon the jury selected, just as in any other case. If a jury of honest fair-minded men is selected a fair trial could be had. I don't think its being the Waters Pierce Company would prevent its getting a fair trial. I believe I
486 was summoned as a witness for the defendant in this case.

Cross-examination:

I don't know that I could positively answer the question that I think the Waters Pierce Oil Company is guilty in this case. The impression made on my mind from reading the papers and hearing the matter discussed generally by intelligent people is that they were re-instated in a fraudulent manner; that seems to be the general impression, but I don't know it to be a fact. I have not heard anybody express a contrary opinion, but I have heard it expressed differently through the papers. Thinking the matter over I believe I have heard people express a contrary opinion, but I could not be positive as to how many. I explain the matter in this way; There is a Bailey feature in this case, and in discussing the Bailey feature in connection with the Waters Pierce Oil Company, there are a great many people in my community who are especially friendly to the Bailey feature in the suit of the Waters Pierce Oil Company and they question everything that is an unfriendly opinion as expressed against Mr. Bailey. I don't know that I have heard from a good many Bailey men that the admission of the Waters Pierce Oil Company into Texas was a fraud and that Mr. Pierce imposed on Mr. Bailey in inducing him to get the company in here.

I was an ardent opponent of Mr. Bailey in this last campaign. I don't think that a fair trial in this case would inevitably result in a conviction of the Waters Pierce Oil Company it would depend upon the evidence. I do not believe it is guilty. I would have to see more positive evidence. Mine is all second hand. If I were on the jury in this case I would not be inclined to look askance at the testimony of every one connected with the Waters Pierce Oil Company. I believe I could accept their testimony as fairly as I could others.

I have said that I believe most of the people consider the
487 Waters Pierce Oil Company guilty. That was not the basis of the opposition to Mr. Bailey; it was his connection with the company. They believe and I believe that he got it back into the State.

W. R. Davis, a witness for the plaintiff, being duly sworn, testified as follows:—

I live at Creedmoor; that is the same voting box at which Mr. Calvin Hughes lives. I have lived there some twelve or fourteen years. I am farming out there. I think I am tolerably well acquainted with the people around Creedmoor and south of the river generally. I think I am a pretty good mixer. In regard to the

sentiment at Creedmoor concerning the Waters Pierce Oil Company and its getting a fair trial in this county, I will say that if you cut out the Bailey part I don't think I have heard the company discussed. I have heard it said that it is a trust, and have heard that it is not a trust. I have heard both sides. Leaving out the Bailey issue I don't think I have heard anything south of the river to indicate prejudice against the Waters Pierce Oil Company.

I don't know whether I was called as a witness for the defendant. I was called over the 'phone, and I don't know by whom. Counsel for defendant said a moment ago they were willing to excuse me.

Leaving out the Bailey issue, I think the Waters Pierce Oil Company can get a fair trial in this county.

Cross-examination:

I have heard some few people express the opinion that the Waters Pierce Oil Company is a trust, but I have not heard many express their opinion about the Waters Pierce Oil Company at all, only in regard to this Bailey matter. I have heard Mr. Bailey cussed and discussed. It was about a standoff on that point. Some cussed him because they thought he had got the Waters Pierce Oil Com-
488 pany back into the State after they had been put out, and others cussed because they thought he was a traitor to the party and the people; that he had lied to them; that we had him employed as Congressman and United States Senator, and we thought that he would represent us, but instead of that he represented the trusts. I think the people meant this Waters Pierce Oil Company and other trusts; I can't think of the names. Among the people I heard express themselves, the great majority think the Waters Pierce Oil Company is a trust. A majority also thought that its admission into the State after the old company was dismissed, was a fraud.

In the last election I voted at Creedmoor. I voted against Mr. Bailey.

I don't know what I think about the Waters Pierce Oil Company. I am pretty well satisfied with the Waters Pierce Oil Company. I am getting oil about as cheap, and have no kick coming against them. I reckon they are a trust, and I believe it was fraudulently re-admitted.

The people in my community read a great deal. I read most of the testimony in the Bailey Investigation. I think most of the people out there read it. I have seen something purporting to be from Mr. Lightfoot about valuable evidence he had secured, but don't remember what it was. I couldn't say as to whether or not the people generally read it. I may have *a* read a letter from the Attorney General to Senator Bailey, written about the first of December, but I couldn't say for certain. Most of the people around Creedmoor and south of the river take one or the other of the local papers, the Statesman or the Tribune. I do not know whether or not the Houston Chronicle is taken in that part of the country.

Redirect examination:

I don't think I have heard any discussion among the people about the issues in this case, that is, the facts in this particular case.

489 The plaintiff here introduced in evidence a written agreement on file among the papers in this case, and signed by counsel for plaintiff and defendant, by which it was agreed that it was a fact that the Standard Oil Company of New Jersey had, since about September 20th, 1900, owned 2747 shares of the capital stock of the Waters Pierce Oil Company, and that from said date auditors of said Standard Oil Company had, from time to time, audited the books of the Waters Pierce Oil Company, and that on the trial of this case the said agreement might be read in evidence as an admission by defendant of said facts, to the introduction of which agreement in evidence on this hearing defendant objected on the ground that the same was irrelevant and immaterial to any issue before the Court on the hearing of said application for a change of venue, but which objection was overruled by the court and the said agreement was admitted in evidence, and to which action and ruling of the Court in so admitting said agreement in evidence the defendant then and there in open Court excepted.

And be it further remembered, that upon the conclusion of the evidence on the hearing of said application for change of venue in this court, the court, after hearing the argument of counsel thereon, overruled defendant's said application for a change of venue in this cause, and refused to grant to defendant a change of venue in this cause, and to which action and ruling of the Court, in so refusing said application for a change of venue and in so refusing to grant to defendant a change of venue in this cause, defendant then and there in open court excepted and here and now tenders this, its bill of exception to such action and ruling of the court and prays that the same be allowed and ordered filed and made a part of the record in this cause.

490 CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant, Waters-Pierce Oil Company.*

The foregoing bill of exceptions was tendered and delivered to me on the 29 day of June, A. D. 1907, and is hereby approved, ordered filed and made a part of the record in this cause, with the statement inserted, after filing, by consent of counsel for both parties, that 23 out of the first 28 talesmen examined in the selection of a jury in this cause testified that they had no opinions on the issues involved in the cause, and were accepted without objection by either party. One of the other five had no such opinion thereon as would disqualify him, and one of the remaining four had no opinion thereon but was unable because of physical disability to read and write.

V. L. BROOKS,
*Judge 26th Judicial District of Texas.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's Bill of Exceptions No. 7. Filed June 29, 1907. D. J. Pickle, Clerk.

491 *Charge of Court.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Cause Pending in the District Court of Travis County, Texas, for the 26th Judicial District, May Term, A. D. 1907.

GENTLEMEN OF THE JURY:

In this case the State of Texas, as plaintiff, has sued the Waters Pierce Oil Company, a private corporation chartered under the laws of the State of Missouri, and doing business in Texas by virtue of a permit issued to it by the State of Texas on May 31, 1900, as defendant, to cancel said permit, and to recover penalties for violations of the anti-trust laws of Texas which the State alleges the defendant has committed on each and every day from May 31, 1900, to April 29, 1907.

The State alleges that on or about January 1, 1870, John D. Rockefeller, John D. Archbold, H. H. Rogers, Henry M. Flagler, and a number of other persons conceived the scheme of monopolizing and controlling the business of refining, transporting, and selling petroleum and the products thereof throughout the United States, including the State of Texas, and that said persons to that end and for that purpose entered into a conspiracy among themselves and with other individuals and corporations, including the defendant corporation, which conspiracy the State alleges continued in force and effect from the date of its formation until the date of the filing of the State's Second Amended Petition in this case,

492 and the State further alleges that in pursuance of said alleged conspiracy the defendant has done various acts and entered into various agreements which constitute violations of the anti-trust laws of Texas.

The State further alleges that the defendant's predecessor, the Waters Pierce Oil Company incorporated in 1878, on or about the 5th day of October, 1894, entered into a contract with the Eagle Refining Company, A. W. Clem, and certain other individuals named in its petition, by the terms of which defendant acquired the property of said Eagle Refining Company situated in the City of Dallas, Texas, and the right to operate its business under the name of the said Eagle Refining Company. It further alleges that the defendant did subsequent to May 31, 1900, operate said Eagle Refining Company and maintain the plant thereof at Dallas, as an

apparently competing concern for various purposes prohibited by the anti-trust laws.

The State further alleges that in the year 1896, the defendant's said predecessor bought out the business of the Texas Oil and Gasoline Company and of one Roy Campbell, who were at that time doing business in the City of San Antonio, Texas, and elsewhere, and entered into contracts and agreements with the said Texas Oil and Gasoline Company and Roy Campbell whereby said Texas Oil and Gasoline Company was thereafter to be operated under said name by defendant as an apparently competing concern with defendant at San Antonio, in the sale of the products of petroleum. It further alleges that said Texas Oil and Gasoline Company was operated by defendant as a concern apparently competing with it at San Antonio subsequent to May 31, 1900, for various purposes in violation of the anti-trust laws of the State. For full particulars of the State's allegations you are referred to its Second Amended Original Petition.

The defendant denies all and singular the allegations of the State, and in addition to various other special defenses, pleads
493 specially that, if it has entered into any of the agreements or committed any of the acts alleged by the State, none of same constitute violations of the anti-trust laws of Texas because said agreements were made and said acts done (if at all) solely with reference to subjects of interstate commerce. For full particulars of defendant's allegations, you are referred to its 3rd Amended Original Answer.

As the Law of the case you are instructed as follows, viz:

I. The burden of proof rests upon the State to establish the affirmative of the issues which will hereafter be submitted in this charge for your consideration by a preponderance of the evidence, and you will find in favor of the defendant on each issue so submitted for your consideration, except such issue or issues, if any, as you find that the State has established by a preponderance of the evidence, and you will return a general verdict for the defendant, unless you find that the State has established by a preponderance of the evidence some combination or combinations of facts which will entitle it to recover under the Law as it is given you in charge by the Court.

II. The statute known as the anti-trust law of 1899 was in force on May 31, 1900, and thereafter remained continuously in force until March 31, 1903.

For the purposes of this charge you are instructed that this Act made it unlawful for any corporation transacting or conducting any kind of business in this State to enter into, or become a party to, any agreement, or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

494 You are further instructed that said statute also made it unlawful for any corporation transacting or conducting any kind of business in this State to bring about or permit any union

or combination of its capital, property, trade or acts with the capital, property, trade or acts of any other person or corporation whereby the price in Texas of any article of manufacture or merchandise would be fixed or sought to be fixed, regulated or sought to be regulated; or whereby the price in Texas of any article of manufacture or merchandise would be reasonably calculated to be fixed or regulated, or whereby the trade in such article of manufacture or merchandise in Texas would be sought to be controlled or limited, or would be reasonably calculated to be controlled or limited.

The statute known as the anti-trust Law of 1903, became effective on March 31, 1903, and has since continued in force.

For the purposes of this charge you are instructed that this statute defines a trust to be a combination of capital, skill, or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any, or all, of the following purposes, viz:

1. To create or which may tend to create or carry out restrictions in trade or commerce in Texas, or to create or carry out restrictions in the free pursuit in Texas of any business authorized or permitted by the laws of this State.

2. To fix, maintain, or increase the price of merchandise in Texas.

3. To prevent or lessen competition in Texas in the sale of merchandise.

4. To abstain from engaging in business or in the sale of merchandise in Texas, or any portion thereof.

Said statute of 1903, further defines a monopoly to be a
495 combination or consolidation of two or more corporations when effected in any of the following methods, viz:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create, a trust as above defined.

2. When any corporation acquires the shares or certificates of stock, franchise or other rights, or the physical properties or any part thereof of any other corporation or corporations for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

III. Oil, all other products of petroleum, and goods, wares or merchandise of any character which the defendant or its agents may have purchased or acquired in any manner outside the State of Texas and caused to be transported to its agents or others within the State, are the subjects of interstate commerce when they enter this State, and so remain until such commodities are removed from the original tanks, vessels, or other packages in which they are imported into the State, and become mixed with the common mass of property of similar character in the State. The anti-trust laws of Texas have no reference to agreements or pools or arrangements of any character concerning subjects of interstate commerce, and no

agreement, pool, or other arrangement, if any, which the defendant may have entered into with reference to the sale of any subject of interstate commerce can be considered by you as violating any anti-trust law of Texas. But neither oil purchased by the defendant from the Corsicana Refinery or elsewhere in Texas, nor other merchandise purchased by defendant at points in Texas, nor such oil or other merchandise purchased by defendant at points out-
496 side the State and transported into the State and removed from the original packages or vessels in which it was brought into the State and mingled with other property of similar character in the State, is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any agreement or pool or arrangement entered into by defendant with reference to such property or the sale thereof, if any such there were, would be unlawful, if in violation of the anti-trust Laws of this State.

IV. A corporation such as defendant can only act through its agents and servants, but such a corporation is not liable for all of the acts of its agents or servants. It is liable, however, for the acts done in the scope of their employment and agency, and is also liable for the acts of its agents which it has authorized such agents to perform, and it is also liable for the unauthorized acts of its agents, if any, which have been knowingly acquiesced in or ratified by the governing body of said corporation.

V. Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor's agents prior to June 1st, 1900, and to the doings and agreements of defendant's agents, and the agents of other corporations, outside the State of Texas, and to the doings and agreements of individuals both prior and subsequent to June 1, 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant, except within the limitations and for the purposes hereinafter stated, viz:

If you find from a preponderance of the other evidence in the case, independent of all declarations or statements made by
497 any person or persons, except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June 1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it worth, such acts or declarations of all the parties to said agreemnt, if any, and such acts and declarations of their authorized agents, if any, as were done or made, as the case may be, during the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the

character of said agreement, and whether or not it contemplated a violation by defendant of the anti-trust laws of Texas.

You may further consider for what, if anything, you think it worth as tending to show or explain the course of defendant's dealings in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside the State,

None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency.

VI. No agreement made by the defendant outside the State of Texas, to violate the anti-trust laws of Texas, if any such there were, can be made the basis for forfeiting its permit to do business
498 in Texas, or for imposing penalties upon it, unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of defendant; but inasmuch as the undisputed evidence in the case shows that the defendant has continuously maintained its agents in this State and prosecuted its business therein since May 31, 1900, you will be authorized to convict it of violating the anti-trust laws of Texas, if you find from a preponderance of the evidence in favor of the State on the issues submitted for your consideration in paragraphs VII, VIII, IX, X, or XI, of this charge.

VII. If you find from a preponderance of the evidence that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey, on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company, remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, and if you further find from a preponderance of the evidence that the oil with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce, you will return a verdict for the State, and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph seven of the Court's charge. You are instructed in this connection that if you find in favor of the State on the issues above submitted for your consideration in this paragraph of the charge, each day embraced between May 31, 1900,
and March 31, 1903, during which the defendant remained
499 a party to the agreement or understanding herein mentioned, if there were any such agreement or understanding, and if it remained a party to same on any of said days, would constitute a separate and distinct violation of the anti-trust laws of Texas.

If you do not find from a preponderance of the evidence that the defendant was on June 1, 1900, or on some date subsequent

thereto and prior to March 31, 1903, through the action of its duly appointed and authorized agents, a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined from petroleum, and if you do not further find from a preponderance of the evidence that the oil with reference to which defendant entered into said agreement or understanding, if any such there were, was the subject of local as distinguished from interstate commerce, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph seven of the Court's charge.

VIII. If you find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in
500 paragraph eight of the Court's charge. In this connection you are instructed that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas. If you do not find from a preponderance of the evidence that on June 1, 1900, or that on some date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents had brought about or permitted a combination or union of its capital with the capital of the Standard Oil Company of New Jersey, and if you do not further find from a preponderance of the evidence that by said combination or union, if such there were, the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or that thereby the price in Texas of such oil was reasonably calculated to be fixed or regulated, or that thereby the trade in such oil in Texas was sought to be controlled or limited or would be reasonably calculated to be controlled or limited, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph eight of the Court's charge.

IX. If you find from a preponderance of the evidence that the defendant acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas,

restrictions in the free pursuit in this State of the business of selling oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, or to fix,
501 maintain, or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were, on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, you will return a verdict for the State, and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph nine of the Court's charge. In this connection you are instructed that if the defendant became a party to a trust of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas.

If you do not find from a preponderance of the evidence that the defendant acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas or which tended to create or carry out in Texas restrictions in the free pursuit in this State of the business of selling said character and kind of oil, or to fix, maintain, or increase the price of such oil in Texas, or to prevent or lessen competition in Texas, in the sale of such oil, and that the defendant remained or was a party to, and acted under, such combination, if such there were subsequent to March 30, 1903, and prior to April 30, 1907, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph nine of the Court's charge.

X. If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the
502 same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances, that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix, maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph ten of the Court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

If you do not find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, and that they were brought under such common management or control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of such oil, or to fix, maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in
503 paragraph ten of the Court's charge.

XI. If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State and say by your verdict, we the jury find in favor of the State on the issues submitted for our consideration in paragraph eleven of the Court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

If you do not find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation, and if you do not further find from a preponderance of the evidence that said stock was acquired and combination effected, if it were at all, with the purpose and intention on part of the managing officers and directors of said Standard Oil Company of New
504 Jersey of preventing or lessening the competition in the sale in Texas of said character and kind of oil, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will say by your verdict, we the jury find in defendant's favor on the issues submitted for our consideration in paragraph eleven of the Court's charge.

XII. The evidence introduced before you does not show with

sufficient definiteness that the defendant has since May 31, 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil and Gasoline Company, in such manner as to violate the anti-trust laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts.

XIII. Evidence has been introduced before you tending to show that the defendant has given rebates and discounts in the course of its dealings; evidence has also been introduced before you tending to show that defendant has made contracts and entered into understandings other than those which have been submitted for your consideration in paragraphs seven to eleven, inclusive, of this charge. Evidence has also been introduced before you tending to show the general course of dealings of defendant in Texas and elsewhere, including some of its business methods in meeting competition.

You are instructed that none of this evidence shows or tends to show any violation of the anti-trust laws of Texas, unless it tends in some degree to establish some one or more of the issues submitted for your consideration in the last above mentioned paragraphs of this charge; and you are therefore instructed to
505 acquit the defendant and return a general verdict for it,— notwithstanding any and all of said evidence, unless you find in favor of the State on the issues submitted for your consideration in some one or more of said paragraphs of the charge.

XIV. If you convict the defendant under the foregoing instructions of any violation or violations of the anti-trust law of 1899, you will specify in your verdict the date or days for which it is convicted of having violated said law, and will further specify in your verdict that for said violation or violations, if any, you find, that its permit to do business in Texas shall be forfeited, and the amount of money which shall be adjudged against it as penalties for said violations, if any. In fixing the penalties, if any, which you assess against the defendant for any violations of which you may convict it, of the anti-trust law of 1899, you will fix same at not less than Two Hundred Dollars or more than Five Thousand Dollars per day for each day that you find it has so violated the law. If you convict the defendant of any violations of the anti-trust law of 1903, you will specify in your verdict the date or days for which it is so convicted, and further specify therein that as a result of said conviction, its permit to do business in Texas shall be forfeited, and the sum of money that shall be adjudged against it as a penalty for such violation, fixing said sum at Fifty Dollars per day for each and every day that you convict it of having violated said law.

XV. In order to aid you in preparing your verdict in proper form, when you have reach- same, the following forms of verdicts are submitted for your consideration.

1. If you find in favor of the State on all of the issues submitted

to you and for the entire time for which penalties are claimed
506 by the State against the defendant in its petition, you will say: "We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for the penalties at —— Dollars; and we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty-eight days, and fix the penalties at Seventy-four Thousand Four Hundred Dollars. We further find that the permit of the defendant to do business in the State of Texas should be canceled. We find for defendant upon all issues made by the pleadings and not submitted in the charge of the Court."

2. If you find in favor of the State on some of the issues submitted for your consideration relating to the alleged violations of the anti-trust law of 1899, and in favor of the State with reference to some of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

We the jury find in favor of the State on the issues submitted for our consideration in the following paragraphs of the Court's charge: ——. We further find that the defendant violated the anti-trust laws of Texas on the following days embraced between May 31, 1900, and March 31, 1903: ——. We further find that on account of said violations, the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of —— Dollars. We further find that the defendant violated the anti-trust laws of 1903, on the following days embraced between the 30th day of March, 1903, and the 29th day of April, 1907: ——. We further find that
507 on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of —— Dollars. On all other issues raised by the pleadings, we find in favor of the defendant.

3. If you find in favor of the State with reference to some or all of the alleged violations of the anti-trust law of 1899 submitted for your consideration, and if you find in favor of the defendant on other of said alleged violations, and if you find in favor of the defendant on the issue of all of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

We, the jury find in favor of the State on the issues submitted for our consideration in the following paragraphs of the Court's charge: ——. We further find that the defendant has violated the anti-trust laws of Texas on each of the following days embraced between May 31, 1900, and March 31, 1903: ——. We further find that because of said violations the permit of the defendant to do business in Texas should be forfeited, and penalties should be imposed upon it in the amount of —— Dollars. We further find in defendant's favor on all alleged violations of the anti-trust laws of 1903, and on all other issues made by the pleadings.

4. If you find in the defendant's favor on all issues submitted

for your consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the State on all or some of the issues relating to defendant's alleged violation of the anti-trust law of 1903, you may use the following form of verdict:

508 We the jury find in defendant's favor on all issues submitted for our consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the State under the following paragraphs of the Court's charge: ——, for alleged violations of the anti-trust laws of 1903. We further find that the defendant has violated said anti-trust laws on each of the following days embraced between March 30, 1903, and April 29, 1907, ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the sum of —— Dollars.

5. If you desire to return a general verdict for defendant, you may use the following form of verdict: We the jury find for the defendant.

XVI. You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to take the law as it is given you in charge by the Court, and to be governed thereby in arriving at your verdict.

V. L. BROOKS,
*Judge 26th Judicial District of Texas.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Charge of Court. Filed May 31, 1907. D. J. Pickle, Clerk.

509 *Defendant's Special Charge No. 1. Refused.*

Filed May 31, 1907.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

*Defendant's Special Charge No. 1.*

The defendant requests the Court to charge the jury as follows:

You are instructed that if you find that the defendant is liable for penalties for any act committed, under the instructions given in the general charge of the Court, you cannot consider any act as the basis of a recovery which occurred prior to the — day of September, A. D. 1904, and you will, therefore, ascertain from the evidence before you, and under the instructions of the court heretofore given you, the number of days, if any since the — day of September, 1904, on which the defendant may have committed an act subjecting it to a penalty, and fix the amount which you find against defendant for

the number of days, if any on which the defendant may have violated the law at the rate of $50.00 per day, for each day you may find such violation.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Defendant.*

Refused:
V. L. BROOKS, *Judge.*

510 (Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Def't's Special Charge No. 1. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

*Defendant's Special Charge No. 2. Refused.*

Filed May 31, 1907.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

*Defendant's Special Charge No. 2.*

Without waiving its request to limit the right of recovery to two years before the institution of this suit, as set out in Special Charge No. 1, and on condition that the court shall refuse said Special Charge, defendant now requests the court to submit the following special instruction:

You are instructed that if you find that the defendant is liable for penalties for any act committed, under the instructions given in the general charge of the court you cannot consider any act as the basis of a recovery which occurred prior to the — day of September, A. D. 1903, and you will therefore ascertain from the evidence before you, and under the instructions of the court heretofore given you, the number of days, if any since the — day of September, 1903, on which the defendant may have committed an act subjecting it to a penalty, and fix the amount which you find against defendant for the number of days, if any, on which the defendant may have violated the law at the rate of $50.00 per day for each day you may find such violation.

511 CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Def't's Special Charge No. 2. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

*Defendant's Special Charge No. 3. Refused.*

Filed May 31, 1907.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

*Defendant's Special Charge No. 3.*

No. 3. Without waiving defendant's request as contained in its Special Charge No. 1 limiting the right of the State to recover penalties prior to September —, 1904, and also without waiving defendant's Special Charge No. 2, limiting the right of the State to recover penalties prior to September —, 1903, and on condition that both of said charges are refused by the Court, defendant now further requests the court to charge the jury as follows:

You are instructed that if you find that the defendant is liable for penalties for any act committed under the instructions given in the general charge of the Court you cannot consider any act as the basis of a recovery which occurred prior to the — day of September, A. D. 1902, and you will therefore ascertain from the evidence
512 before you, and under the instructions of the Court heretofore given you, the number of days, if any, since the — day of September, 1902, on which the defendant may have committed an act subjecting it to a penalty, and fix the amount which you find against defendant for the number of days, if any, on which the defendant may have violated the law at the rate of $50.00 per day, for each day you may find such violation.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Def't's Special Charge No. 3. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

513 *Defendant's Special Charge No. 4. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant requests the court to charge the jury as follows:
You are instructed that it is not a violation of the laws of the State of Texas, and has not been a violation of such laws at any time since May 31st, 1900, for the defendant to have sold oil or the products of petroleum to persons at different prices, and you will, therefore, disregard all evidence that may have been introduced before you, if any, showing that defendant may have at different times, or at different places sold oil or the products of petroleum to any one or more persons at a lower price than it sold the same to others.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 4. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

514 *Defendant's Special Charge No. 5. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows:
You are instructed that in as much as the defendant is a corporation created and existing under the laws of the State of Missouri the

question of the legality of the ownership of a majority of its stock by the Standard Oil Company is not an issue in this case, and in this connection you are further instructed that the Anti-trust Laws of Texas, being designed merely to prohibit unlawful combinations or agreements having the purpose of fixing and regulating prices and other forbidden purposes denounced by such laws, could not be violated by the mere ownership by the Standard Oil Company of a majority of the stock of the defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL, &
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 5. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

515 *Defendant's Special Charge No. 6. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows:

You are instructed to find for the defendant in respect to the agreement executed on the 5th day of October, 1894, between the Waters Pierce Oil Company and the Eagle Refining Company and other persons, in as much as the defendant did not exist until after said agreement had been made and had been fully executed.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL &
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 6. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

516 *Defendant's Special Charge No. 7. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant requests the court to charge the jury as follows:

You are instructed that it is admitted by the defendant that the Standard Oil Company of New Jersey acquired a majority of the shares of stock of the defendant company on or about the 4th day of September, 1900, and thereafter continued to own the same. Therefore, the court further instructs the jury that the acquiring and owning of said shares of stock by said Standard Oil Company did not constitute a violation of the Act approved March 31st, 1903, even though the jury may believe that the said Standard Oil Company voted said shares of stock at the meetings of the stockholders of the defendant company for the election of director of said defendant company.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 7. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

517 *Defendant's Special Charge No. 8. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The Defendant requests the court to give the jury the following special instruction, viz:

The jury are instructed that special charges given you by the court, at the request of either counsel for the state or counsel for

the defendant, are, in all respects, as binding upon you as the instructions given you in the main charge of the court, and, in your retirement, you are instructed to give all such special instructions the same consideration and be bound by them to the same extent as the instructions given you in the main charge of the court.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

Refused:

V. L. BROOKS, *Judge.*

(Endorsed:) *No.* 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 8. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

518 *Defendant's Special Charge No. 9. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant requests the court to charge the jury as follows:

You are instructed that it is not a violation of the laws of the State of Texas, and has not been a violation of such laws at any time since May 31st, 1900, for the Standard Oil Company of New Jersey, or any other person or corporation to own a part of the stock of the defendant Waters Pierce Oil Company and you will therefore disregard any evidence that has been introduced before you upon this subject.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:

V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 9. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

519 *Defendant's Special Charge No. 10. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant in this cause respectfully requests the court to give the jury the following special instruction, viz:—

The jury are instructed that the defendant in this case is presumed to be innocent until its guilt is established by competent evidence and beyond a reasonable doubt, and, unless you believe from the evidence and beyond a reasonable doubt that the defendant is guilty of some act in violation of the law as submitted to you in the instructions of the court, you will return a verdict for the defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 10. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

520 *Defendant's Special Charge No. 11. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Defendant respectfully requests the Court to give the jury the following special instructions, viz:

The jury are instructed that certain evidence has been introduced before you with reference to certain acts and things claimed to have been done by defendant, or permitted to have been done by defendant, in states other than the State of Texas, and with reference to all such evidence you are instructed that you will consider the same only for the purpose of aiding you, if such evidence shall aid you

at all, in determining whether or not the defendant has committed in the State of Texas any act or thing which, if committed in the State of Texas, would, under the instructions given you by the court, constitute a violation of the laws of this State.

You cannot convict the defendant in this case on account of any act or thing done or committed by it, or suffered by it to be done, in any state other than the State of Texas.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

Refused:
V. L. BROOKS, *Judge.*

521 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 11. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

*Defendant's Special Charge No. 12. Refused.*

Filed May 31, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows:

You are instructed to find for the defendant in respect to the agreement executed in 1894 between the Waters Pierce Oil Company and Royer Campbell, doing business under the name of the Texas Oil & Gasoline Company, in as much as the defendant did not exist until after said agreement had been made and had been fully executed.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'y- for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 12. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

522 *Defendant's Special Charge No. 13. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows:
You are instructed that in view of the fact that the Standard Oil Trust Agreement of January 2nd, 1882, and the supplemental agreement thereto of January 4th, 1882, were executed long prior to the creation of the defendant and there is no evidence showing that the defendant ever adopted said agreement, you will not consider the execution of said agreement or the contents of the same as in anywise affecting this defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 13. Requested by defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

523 *Defendant's Special Charge No. 14. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

The defendant respectfully requests the Court to give the jury the following special instructions, viz:
The jury are instructed that the Standard Oil Company, as a stockholder in the Waters Pierce Oil Company, had the right to examine the books and records of defendant and to audit its books and accounts, and that the defendant had the right to make reports

to the Standard Oil Company as such stockholder, of the course and progress of its business; and you are, therefore, further instructed that you would not be authorized in returning a verdict against the defendant in this case on account of such stock ownership by the Standard Oil Company, or on account of such examination by the Standard Oil Company of the books and records of defendant, or on account of such auditing by the Standard Oil Company of the books and accounts of defendant, or on account of the fact that defendant made reports to the Standard Oil Company of the course and progress of its business, nor on account of all of such facts taken together.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

Refused:
V. L. BROOKS, *Judge.*

524 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 14. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

*Defendant's Special Charge No. 15. Refused.*

Filed May 31, 1907.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas.

Defendant requests the court to charge the jury as follows:

You are instructed that the defendant in this case cannot be held responsible, and is not liable in law for any act of any kind occurring prior to May 31st, 1900, and you will therefore, disregard all evidence that may have been introduced before you with respect to acts and transactions occurring prior to said 31st day of May, 1900.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Special Charge No. 15. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

525 *Defendant's Special Charge No. 16. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that the agreement executed on the 5th day of October, 1894, between the Waters Pierce Oil Company and A. W. Clem was a lawful contract at the time it was made and that it would have been lawful if made after the enactment of the Anti-trust Act of 1899, or after the enactment of the Anti-trust act of 1903. You are therefore instructed that the continued employment of said A. W. Clem by the defendant after the enactment of said laws, or either of them, would not constitute any violation of either of said Anti-trust Acts, and accordingly you will, under any view of the evidence, return a verdict in favor of the defendant in respect to that agreement.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 16. Requested by defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

526 *Defendant's Special Charge No. 17. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the court to instruct the jury as follows: You are instructed that inasmuch as the Standard Oil Company was a refining and producing company and inasmuch as the Waters Pierce Oil Company was a marketing company it was legitimate for the latter to purchase any part or all of its oils and other articles sold by it from the former, and that the extent to which it made such purchases is not of any importance in establishing a violation of either the Anti-trust act of 1899 or of the Anti-trust Act of 1903, and in this connection you are instructed that the fact, if it be a fact, that the Standard Oil Company, a refining and producing company, did not compete with the Waters Pierce Oil Company, a marketing company, and its customer, in the territory within which the latter operated, would not establish any violation of the Anti-trust Laws of Texas.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

527 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 17. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

*Defendant's Special Charge No. 18. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that if you believe from the evidence that since the incorporation of the defendant under the laws of Missouri on the 29th day of May, 1900, and its obtaining a permit to transact business in the State of Texas on the 31st day of May, 1900, the defendant has, through its officers and agents, fixed and regulated the prices at which it has sold oil and other commodities handled by it in the conduct of its business independently of any control by the Standard Oil Company, then as to the alleged violation of the law by the defendant upon the alleged ground of the fixing and regulating of its selling prices by the Standard Oil Company, you should find for the defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

528 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 18. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

*Defendant's Special Charge No. 19. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that there is no law in Texas against any corporation's employing any legitimate agency in the prosecution of

its business or against its using the name of such agency in the conduct of its business, and that therefore the mere fact that the defendant may at one time have used the name of the Eagle Refining Company in conducting a part of its business at Dallas, Texas, and the name of the Texas Oil & Gasoline Company in conducting a part of its business at San Antonio, Texas, would not constitute a violation of the Anti-trust laws of Texas on the part of the defendant.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

529 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 19. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

*Defendant's Special Charge No. 20. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that the Anti-trust Laws of Texas were designed to prevent combinations, agreements, etc. to accomplish the unlawful fixing and regulating of prices and other unlawful objects denounced by such laws between corporations having authority to transact business in the State of Texas. You are therefore instructed that inasmuch as it has been established by the evidence that the Standard Oil Co. has no authority to transact business in the State of Texas, and is not transacting and has never transacted business in the State of Texas, any combination or agreement between that company and the defendant if any such agreement or combination was ever made, would not be a violation of said laws or any of the provisions thereof.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

530 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 20. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

*Defendant's Special Charge No. 21. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that the agreement executed in 1894 between the Waters Pierce Oil Company and Royer Campbell, doing business under the name of the Texas Oil & Gasoline Company, was a lawful contract at the time it was made and that it would have been lawful if made after the enactment of the Anti-trust Act of 1899, or after the enactment of the Anti-trust Act of 1903. You are therefore instructed that the continued employment of said Royer Campbell by defendant after the enactment of said laws, or either of them, would not constitute a violation of either of said Anti-trust Acts, and accordingly you will, under any view of the evidence return a verdict in favor of defendant in respect to that agreement.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

531 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 21. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

*Defendant's Special Charge No. 22. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that if you believe from the evidence that there was ever formed any agreement or combination between the Standard Oil Company and the defendant for any of the purposes that would render such combination or agreement unlawful if made in Texas, still if you believe from the evidence that such agreement or combination, if any was ever made, was formed outside of the State of Texas and related exclusively to commerce between the States, then the defendant could not be prosecuted or punished for violating the laws of the State of Texas by reason of the making of such agreement or combination.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 22. Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

532 *Defendant's Special Charge No. 23. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that if you believe from the evidence that the defendant has entered into any agreement by which it has bound

itself to transact business within a certain territory in the United States, including the State of Texas, and that in pursuance of such agreement the defendant has been and is transacting its business in the State of Texas, the making of such agreement and the transaction of business thereunder by the defendant cannot be considered as in violation of the Anti-trust Laws of Texas; and in this connection you are instructed that the defendant always had and now has the right to confine its business operations to any territory desired by it and that the fact that the defendant has not extended its operations to a broader field would not render the defendant guilty of violating the Anti-trust Laws of Texas.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

533 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 23, Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

*Defendant's Special Charge No. 24. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that since the Standard Oil Company acquired a majority of the stock of the defendant prior to the enactment of the Anti-trust Act of 1903, and since, the defendant being a corporation created by the laws of Missouri, the acquisition of such stock by the Standard Oil Company cannot be inquired into by the Courts of Texas, but must be in all things treated as legal and valid, the inhibition of the Anti-trust Act of 1903 against any corporation's acquiring the shares of stock of any other corporation for the purpose of preventing or lessening competition, or tending to affect or lessen competition, can have no application to this case.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'y- for Def't.*

Refused:
V. L. BROOKS, *Judge.*

534 (Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 24, Requested by Defendant. Refused. Filed May 31, 1907, D. J. Pickle, Clerk.

*Defendant's Special Charge No. 25. Refused.*

Filed May 31, 1907.

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

The defendant requests the Court to instruct the jury as follows: You are instructed that the defendant has at all times had the lawful right to compete with other persons and corporations in Texas in business, and you are therefore instructed to disregard any evidence in this case which merely shows competition between the defendant and other persons in Texas in the business in which defendant has been engaged.

J. D. JOHNSON,
CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters Pierce Oil Co. Special Charge No. 25. Requested by Defendant. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

535 *Plaintiff's Special Charge No.* 1. *Refused.*

Filed May 31, 1907.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

*Charge Requested No.* 1.

You are instructed that the uncontradicted evidence shows that there existed between the Standard Oil Co. and the defendant an agreement or understanding that the former should abstain from en-

gaging in business and from the sale of oil and that said agreement or understanding was carried out from March 31, 1903 to April 29, 1907; you are instructed that this is a violation of the law of 1903, and you will find a verdict accordingly.

R. V. DAVIDSON,
*Att'y Gen.*
J. P. LIGHTFOOT,
*Assistant.*
J. W. BRADY, *Co. Att'y.*
G. W. ALLEN,
GREGORY & BATTS,
*Att'ys for Pl'ff.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Pl'ff's Special Charge No. 1. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

536 *Plaintiff's Special Charge No. 2. Refused.*

Filed May 31, 1907.

In the District Court of Travis County, 26th Judicial District, May Term, 1907.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

*Special Charge No. 2. Requested by Plaintiff.*

The plaintiff requests the Court to instruct the jury as follows:

If you believe from a preponderance of the evidence that at any time prior to the 31st day of March, 1903, there was entered into any agreement by which any one or all of the corporations named in plaintiff's petition agreed and bound themselves to abstain from engaging in the business of selling oil or petroleum or any of its products within the state of Texas or any part thereof, and further find from a preponderance of the testimony that since said 31st day of March, 1903, the defendant has maintained or carried out or acted upon said agreement, you are charged that this would constitute a violation of the anti-trust act of 1903; and if you so find, you will further find the number of days that such agreement was carried out by the defendant, if any, and state by your verdict the number of such days, and find in favor of the State cancelling the permit of the defendant to do business in the State of Texas and

assess a penalty at the rate of fifty dollars per day for each
537 and every day you may find said agreement was carried out by the defendant, if it was so carried out.

R. V. DAVIDSON,
*Attorney General.*
J. P. LIGHTFOOT,
*Assistant Attorney General.*
JNO. W. BRADY,
*County Attorney, Travis County.*
GREGORY & BATTS,
ALLEN & HART,
*Attorneys for Plaintiff.*

Refused:
V. L. BROOKS, *Judge.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Plaintiff's Charge No. 2. Refused. Filed May 31, 1907. D. J. Pickle, Clerk.

538 *Judgment.*

June 1st, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by attorneys and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impaneled and sworn to try the case, and thereafter the case proceeded to trial, when by agreement of all parties on the 24th day of May, 1907, one of the jurors Aaron Davis, theretofore selected, was excused on account of sickness which disabled him from acting as a juror in the case, and the trial then proceeded before the Court and the eleven jurors theretofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the Court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the 1st day of June, 1907, they returned into open Court the following verdict:

"AUSTIN, TEXAS, *June* 1, 1907.

"We the jury find for the plaintiff against the defendant on each
" of the issues submitted to us for each of the days between May 31,
" 1900, and March 31, 1903, being 1033 days, and for penalties
" 1,549,500.00 dollars.

539 "And we find for the plaintiff against the defendant on "each of the issues submitted for each of the days between "April 1, 1903, and April 29, 1907, being fourteen hundred and "eighty eight days and fix the penalties at seventy four thousand "four hundred dollars.

"We further find that the permit of the defendant to do business "in the State of Texas should be cancelled.

"We find for defendant upon all issues made by the pleadings "and not submitted in the charge of the court.

"W. T. HART, *Foreman.*
"W. J. CRISWELL.
"J. C. BRODIE.
"W. W. CHILDRESS.
"H. E. TOWNSEND.
"EARNEST GOWER.
"G. A. BERGSTROM.
"L. B. STUBBS.
"W. T. THOMPSON.
"J. C. GRINDSTAFF.
"CHAS. KROHN."

which verdict was by the Court received, ordered filed and made a part of the record of this cause.

It is therefore considered, ordered, adjudged and decreed that the plaintiff, the State of Texas, do have and recover of and from the defendant, the Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six hundred and twenty three thousand nine hundred dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue.

It is further ordered, adjudged and decreed that the permit of the defendant, the Waters Pierce Oil Company, to do business in the State of Texas, be and the same is hereby canceled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas.

540 *Defendant's Motion for New Trial.*

Filed June 1st, 1907.

In the District Court of Travis County, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

In the above entitled cause, now comes the defendant, the Waters Pierce Oil Company, and moves the Court to set aside the verdict

of the jury heretofore returned against it, and the judgment of the Court thereon rendered, and to grant this defendant a new trial in this cause for the following reasons, to-wit:

1. Because the verdict of the jury is not supported by the evidence in that the evidence wholly failed to show that the defendant at any time since June 1st, 1900, committed any act or did anything within the State of Texas or elsewhere which was in violation of the anti-trust laws of the State of Texas.

2. Because the verdict of the jury is without evidence to support it in that all of the evidence introduced before the jury showed that whatever agreements, acts and transactions may have occurred between the Standard Oil Company of New Jersey and the defendant company did not involve commerce in the State of Texas, but were with respect to and related to inter-state commerce exclusively, and therefore they were not in violation of the anti-trust laws of the State of Texas.

3. Because the verdict of the jury is without evidence to support it in that the only evidence before the jury showing any
541 agreement act or transaction between the defendant company and the Standard Oil Company of New Jersey was limited and confined to the fact of ownership by the said Standard Oil Company of stock in defendant company, and there was no evidence to show that through such ownership, or otherwise, said Standard Oil Company at any time did, in any way undertake or did in fact interfere with or control or attempt to control the business of the defendant company with reference to the matter of fixing, regulating or maintaining of prices, or in limiting or controlling the quantity of oil or other product of petroleum in the State of Texas in violation of the laws of said State.

4. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 7th paragraph thereof, in that there was no evidence showing that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, or that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying out the same in Texas through its duly authorized agent on June 1, 1900, or on any other day or days subsequent to June 1, 1900, and prior to March 31, 1903, nor was there any evidence that the oil, with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce.

5. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 8th paragraph thereof, in that there was no evidence showing that on
542 June 1, 1900, or on any day subsequent thereto and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital with the capital of the Standard

Oil Company of New Jersey whereby the price in Texas of oil, refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited.

6. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 9th paragraph thereof, in that there was no evidence showing that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas or which tended to create in Texas, or carry out in Texas restrictions in the free pursuit in this State of the business of selling oil refined from petroleum other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if any, on March 31, 1903, or on any day subsequent thereto and prior to April 29, 1907.

7. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 10 paragraph thereof, in that there was no evidence showing that the direction of the affairs of the defendant and the affairs of the
543 Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any day subsequent thereto and prior to April 29, 1907, and that they were placed under such management and control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there was, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the 9th paragraph of the charge, or to fix, maintain or increase the price in Texas of such oil or to prevent or lessen in Texas the Competition in the sale of such oil.

8. Because the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 11th paragraph thereof, in that there was no evidence showing that the Standard Oil Company of New Jersey had on March 31, 1903, or any day subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, nor was there any evidence showing that said stock was acquired and combination effected, if any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the kind and character of oil mentioned, or that the effect of such combination, if any, tended to affect or lessen the competition in the sale in Texas of said oil.

9. Because the verdict of the jury, in so far as it assesses penalties against the defendant on each of the issues submitted to the jury

for each of the days between May 31, 1900, and March 31, 1903, being, as found by the jury, 1033 days, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it violated the law in any of the respects complained of be-
544 tween May 31, 1900, and March 31, 1903, committed such violation on any particular day, nor was there any evidence showing that the defendant, if it violated the law in any of the respects complained of between May 31, 1900, and March 31, 1903, committed such violation for either 1033 days or any other definite number of days.

10. Because the verdict of the jury, in so far as it finds for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being 1488 days, as found by the jury, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it violated the law in any of the respects complained of between April 1, 1903, and April 29, 1907, committed such violations on any particular day, nor was there any evidence showing that the defendant, if it violated the law in any of the respects complained of between April 1, 1903, and April 29, 1907, committed such violation for 1488 days or any other definite number of days.

11. Because the verdict of the jury in assessing penalties against the defendant at the sum of $1,549,500.00 for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, was so grossly and shockingly excessive as to show passion and prejudice upon the part of the jury against the defendant.

12. Because the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,-500.00 was so manifestly excessive as to amount to the deprivation of the property of the defendant without due process of law in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

13. Because the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of
545 the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00 was so manifestly excessive as to amount to the imposition of excessive fines in violation of Section 13 of Article 1 of the Constitution of the State of Texas.

14. Because the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,-500.00, and in assessing penalties against the defendant for alleged violations of law for each of the days between April 1, 1903, and April 29, 1907, at the sum of $74,400.00, is so manifestly excessive as to amount to the deprivation of the property of the defendant without due process of law in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

15. Because the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,-

500.00, and in assessing penaltics against the defendant for alleged violations of the law for each of the days between April 1, 1903, and April 29, 1907, at the sum of $74,400.00, is so manifestly excessive as to amount to the imposition upon the defendant of excessive fines in violation of Section 13 of Article 1 of the Constitution of the State of Texas.

16. Because the Court erred in instructing the jury that they could assess penalties for alleged violations of the Anti-Trust Act of 1899 in excess of $50 per day.

The foregoing motion is presented by defendant without waiving any error committed by the court in any of its rulings on questions of law heretofore made, all of which rulings and errors will be insisted upon by the defendant in the further progress of this case in the event the court shall refuse this motion, and defendant also reserves the right to amend this motion and to assign such
546 additional grounds for setting aside said verdict and judgment as may hereafter present themselves, if it shall see proper so to do.

CLARK & BOLINGER,
N. A. STEDMAN,
D. W. ODELL,
COCHRAN & PENN,
*Att'ys for Defendant.*

J. D. JOHNSON &
H. S. PRIEST,
*Of Counsel.*

(Endorsed:) #24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's Motion for New Trial. Filed June 1st, 1907. D. J. Pickle, Clerk. By E. Huppertz, Deputy.

*Order on Motion.*

June 7th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this the 7th day of June, A. D. 1907, came on to be heard the motion of the defendant Waters Pierce Oil Company to be granted a new trial of this cause, and the Court having heard the motion and argument thereon and considered the same is of the opinion that same should be overruled;

It is therefore ordered, adjudged and decreed by the Court that the said motion be and the same is hereby now overruled and a new trial of this cause is hereby now refused. To which ruling and action of the Court the defendant in open Court excepts and gives

notice of appeal to our Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin, Texas.

It is further ordered that the defendant be and is allowed 20 days from and after final adjournment of the present term of this Court in which to file Stenographer's report of the evidence, Statement of facts and bills of exceptions.

547 *Appeal Bond in Main Case.*

Filed June 15th, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Know all men by these presents:

That, whereas, in the above entitled and numbered cause in the District Court of Travis County, State of Texas, Twenty-sixth Judicial District, a judgment was rendered in behalf of the plaintiff, the State of Texas, against the defendant, the Waters Pierce Oil Company, in words and figures as follows, to-wit:

In District Court, Travis County, Texas.

June 1st, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by Attorneys, and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impaneled and sworn to try the case, and thereafter the case proceeded to trial, when, by agreement of all parties on the 24th day of May, 1907, one of the jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the Court and the eleven jurors there-
548 tofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the Court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the

1st day of June, 1907, they returned into open Court the following verdict:

"AUSTIN, TEXAS, *June* 1, 1907.

"We the Jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties 1,549,500.00 dollars.

And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty eight days and fix the penalties at seventy four thousand four hundred dollars.

We further find that the permit of the defendant to do buisiness in the State of Texas should be canceled.

We find for defendant upon all issues made by the pleadings and not submitted in the charge of the court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
G. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS,
W. T. THOMPSON.
H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN."

549 which verdict was by the Court received, ordered filed, and made a part of the record of this cause.

It is therefore, considered, ordered, adjudged and decreed that the plaintiff, The State of Texas, do have and recover of and from the defendant, The Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six Hundred and twenty-three thousand nine hundred dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

It is further ordered, adjudged, and decreed that the permit of the defendant, The Waters Pierce Oil Company, to do business in the State of Texas, be, and the same is, hereby cancelled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of the Judgment in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as same appears of record in Minute Book 12, page 349, *et seq.*, of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the 14th day of June, A. D. 1907.

[SEAL.] D. J. PICKLE,
*Clerk District Court, Travis County, Texas,*
By J. A. BELGER, *Deputy.*

550 And, whereas, the defendant in said cause duly filed its motion for a new trial, which said motion was by the Court overruled and refused by order and judgment entered on the 7th day of June, A. D. 1907, and the said defendant then and there in open Court excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

And, whereas, the defendant desires to perfect its said appeal and supersede the judgment aforesaid pending its said appeal;

Now, therefore, we, the said Waters Pierce Oil Company, defendant aforesaid and appellant, as principal, and The American Surety Company of New York, a corporation duly qualified and authorized to execute this bond, as surety, together with Jno. H. Kirby, as further surety herein, do hereby each acknowledge ourselves indebted, held and firmly bound to pay to the State of Texas, plaintiff aforesaid and appellee herein, the full sum of Three Million, Two Hundred and Seventy-Five Thousand ($3,275,000.00) Dollars, conditioned that the said appellant, the Waters Pierce Oil Company, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree, and pay all such damages as said court may award against it.

In witness of all which the said Waters Pierce Oil Company causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York causes this bond to be executed by J. E. Lucy, its Resident Vice-President and duly appointed agent and attorney in fact, and the said Jno. H. Kirby execute the same in his own
551 proper person, this the 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN,
*Attorney at Law and in Fact.*
THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
[SEAL.] *Resident Vice President and Agent.*

Attest:
W. T. DECHERD,
*Resident Assistant Secretary.*
JNO. H. KIRBY.

Approved June 15, 1907.
D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Appeal Bond No. 1. Filed June 15, 1907. D. J. Pickle, Clerk.

552 *Application for a Receiver.*

Filed June 1, 1907.

In the District Court, Travis County, Texas, Twenty-sixth Judicial District.

No. 24551.

STATE OF TEXAS, Plaintiff,
*vs.*
WATERS-PIERCE OIL COMPANY, Defendant.

To the Honorable V. L. Brooks, Judge of said Court:

And now comes the State of Texas, acting by and through her Attorney General, and the County Attorney of Travis County, Texas, acting under the direction and supervision of the said Attorney General, and shows to the Court:

First. That on the 1st day of June, 1907, in this court, in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, the Waters Pierce Oil Company, for the sum of One Million Six Hundred twenty-three Thousand Nine Hundred ($1,623,900.00) Dollars, and said judgment further providing for the cancellation of the permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the Anti-trust law of the State of Texas.

Second. That in a certain suit pending in the State of Missouri, wherein the State of Missouri is plaintiff, and the said above named defendant, the Waters Pierce Oil Company, among others, is defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters Pierce Oil Company and prohibiting it doing business in said State, said suit being instituted in the Su-
553 preme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a commissioner to hear testimony and make his report and findings of fact, and recommendation of law thereon; that after hearing the testimony, the said commissioner found in favor of the State of Missouri on all issues in said case, and recommended to the said Supreme Court of Missouri that the charter of the said Waters Pierce Oil Company be cancelled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of the said defendant, Waters-Pierce Oil Company.

Third. That the penalties recovered in this cause by plaintiff, the State of Texas, cannot be collected outside the State of Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the

payment of said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal movable, property and if carried beyond the limits of this State cannot be pursued by the State of Texas, and the State would have no way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

Fourth. That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven
554 years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

Wherefore, plaintiff requests the Court to appoint a receiver to take charge of all the property and assets of every kind, character and description of the defendant situated within the State of Texas, pending the hearing of this application; that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas.

R. V. DAVIDSON,
*Attorney General,*
JEWEL P. LIGHTFOOT,
*Ass't Attorney General.*
JNO. W. BRADY,
*County Attorney, Travis Co. Tex.*
GREGORY & BATTS,
ALLEN & HART,
*Attorneys for the State of Tex.*

555 THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Jno. W. Brady, County Attorney of Travis County, Texas, who, after being by me duly sworn on his oath, says that the facts stated in the foregoing application are true, except where stated upon information and belief, and where so stated he verily believes them to be true.

JNO. W. BRADY.

Sworn to and subscribed before me on this the 1st day of June, A. D. 1907.

ROSE LITTMAN,
*Notary Public, Travis Co., Tex.*

AUSTIN, TEXAS, *June* 1, 1907.

In Chambers.

The above application for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, being presented to me, it is hereby set down for hearing on the 8th day of June, 1907, at 10 o'clock A. M. at the Court House in Travis County, Texas, and the Clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the Clerk of this Court is instructed to issue such temporary injunction
556 under his hand and the seal of court, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing beyond the State of Texas any of the property or assets of the defendant until the further orders of this court.

V. L. BROOKS,
*Judge 26th Judicial District of Texas.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Application for a Receiver. Filed June 1st, 1907. D. J. Pickle, Clerk. By J. A. Belger, Deputy.

557 *Defendant's Answer to Plaintiff's Application for Receiver.*

Filed June 10th, 1907.

In District Court of Travis Co., Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL CO.

Now comes the defendant in the above entitled and numbered cause, by its attorneys, and excepts to the application filed by the plaintiff herein on June 1st, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for the appointment of such receiver, and of this defendant prays judgment of the Court.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Def't.*

And for answer to said application defendant denies all and singular the allegations therein contained.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Def't.*

558 And for further answer to said application, and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true, as stated in said application that the recommendation of said Commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been rendered in said cause in said Supreme Court of Missouri, and said report of said Commissioner does not have the effect of a judgment, but that said report and recommendations of said Commissioner may be either approved or rejected by said Supreme Court of Missouri, and will have no force or effect unless confirmed and approved by said Supreme Court of Missouri.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me first duly sworn on oath deposes and says: that he is one of the attorneys for defendant in the above entitled and numbered cause and that the facts stated in the foregoing special plea are true as he is informed and verily believes.

D. W. ODELL.
R. L. PENN.

Subscribed and sworn to before me by D. W. Odell & R. L. Penn this 10th day of June, A. D. 1907.

[SEAL.] D. J. PICKLE,
*Clerk District Court, Travis Co., Texas,*
By E. HUPPERTZ, *Deputy.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Defendant's Answer to Plaintiff's Application for Appointment of Receiver. Filed June 10th, 1907. D. J. Pickle, Clerk. By E. Huppertz, Deputy.

559 *Order Granting Injunction.*

June 1st, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

IN CHAMBERS, AUSTIN, TEXAS, *June* 1, 1907.

On this day came on to be heard the application for a temporary injunction, restraining the defendant from removing beyond the State of Texas any of its property or assets, and the Court having

considered said application is of the opinion that same should be granted;

It is therefore ordered, adjudged and decreed that the defendant, the Waters Pierce Oil Company, its officers, agents, attorneys and employees, each and all of them, are hereby restrained, enjoined and prohibited from removing beyond the limits of the State of Texas any of the property or assets of the said defendant, the Waters-Pierce Oil Company, until further orders of this Court.

560 *Order Granting Application for Appointment of Receiver.*

June 10th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this the 10th day of June, 1907, at a regular term of this Court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant the Waters Pierce Oil Company situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this Court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas; that the temporary injunction heretofore granted, prohibiting the defendant from removing any of its property and assets beyond the limits of the State of Texas, be and the same is hereby continued in force until the further orders of this Court. To all of which action the defendant in open Court excepts, and in open Court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

561 *Order Appointing Receiver.*

June 13th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

On this the 10th day of June, A. D. 1907, in this cause an order was made and entered by this Court granting the application of the

plaintiff, the State of Texas, for the appointment of a receiver herein, the Court at the time of the making of said order naming as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the Court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described said Robert J. Eckhardt, with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two hundred and fifty thousand dollars.

And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

562 *Order Amending Orders Appointing Receiver.*

June 15th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this 15th day of June, A. D. 1907, at a regular term of this Court,

It is considered, ordered, adjudged and decreed by the Court that the orders of this Court made and entered in said cause on the 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

And now on this 10th day of June, 1907, at a regular term of this Court there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this Court, and said receiver is hereby directed and
563 instructed to continue and carry on the business of the defendant until such future time as the Court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas, with the right, power, and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as Receiver from any of the present employees or those hereafter engaged by him as he may think expedient and proper, and to sell the present stock of oil and other products and personal

property in the hands of the defendant and which may come into his hands as receiver and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business so that said business may be kept up to its present condition as near as may be; and the said Receiver shall have power, under control of the Court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the Court may authorize and all the expenses of said receivership, including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the Court costs of the suit.

That the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets
564 beyond the limits of the State of Texas, be and the same is hereby continued in force until the further orders of this Court.

To all of which action the defendant in open Court excepts, and in open Court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

And on this 13th day of June, A. D. 1907, the Court confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such Receiver at ($250,000.00) Two Hundred and fifty thousand dollars, to be made payable to the Judge of this Court and his successors in office, for the use of all parties interested in said property and this suit.

And defendant renewed its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

565 *Order Fixing Amount of Appeal Bond in Receivership.*

June 15th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this the 15th day of June, 1907, in open Court it is ordered by the Court in the above cause, that $100,000.00 be and the same is hereby fixed as the amount of bond which the defendant shall be required to give in order to supercede the judgment of the Court placing defendant's property in the hands of a Receiver; and,

It is further ordered that upon the approval by the Court and the filing with the Clerk by defendant of a good and sufficient bond conditioned as required by law for said amount, further proceedings herein be suspended pending appeal.

But this order shall not effect or rescind the order heretofore entered prohibiting and enjoining the defendant, its servants, officers, agents and attorneys from removing any of its property or assets beyond the limits of the State of Texas, but said injunction shall remain in full force and effect pending the appeal from the order appointing a receiver herein.

And thereupon the defendant in open Court tendered to the Court and Clerk certain papers which it stated to be its appeal bond, and an affidavit with reference thereto, which bond purported to have as sureties thereon the American Surety Company of New York and John H. Kirby, and requested the Court and Clerk to approve the same, but the Court deferred further action in the premises and stated that it would announce its further action on said bond at 10 o'clock A. M. June 19, 1907.

566 *Order Approving Bond of Receiver.*

June 19th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this the 19th day of June, A. D. 1907, Robert J. Eckhardt having presented his oath and bond as Receiver under the appointment heretofore made in this cause, and said bond being examined and found to be in proper form and subscribed with competent sureties as required by law;

It is therefore ordered, adjudged and decreed by the Court that the said bond be and the same is hereby approved and the Clerk of this Court is directed to file said bond and enter the same in the minutes of this Court.

*Bond and Oath of Receiver.*

"THE STATE OF TEXAS, *County of Travis:*

Know all men by these presents:

That we, Robert J. Eckhardt as principal and Francis Horace Welch, F. L. Welch, F. A. Allison, O. E. Roberts, J. Melasky, Jno. P. Sturgis, G. E. King, J. W. Womack, Howard Bland, S. G. Yakey, G. M. Booth, L. H. Goldstein, Carl Grau, C. T. Everett, Albert Eikel, T. W. Marse, C. A. Nelson, O. A. Nelson, W. Davidson, Walter W. Taylor, Howell E. Smith, T. E. Waggoner, R. H. Gaston, T. C. Dunn, J. L. Thompson, W. R. Eckhardt, E. P. Wilmot, O.
567 L. Noroworthy, W. T. Brown, Walter Tips, as sureties, are held and firmly bound unto V. L. Brooks, Judge of the Dis-

trict Court of Travis County, Texas, for the 26th Judicial District, and his successors in office, for the use of all parties interested in the action of The State of Texas *vs.* Waters Pierce Oil Company, No. 24,551, in said Court, and the property in said action placed in the hands of a Receiver, in the sum of Two hundred and fifty thousand dollars.

The condition of the above obligation is such that, whereas, the said Robert J. Eckhardt has by orders of the said District Court bearing date 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, and amended by an order made entered in said action in said court on the 15th day of June, A. D. 1907, been appointed receiver in said action.

Now, if the said Robert J. Eckhardt shall faithfully discharge all of the duties of Receiver in said action of The State of Texas *vs.* Waters Pierce Oil Company No. 24,551 in said Court, and obey the orders of the Court therein, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands, this the 15th day of June, A. D. 1907.

ROBERT J. ECKHARDT.
F. L. WELCH.
J. MELASKY.
G. E. KING.
S. G. YAKEY.
CARL GRAU.
T. W. MARSE.
W. DAVIDSON,
T. E. WAGGONER.
J. L. THOMPSON.
W. R. ECHARDT, M. D.
O. L. NOROWORTHY, M. D.
FRANCIS HORACE WELCH.
O. E. ROBERTS.
J. W. WOMACK.
G. M. BOOTH.
C. T. EVERETT.
C. A. NELSON.
WALTER W. TAYLOR.
R. H. GASTON,
By L. N. THOMPSON,
*Att'y in Fact.*
E. P. WILMOT.
W. T. BROWN.
F. A. ALLISON.
JNO. P. STURGIS.
HOWARD BLAND.
L. H. GOLDSTEIN.
ALBERT EIKEL.
O. A. NELSON.
HOWELL E. SMITH.
T. C. DUNN.
WALTER TIPS.

568 *Approval.*

Examined and approved by the undersigned and ordered filed this 19th day of June, 1907, at 10.29 o'clock A. M.

V. L. BROOKS, *Judge.*

Approved June 19, 1907, 10.35 A. M.

D. J. PICKLE, *Clerk.*

*Oath of Receiver.*

THE STATE OF TEXAS, *County of Williamson:*

I, Robert J. Eckhardt, do solemnly swear that I will faithfully perform all the duties of Receiver in the action of The State of Texas *vs.* Waters Pierce Oil Company, No. 24551 in the District Court of Travis County, Texas, for the 26th Judicial District.

ROBERT J. ECKHARDT.

Sworn to and subscribed before me this 15 day of June, A. D. 1907. Given under my hand and seal of office.

[SEAL.] O. E. ROBERTS,

*Notary Public in and for Williamson County, Texas."*

569 *Order Approving Supersedeas Bond.*

Filed June 19th, 1907.

24551.

THE STATE OF TEXAS

*vs.*

THE WATERS PIERCE OIL CO.

And now on this the 19th day of June, 1907, came the defendant by its attorneys and presented in open Court their supercedeas bond in Receivership proceeding and the Court having examined said bond and finds same in proper form and subscribed with sufficient sureties as required by law;

It is therefore ordered, adjudged and decreed by the Court that the said Supercedeas bond be and the same is hereby approved and the Clerk is directed to file said bond and enter the same in the minutes of this Court.

570 *Defendant's Bill of Exceptions to Orders and Proceedings in Reference to Receivership.*

Filed June 29, 1907.

In the District Court of Travis County, Texas, 26th Judicial District, May Term, A. D. 1907.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Be it remembered that on the 22nd day of September, A. D. 1906, the State of Texas instituted suit by original petition filed in the above court against the defendant, the Waters Pierce Oil Company, in which petition and for cause of action against the defendant, the plaintiff alleged that defendant had on each and every day from June 1st, 1900, down to and including the 31st day of March, 1903, in each and every County in the State of Texas, committed acts in violation of Chapter 146 of the Acts of the Twenty-sixth Legislature, known as the Anti-trust law of 1899, and being entitled "An act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; and to prevent the formation or operation of pools, trusts, monopolies, and combinations of charters of corporations that violates the terms of this Act, and to authorize the institution of prosecutions and suits therefor;" and that said defendant had in each and every County in the State of Texas, and on each and every day from the 1st day of April, 1903, to the filing of said suit committed acts in violation of Chapter 94 of the Acts of
the Twenty-eighth Legislature of the State of Texas, known
571 as the anti-trust law of 1903, and being entitled, "An Act to
define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade; to prescribe penalties for forming or being connected with such trusts, monopolies, and conspiracies; and to provide for the suppression of the same and to promote free competition in the State of Texas; and to repeal all laws in conflict therewith;" and in said petition the plaintiff sued for the maximum penalty provided in each of said statutes, and for the aggregate sum of $5,228,400.00.

That after the filing of said petition the defendant was duly served with citation, filed its answer to the October Term of said Court, A. D. 1906, and thereafter said cause was continued at said October term, and likewise at the March Term of said Court, A. D. 1907, and the pleadings of both parties having been amended the State filed its second amended original petition by leave of the Court, in which the plaintiff alleged that defendant had in each and every County and on each and every day from the 1st day of June, A. D. 1900, down to the 29th day of April, 1907, committed acts in violation of each of the two anti-trust statutes above set out, and in said amended

petition the State continued to claim the maximum penalty provided in each of said statutes.

In said original petition and in the said second amended original petition the State alleged that the defendant was a foreign corporation chartered under the laws of the State of Missouri, and had during the period aforesaid, been engaged in transacting business in the State of Texas under a permit granted to the defendant by the Secretary of State of the State of Texas on May 31st, 1900, and in said second amended original petition the said State of Texas prayed for relief as follows:

"Plaintiff prays that it have judgment cancelling the permit issued to defendant on the 31st day of May, 1900, and for an
572–574 injunction restraining it from doing business within this State, and that it have judgment for the sum of $5,239,000.00, penalties, and it prays for costs and general relief."

And be it further remembered that in its answer to the said last named petition filed by the State, the defendant, among other things, denied all and singular the allegations contained in said petition and plead not guilty to the offenses therein charged against it, and upon said petition and said answer a trial was had before said Court and a jury duly impanelled, beginning on the 20th day of May, A. D. 1907, and concluding on the 1st day of June, A. D. 1907, when the jury returned a verdict in favor of the plaintiff and the Court rendered judgment thereon in words and figures as follows:

"24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by Attorneys, and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impanelled and sworn to try the case, and thereafter the case proceeded to trial, when, by agreement of all parties on the 24th day of May, 1907, one of the jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the Court and the eleven jurors theretofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the Court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the 1st day of June, 1907, they returned into open court the following verdict:

575 "AUSTIN, TEXAS, *June* 1, 1907.

"We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties $1,549,500.00 Dollars.

"And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty days and fix the penalties at seventy four thousand four hundred dollars.

"We further find that the permit of the defendant to do business in the State of Texas should be cancelled.

"We find for defendant upon all issues made by the pleadings and not submitted in the charge of the court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
C. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS.
W. T. THOMPSON.
H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN.

which verdict was by the court received, ordered filed and made a part of the record of this cause.

"It is, therefore, considered, ordered, adjudged and decreed that the plaintiff, the State of Texas, do have and recover of and from the defendant, the Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six Hundred and
576 Twenty-three Thousand Nine Hundred Dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

"It is further ordered, adjudged and decreed that the permit of the defendant, the Waters Pierce Oil Company, to do business in the State of Texas, be, and the same is, hereby cancelled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas."

And be it further remembered that upon said 1st day of June A. D. 1907, the defendant filed with the Clerk of said court its motion to set aside the verdict of the jury aforesaid and the judgment thereon rendered, and to grant it a new trial.

And be it further remembered that after the filing of the motion aforesaid, the plaintiff, the State of Texas, through its attorneys, presented to the Honorable V. L. Brooks, Judge of this Court, its application for the appointment of a receiver, and upon the application the said Judge of this Court endorsed his fiat, and said application and fiat was thereupon, on said 1st day of June, A. D. 1907, filed with the Clerk of this Court, and the same is in words and figures as follows:

In the District Court, Travis County, Texas, Twenty-sixth Judicial District.

No. 24551.

STATE OF TEXAS, Plaintiff,
*vs.*
WATERS-PIERCE OIL COMPANY, Defendant.

To the Honorable V. L. Brooks, Judge of said Court:

And now comes the State of Texas, acting by and through
577 her Attorney General, and the County Attorney of Travis County, Texas, acting under the direction and supervision of the *of the* said Attorney General, and shows to the Court:

First. That on the 1st day of June, 1907, in this Court, in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, The Waters Pierce Oil Company, for the sum of One Million, Six Hundred Twenty-three Thousand, Nine Hundred ($1,623,900.00) Dollars, and said judgment further providing for the cancellation of the permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the Anti-trust law of the State of Texas.

Second. That in a certain suit pending in the State of Missouri, wherein the State of Missouri is plaintiff, and the said above named defendant, the Waters-Pierce Oil Company, among others, is defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters-Pierce Oil Company, and prohibiting it doing business in said State, said suit being instituted in the Supreme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a commissioner to hear testimony and make his report and findings of fact, and recommendation of law thereon; that after hearing the testimony, the said Commissioner found in favor of the State of Missouri on all issues in said case, recommended to the said Supreme Court of Missouri that the charter of the said Waters Pierce Oil Company be cancelled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of the said defendant, Waters-Pierce Oil Company.

Third. That the penalties recovered in this cause by plaintiff,
the State of Texas, cannot be collected outside of the State of
578 Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the payment of said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal, movable property and if carried beyond the limits of this State cannot be pursued by the State of Texas, and the State would have no

way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

Fourth. That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

Wherefore, plaintiff requests the court to appoint a receiver to take charge of all the property and assets of every kind, character and description of the defendant situated within the State of Texas, pending the hearing of this application; that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any
579 of them, from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas.

R. V. DAVIDSON,
*Attorney General.*
JEWEL P. LIGHTFOOT,
*Asst. Attorney General.*
JNO. W. BRADY,
*County Attorney, Travis Co. Tex.*
GREGORY & BATTS,
ALLEN & HART,
*Attorneys for the State of Tex.*

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Jno. W. Brady, County Attorney of Travis County, Texas, who, after being by me duly sworn on his oath, says that the facts stated in the foregoing application are true, except where stated upon information and belief, and where so stated he verily believes them to be true.

JNO. W. BRADY.

Sworn to and subscribed before me on this the 1st day of June, A. D. 1907.

[SEAL.] ROSE LITTMAN,
*Notary Public, Travis Co. Tex.*

580 AUSTIN, TEXAS, *June* 1, 1907.

In Chambers:

The above application for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, being presented to me, it is hereby set down for hearing on the 8th day

of June, 1907, at 10 o'clock A. M. at the Court House in Travis County, Texas, and the Clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the Clerk of this Court is instructed to issue such temporary injunction under his hand and the seal of court, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing beyond the State of Texas any of the property or assets of the defendant until the further orders of this Court.

V. L. BROOKS,
*Judge 26th Judicial District of Texas.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Application for a Receiver. Filed June 1st, 1907, D. J. Pickle, Clerk, by J. A. Belger, Deputy.

581 And be it further remembered that on Friday, June 7th, 1907, defendant's motion for a new trial was taken up, argued and considered by the Court and on said day was overruled, to which action and ruling the defendant in open court excepted, and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas; and said defendant thereupon, on said June 7th, 1907, tendered and placed in the hands of D. J. Pickle, the Clerk of said Court, on appeal bond with the American Surety Company of New York as its sole surety, which said bond is in words and figures as follows:

"THE STATE OF TEXAS, *County of Travis:*

"Whereas, in a certain cause pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas was plaintiff and the Waters Pierce Oil Company was defendant, and numbered 24,551 on the docket of said Court, a judgment was on June 1st, 1907, rendered by said court in favor of the plaintiff, the State of Texas, and against the defendant, the Waters Pierce Oil Company for the sum of One Million, Six Hundred and twenty-three thousand, and nine hundred ($1,623,900.00) Dollars, and for costs of suit, and cancelling the permit of said defendant, the Waters Pierce Oil Company, to do business in the State of Texas; and, whereas, said defendant, the Waters Pierce Oil Company, has appealed from said judgment to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, and desires to suspend the execution of such judgment pending such appeal;

Now, Therefore, know all men by these presents, that we, the said Waters Pierce Oil Company, as principal and — American Surety Company of New York, as surety, do hereby acknowledge ourselves bound to pay to the State of Texas the sum of
582 Three Million and Two Hundred and Seventy Five Thousand ($3,275,000.00) Dollars, conditioned that said Waters

Pierce Oil Company shall prosecute its said appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree, and pay all such damages as said Court may award against it.

"Witness our hands this 7th day of June, A. D. 1907.

WATERS PIERCE OIL COMPANY,
By R. L. PENN, *Att'y in Fact.*
AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY, *Res. Vice President,*
[L. S.] By W. T. DECHARD, *Res. Ass't Secretary.*"

And be it further remembered that on Saturday, June 8th, 1907, at 10:00 o'clock A. M. and in open Court the Honorable V. L. Brooks, Judge, announced that the time for consideration of the application for the appointment of a receiver, above copied, had been reached, and the same was then called for consideration, whereupon the defendant, by its attorneys, stated that before considering said application they desired to call to the attention of the court the fact that they had tendered their supersedeas appeal bond, above copied, and that they desired to know the action of the Clerk as to whether he would approve or reject said bond, and thereupon, said Clerk, by written motion, requested instructions or advice from the Court as to whether said bond was legally sufficient and as to whether he was authorized to approve the same with the said single surety thereon, and thereupon the Court stated that before considering said application for a receiver he would consider the Clerk's request for advice, without assuming to have any power to dictate or control his action in approving or rejecting said bond, and
583 after argument of counsel for the State and defendant as to the sufficiency of said bond because of the admitted fact on the part of defendant that the said American Surety Company of New York was a bonding company chartered under the laws of another State and only had as assets within this State the $50,000.00 required to be deposited with the State Treasurer, as required by Article 734 of the Revised Statutes of the State of Texas, and after the said Judge gave advice to the said Clerk and without directing him to approve or reject said bond, the Clerk made known his refusal to accept said bond, and thereupon the defendant, by its counsel, requested a postponement of the further consideration of the said application for a receiver for a period of two weeks to allow it a reasonable time to procure other sureties and to give a supersedeas bond in connection with its appeal from the judgment rendered against it, and after full argument by both parties upon said application for postponement, and the propriety and authority of the Court to appoint a Receiver, the Court announced that he would take the matter under advisement until 10:00 o'clock on Monday morning, June 10th, 1907.

And be it further remembered that on said June 10th, 1907, at the hour of 10:00 o'clock A. M. the Court announced its ruling

refusing to grant the postponement of the consideration of said application for a receiver and again called the same for consideration and action, and thereupon, defendant, by its counsel, read its answer and response to said application, same being in words and figures as follows:

584 In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL CO.

Now comes the defendant in the above entitled and numbered cause, by its attorneys, and excepts to the application filed by the plaintiff herein on June 1st, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for the appointment of such Receiver, and of this defendant prays judgment of the Court.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Def't.*

And for answer to said application, defendant denies all and singular the allegations therein contained.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Def't.*

And for further answer to said application and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true, as stated in said application, that the recommendation- of said Commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been
585 rendered in said cause in said Supreme Court of Missouri, and said report of said Commissioner does not have the effect of a judgment, but that said report and recommendations of said Commissioner may be either approved or rejected by said Supreme Court of Missouri, and will have no force or effect unless confirmed and approved by said Supreme Court of Missouri.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me duly sworn on oath deposes and says: That he is one of the attorneys for defendant in the above entitled and numbered cause, and that the facts stated in the foregoing special plea are true as he is informed and verily believes.

(Signed) D. W. ODELL.
R. L. PENN.

Subscribed and sworn to before me by D. W. Odell and R. L. Penn, this 10th day of June, A. D. 1907.

D. J. PICKLE,
*Clerk District Court of Travis County, Texas,*
[L. S.] By E. HUPPERTZ, *Deputy.*

And be it further remembered that after reading the foregoing answer and response, counsel for defendant proceeded to argue its said general exception or demurrer to the said application for the appointment of a receiver, and at the conclusion of such
586 argument when counsel for the State started to argue the same, the Court announced that it was unnecessary for counsel for the State to make any further argument, and the Court thereupon proceeded to announce his conclusions with respect to said application and defendant's objections thereto, and stated that the Court would take judicial notice of the proceedings in the main case and of the rendition of judgment against the defendant for violating the anti-trust laws of the State, as charged against it in plaintiff's said second amended original petition, and that it had been found guilty of violating the said anti-trust laws on each and every day from the 1st day of June, 1900, to the 29th day of April, 1907, and that its permit to do further business in the State had been forfeited and cancelled by reason of said violations, and that defendant had since May 31, 1900, *had* been a member of an agreement which had its very existence in Texas, in violation of the Civil and Criminal laws of Texas, and that it has been and still is in possession of certain instrumentalities by means of which it, in violation of the public welfare and interests, intended to continue its violation of the law pending appeal from the judgment of conviction, and that the court would assume that the defendant would file its proper supersedeas bond from the said judgment of conviction, but that notwithstanding defendant's right to so file said supersedeas bond within the time provided by law, the Court was of the opinion that the Legislature had provided as a remedy or means of preventing defendant from the continued violation of the law, that a receiver should be appointed to take charge of its property and business and deprive it of the instrumentalities by which it had so violated the law, and would continue to violate the law; and that because of said statute and of the declared purpose of de-
587 fendant, speaking through its general counsel John D. Johnson, in newspaper interviews which had been brought to the attention of the Court, in which said Johnson had discussed the effect of the aforesaid judgment of conviction against defendant, and

had declared the purpose of defendant to appeal from said judgment of conviction and to continue to carry on its business in the same manner that it had theretofore done, notwithstanding such judgment of conviction; and without any evidence being submitted to the court in connection with said application, the court thereupon announced that it would grant the said application and appoint a receiver as therein prayed for, and that the Court had made up its mind as to the gentleman so to be appointed receiver, and would invite counsel for the State and for defendant to his room, where he would disclose the name of the gentlemen so determined upon, and give to counsel for both sides an opportunity to present any objections which they might have to the gentleman so determined upon, to which action of the court, and before the Judge left the bench and retired to his room for the conference aforesaid, the defendant, by its attorneys, in open Court, then and there excepted and gave notice of appeal from the action of the court to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, and thereupon the Court caused an order to be prepared and entered of record evidencing its action in granting the application of the State for the appointment of a receiver aforesaid, which said order is in words and figures as follows:

"24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

"And now on this the 10th day of June, 1907, at a regular term of this court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation pend-
588 ing the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this Court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business and supplying oil to the public in the State of Texas; that the temporary injunction heretofore granted, prohibiting defendant from moving any of its property and assets beyond the limits of the State of Texas be. and the same is hereby continued in force until the further orders of this court.

"To all of which action the defendant in open court, excepts, and in open court give- notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas."

And be it further remembered that after the proceedings aforesaid had taken place in the manner above recited, the Honorable V. L. Brooks, Judge of said Court, did announce to counsel that he had determined upon the selection of Robert J. Eckhardt to be receiver, and was willing to hear any objections that might be urged against his appointment, and, at the request of defendant's counsel, the matter of the final order naming the said Eckhardt as receiver was postponed until June 13th, 1907, and on said last mentioned date the court, did make its order naming said Robert J. Eckhardt as receiver, and caused the same to be entered of record in
589 words and figures as follows:

"No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

"On this the 10th day of June, A. D. 1907, in this cause an order was made and entered by this Court granting the application of the plaintiff, the State of Texas, for the appointment of a receiver herein, the court at the time of the making of said order naming as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt, as such receiver, and no objection having been made to said Eckhardt, the Court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as receiver herein of the property in said order described said Robert J. Eckhardt with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two Hundred and Fifty Thousand Dollars;

"And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin."

To which action of the Court at the time said order was entered defendant excepted and again gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

And be it further remembered that thereafter on the 15th day of June, A. D. 1907, the defendant having tendered to the Clerk of this Court another supersedeas appeal bond from the main judgment rendered against it on June 1st, 1907, with the American Surety Company of New York and John H. Kirby as its sureties thereon, and before the approval of said bond, as hereinafter recited, the court caused the following amendment to the above recited orders of June 10th and June 13th, 1907, to be entered, which
590 said order directing said amendment of said order was made over the objections of the defendant, and to the action of the court, in so amending said orders defendant then and there excepted and again gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, which said amendment is in words and figures as follows:

In District Court, Travis County, Texas.

June 15th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this 15th day of June, A. D. 1907, at a regular term of this Court, it is considered, ordered, adjudged and decreed by the Court that the orders of this Court made and entered in said cause on the 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

And now on this 10th day of June, 1907, at a regular term of this Court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defend-
591 ant until such future time as the Court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the Public in the State of Texas, with the rights, power, and authority to continue the various clerks, servants, and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as Receiver from any of the present employees of those hereafter engaged by him as he may think expedient and proper; and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business so that said business may be kept up to its present condition as near as may be; and the said Receiver shall have power, under the control of the Court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the Court may authorize and

all the expenses of said receivership including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the Court costs of the suit. That the temporary injunction heretofore granted, prohibiting the defendant from removing any of its property and assets beyond the limits of the State of Texas, be, and the same, is hereby continued in force until the further orders of this Court;

592 To all of which action the defendant in open court excepts, and in open Court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

And on this 13th day of June, A. D. 1907, the Court confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein names, and fixes the amount of his bond as such Receiver at ($250,000.00) Two Hundred and Fifty Thousand Dollars, to be made payable to the Judge of this Court, and his successors in office, for the use of all parties interested in said property and this suit.

And defendant renewed its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

And be it further remembered that after the entry of said amended orders aforesaid, the Clerk of this Court, duly approved and filed defendant's said supersedeas appeal bond last above mentioned, and the same is in words and figures as follows:

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

Know All Men by These Presents:

That, whereas, in the above entitled and numbered cause in the District Court of Travis County, State of Texas, twenty-sixth Judicial District, a judgment was rendered in behalf of the plain-

593 tiff, the State of Texas, against the defendant, the Waters Pierce Oil Company, in words and figures as follows, to-wit:

In District Court, Travis County, Texas.

June 1st, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by Attorneys, and announced

ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impaneled and sworn to try the case, and thereafter the case proceeded to trial, when by agreement of all parties on the 24th day of May, 1907, one of the Jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the Court and the eleven jurors theretofore selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the Court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the 1st day of June, 1907, they returned into open Court the following verdict:

"AUSTIN, TEXAS, *June* 1, 1907.

"We the Jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties 1,549,500.00 dollars.

And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty eight days and fix the penalties at seventy four thousand four hundred dollars.

594 We further find that the permit of the defendant to do business in the State of Texas should be canceled.

We find for defendant upon all issues made by the pleadings and not submitted in the charge of the Court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
G. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS.
W. T. THOMPSON.
H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN."

which verdict was by the Court received, ordered filed and made a part of the record of this cause.

It is therefore, considered, ordered, adjudged and decreed that the plaintiff, The State of Texas, do have and recover of and from the defendant, The Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six Hundred and twenty-three thousand nine hundred dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

It is further ordered, adjudged and decreed that the permit of the defendant, The Waters Pierce Oil Company, to do business in the

State of Texas, be, and the same is, hereby cancelled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas.

595 THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of the Judgment in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as same appears of record in Minute Book 12, page 349, *et seq.*, of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the 14th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
*Clerk District Court, Travis County, Texas.*
By J. A. BELGER, *Deputy.*

And, Whereas, the defendant in said cause duly filed its motion for a new trial, which said motion was by the Court overruled and refused by order and judgment entered on the 7th day of June, A. D. 1907, and the said defendant then and there in open Court excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

And, Whereas, the defendant desires to perfect its said appeal and supersede the judgment aforesaid pending its appeal;

Now, Therefore, we, the said Waters Pierce Oil Company, defendant aforesaid and appellant, as principal, and The Amer-
596 can Surety Company of New York, a corporation duly qualified and authorized to execute this bond, as surety, together with Jno. H. Kirby, as further surety herein, do hereby each acknowledge ourselves indebted, held and firmly bound to pay to the State of Texas, plaintiff aforesaid and appellee herein, the full sum of Three Million, Two Hundred and Seventy-five Thousand ($3,275,000.00) Dollars, conditioned that the said appellant, the Waters Pierce Oil Company, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree, and pay all such damages as said court may award against it.

In witness of all which the said Waters Pierce Oil Company causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York, causes this bond to be executed by J. E. Lucy, its Resident Vice President and duly appointed agent and attorney in fact,

and the said Jno. H. Kirby, execute the same in his own proper person, this 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN,
*Attorney at Law and in Fact.*

[SEAL.] THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
*Resident Vice President and Agent.*

Attest:
W. T. DECHARD,
*Resident Assistant Secretary.*

JNO. H. KIRBY.

Approved June 15, 1907.
D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Appeal Bond No. 1. Filed June 15, 1907, D. J. Pickle, Clerk.

597 Be it further remembered that on June 15th, 1907, the court made and entered its order fixing the amount of bond which defendant was required to give in order to perfect its said appeal from the orders appointing a receiver and supersede the said orders so appointing a receiver at the sum of $100,000.00; and thereupon, defendant tendered and placed in the hands of the Court its supersedeas appeal bond in said sum last named, with the American Surety company of New York and John H. Kirby as its sureties, and the Court having announced its refusal to consider said bond at said time and its purpose to postpone the further consideration thereof until the succeeding Wednesday morning, June 19, 1907, at 10:00 o'clock, defendant at the time of such refusal to consider said bond and the postponement thereof excepted to the action of the Court.

Be it further remembered that on said 19th of June, 1907, at the hour of 10:00 o'clock, the court having announced that it would consider the matter of the approval of the receiver's bond of Robert J. Eckhardt, receiver, which had been tendered to him on the —— day of June, A. D. 1907, and would also consider the matter of the approval of defendant's said supersedeas appeal bond so tendered to him on June 18th, 1907, the defendant in open Court objected to the consideration and approval of the receiver's bond before acting upon its said appeal bond, which had been first placed with the Court, and for the additional reason that as defendant had duly filed with the Clerk of this Court its said supersedeas appeal bond from the main judgment of June 1st, 1907, the Court was without authority or jurisdiction to make any further orders with respect to said receivership or to approve said receiver's bond, which said objection was then and there overruled and defendant in open
598 court excepted, and thereupon the court proceeded and first entered its order of approval of the said receiver's bond, and,

after so approving the same, did enter its order approving defendant's said supersedeas appeal bond so placed with the Court on June 15th, 1907, to which action of the court at the time defendant excepted; and defendant having announced to the court its desire to submit this said last mentioned supersedeas appeal bond to the Clerk for his approval, the Court directed the Clerk to first consider the bond of the receiver before approving defendant's said bond, to which action of the Court in so directing the Clerk defendant excepted.

And defendant now tenders this its bill of exceptions to all matters connected with the appointment of a receiver, as hereinbefore recited, and prays that this bill be signed and ordered filed as part of the record in this proceeding.

Examined and allowed.

V. L. BROOKS,
*Judge, 26th Judicial District.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's Bill of Exceptions to Orders and Proceedings in Reference to Receivership. Filed June 29, 1907. D. J. Pickle, Clerk.

599 *Appeal Bond—In Receivership.*

Filed June 15th, 1907.

In the District Court of Travis County, State of Texas, Twenty-sixth District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Know all men by these presents that, whereas in the above entitled case in the District Court of Travis County, State of Texas, Twenty-sixth Judicial District, before the Hon. V. L. Brooks, Judge presiding, the following orders, judgments and proceedings were had and duly entered of record, namely:

In District Court, Travis County, Texas.

June 10th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this the 10th day of June, 1907, at a regular term of this Court, there came on to be heard the application of the State of

Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the
600 further orders of this Court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the Court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas; that the temporary injunction, heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be, and the same is hereby continued in force until the further orders of this Court.

To all of which action the defendant in open Court excepts and in open court give notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

In District Court, Travis County, Texas.

June 13th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

On this the 10th day day of June, A. D. 1907, in this cause an order was made and entered by this Court granting the application of the plaintiff, The State of Texas, for the appointment of a receiver herein, the Court at the time of the making of said order naming as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the Court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described said Robert J. Eckhardt with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two Hundred and fifty thousand dollars;

601 And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of Orders of Court appointing Receiver in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as the same appear of record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 13th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
*Clerk District Court, Travis County, Texas.*

And, Whereas, the said defendant, Waters Pierce Oil Company, having duly excepted to the action of the Court in making said orders and judgments, and given notice of appeal therefrom to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, and the said V. L. Brooks, Judge presiding, having fixed the amount of the appeal bond required to be given by said Waters Pierce Oil Company at the sum of One Hundred Thousand Dollars, and said Company desiring to perfect its said appeal and supersede and suspend said orders and judgments as provided by law;

602 Now, therefore, we, the said Waters Pierce Oil Company, appellant, as principal, and The American Surety Company of New York and Jno. H. Kirby, as sureties, do hereby acknowledge ourselves indebted, held and firmly bound to pay to the State of Texas, appellee, the full sum of One Hundred Thousand Dollars, conditioned that the said Waters Pierce Oil Company, appellant, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree and pay all such damages as said Court may award against it, and further conditioned that the said Waters Pierce Oil Company, appellant, shall, in case the judgment is affirmed, pay to the State of Texas, appellee, the value of the rent or hire of all such property embraced in the orders and judgments aforesaid in any suit which may be brought therefor.

In witness of all which the said Waters Pierce Oil Company causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York causes this bond to be executed by J. E. Lucy, its Resident Vice President and duly appointed agent and attorney in fact, and said Jno. H. Kirby execute the same in *their* own proper person, this the 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN,
*Agent, Attorney at Law and in Fact.*

[SEAL.]

THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
*Resident Vice President and Agent.*

603 Attest:

W. T. DECHARD,
*Resident Assistant Secretary.*

JNO. H. KIRBY.

Examined, approved and ordered filed by the undersigned this 19th day of June, 1907, at 10:33 o'clock A. M.

V. L. BROOKS, *Judge.*

Approved June 10, 1907, 10.36 A. M.
D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Appeal Bond No. 2. Filed June 19, 1907. D. J. Pickle, Clerk.

604 *Assignment of Errors in Main Case.*

Filed July 20, 1907.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the 26th Judicial District Court of Travis County, Texas.

Now comes the defendant in the above entitled cause, and, as required by law, files herein its assignments of errors committed by the trial court in this cause, as follows:

1. The Court erred in overruling the defendant's first exception, in the nature of a plea in abatement, to plaintiff's petition.

2. The Court erred in overruling defendant's second exception, in the nature of a plea in abatement, to plaintiff's petition.

3. The Court erred in overruling defendant's third exception, in the nature of a plea in abatement, to plaintiff's petition.

4. The Court erred in overruling defendant's fourth exception, in the nature of a plea in abatement, to plaintiff's petition.

5. The Court erred in overreling defendant's general demurrer to plaintiff's petition.

6. The Court erred in overruling defendant's first special exception to plaintiff's petition.

605 7. The Court erred in overruling defendant's second special exception to plaintiff's petition.

8. The Court erred in overruling defendant's third special exception to plaintiff's petition.

9. The Court erred in overruling defendant's fourth special exception to plaintiff's petition.

10. The Court erred in overruling defendant's fifth special exception to plaintiff's petition.

11. The Court erred in overruling defendant's special exception No. 6 to plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any person of

property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

12. The Court erred in overruling the defendant's special exception No. 7 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

13. The Court erred in overruling the defendant's special exception No. 8 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit
606 of the protection of that part of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

14. The Court erred in overruling the defendant's special exception No. 9 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, which prescribed that no state shall pass any *ex post facto* law, or law impairing the obligation of contracts, and thereby also rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law, all of which provisions of the Constitution of the United States and of the 14th Amendment thereto were relied upon by the defendant in said special exception, and are still relied upon by the defendant.

15. The Court erred in overruling the defendant's special exception No. 10 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of Subdivision 3 of Section 8 of Article 1 of the Constitution of the United States, which gives Congress the power to regulate commerce with foreign nations and among the several states, and of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall de-
607 prive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provisions of the Constitution of the United States and of the 14th Amendment thereto were relied upon by the defendant in said special exception, and are still relied upon by the defendant.

16. The Court erred in overruling defendant's eleventh special exception to plaintiff's petition.

17. The Court erred in overruling defendant's special exception No. 12 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of liberty or property without due process of law, which provision of said 14th Amendment was relied upon in said special exception and is still relied upon by the defendant.

18. The Court erred in overruling defendant's special exception No. 13 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection of Subdivision 3 of Section 8 of Article 1 of the Constitution of the United States, which gives Congress the power to regulate commerce with foreign nations and among the several states, which provision of the Constitution of the United States was relied upon in said exception, and is still relied upon, by the defendant.

19. The court erred in overruling defendant's special exception No. 14 to plaintiff's petition.

20. The Court erred in overruling defendant's special exception No. 15, to plaintiff's petition.

21. The Court erred in overruling the defendant's special exception No. 16 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the bene-
608 fits of, the protection of that part of the 14th Amendment of the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

22. The Court erred in overruling defendant's special exception No. 17 to the plaintiff's petition.

23. The Court erred in overruling defendant's special exception No. 18 to the plaintiff's petition.

24. The Court erred in overruling the defendant's special exception No. 19 to plaintiff's petition.

25. The Court erred in overruling defendant's special exception No. 20 to plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to defendant the benefit of, the protection of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and also of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provisions of the Constitution of the United States and of the 14th Amendment thereto were relied upon, and are still relied upon, by the defendant.

26. The Court erred in overruling defendant's special exception No. 21 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection

of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, which provides that no state shall pass any law
609 impairing the obligation of contracts, and also rendered unavailable to defendant, and denied to defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws which provisions of the Constitution of the United States and of the 14th Amendment thereto were relied upon, by the defendant.

27. The Court erred in overruling defendant's special exception No. 22 to the plaintiff's petition.

28. The Court erred in overruling defendant's special exception No. 23, to the plaintiff's petition.

29. The Court erred in overruling the defendant's special exception No. 24 to the plaintiff's petition.

30. The Court erred in overruling the defendant's special exception No. 25 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provisions of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

31. The Court erred in overruling the defendant's special exception No. 26 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any
610 person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

32. The Court erred in overruling the defendant's special exception No. 27 to the plaintiff's petition.

33. The Court erred in overruling the defendant's special exception No. 28 to the plaintiff's petition.

34. The Court erred in overruling the defendant's special exception No. 29 to the plaintiff's petition

35. The Court erred in overruling the defendant's special exception No. 30 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

36. The Court erred in overruling the defendant's special exception No. 31 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the pro-

tection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property with- due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment to the Constitution of the United States was relied upon in said special exception, and is still relied upon by the defendant.

37. The Court erred in overruling the defendant's special exception No. 32, to the plaintiff's petition.

611 38. The Court erred in overruling the defendant's special exception No. 33 to the plaintiff's petition.

39. The Court erred in overruling the defendant's special exception No. 34 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

40. The Court erred in overruling the defendant's special exception No. 35, to the plaintiff's petition.

41. The Court erred in overruling the defendant's special exception No. 36, to the plaintiff's petition.

42. The Court erred in overruling the defendant's special exception No. 37 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

43. The Court erred in overruling the defendant's special exception No. 38 to the plaintiff's petition.

44. The Court erred in overruling the defendant's special exception No. 39 to the plaintiff's petition.

45. The Court erred in overruling the defendant's special exception No. 40 to the plaintiff's petition, and thereby rendered un-

612 available to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

46. The Court erred in overruling the defendant's special exception No. 41 to the plaintiff's petition.

47. The Court erred in overruling the defendant's special exception No. 42 to the plaintiff's petition.

48. The Court erred in overruling the defendant's special exception No. 43 to the plaintiff's petition.

49. The Court erred in overruling the defendant's special exception No. 44 to the plaintiff's petition, and thereby rendered unavailable

to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

50. The Court erred in overruling the defendant's special exception No. 45 to the plaintiff's petition.

51. The Court erred in overruling the defendant's special exception No. 46 to the plaintiff's petition.

52. The Court erred in overruling the defendant's special exception No. 47 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of; the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any
613 person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

53. The Court erred in overruling the defendant's special exception No. 48 to the plaintiff's petition.

54. The Court erred in overruling Subdivision *a* of defendant's special exception No. 48 to plaintiff's petition.

55 *55*. The Court erred in overruling Subdivision *b* of defendant's special exception No. 48 to plaintiff's petition.

56. The Court erred in overruling Subdivision *c* of defendant's special exception No. 48 to plaintiff's petition.

57. The Court erred in overruling Subdivision *d* of defendant's special exception No. 48 to plaintiff's petition.

58. The Court erred in overruling Subdivision *e* of defendant's special exception No. 48 to plaintiff's petition.

59. The Court erred in overruling Subdivision *f* of defendant's special exception No. 48 to plaintiff's petition.

60. The Court erred in overruling Subdivision *g* of defendant's special exception No. 48 to plaintiff's petition.

61. The Court erred in overruling Subdivision *h* of defendant's special exception No. 48 to plaintiff's petition.

62. The Court erred in overruling Subdivision *i* of defendant's special exception No. 48 to plaintiff's petition.

63. The Court erred in overruling defendant's special exception No. 49 to the plaintiff's petition.

64. The Court erred in overruling Subdivision *a* of defendant's special exception No. 49 to plaintiff's petition.

65. The Court erred in overruling Subdivision *b* of defendant's special exception No. 49 to plaintiff's petition.

66. The Court erred in overruling Subdivision *c* of defendant's special exception No. 49 to Plaintiff's petition.

614 67. The Court erred in overruling Subdivision *d* of defendant's special exception 49 to plaintiff's petition.

68. The Court erred in overruling Subdivision *e* of defendant's special exception No. 49 to plaintiff's petition.

69. The Court erred in overruling Subdivision *f* of defendant's special exception *of* 49 to plaintiff's petition.

70. The Court erred in overruling Subdivision *g* of defendant's special exception No. 49 to plaintiff's petition.

71. The Court erred in overruling Subdivision *h* of defendant's special exception No. 49 to plaintiff's petition.

72. The Court erred in overruling Subdivision *i* of defendant's special exception No. 49 to plaintiff's petition.

73. The Court erred in overruling defendant's special exception No. 50 to plaintiff's petition.

74. The Court erred in overruling defendant's special exception No. 51 to plaintiff's petition.

75. The Court erred in overruling the defendant's special exception No. 52 to plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, which provisions of said 14th Amendment was relied upon in said special exception, and is still relied upon, by the defendant.

76. The Court erred in overruling the defendant's special exception No. 53 to the plaintiff's petition, and thereby rendered unavailable to defendant, and denied to defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, which provision of said 14th
615 Amendment was relied upon in said special exception, and is -till relied upon by the defendant.

77. The Court erred in overruling defendant's special exception No. 54 to plaintiff's petition.

78. The Court erred in overruling defendant's special exception No. 55 to the plaintiff's petition, and thereby rendered unavailable to the defendant, and denied to the defendant the benefit of, the protection of that part of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which provision of said 14th Amendment was relied upon in said special exception, and is still relied upon by the defendant.

79. The Court erred in overruling defendant's special exception No. 56 to the plaintiff's petition.

80. The Court erred in overruling defendant's special exception No. 57 to plaintiff's petition.

81. The Court erred in overruling defendant's special exception No. 58 to plaintiff's petition.

82. The Court erred in overruling defendant's special exception No. 59 to plaintiff's petition.

83. The Court erred in overruling defendant's special exception No. 60 to plaintiff's petition.

84. The Court erred in overruling defendant's special exception No. 61 to plaintiff's petition.

85. The Court erred in overruling defendant's special exception No. 62 to plaintiff's petition.

86. The Court erred in overruling defendant's special exception No. 63 to plaintiff's petition.

87. The Court erred in overruling defendant's special exception No. 64 to plaintiff's petition.

616 88. The Court erred in overruling defendant's special exception No. 65 to plaintiff's petition.

89. The Court erred in overruling defendant's special exception No. 66 to plaintiff's petition.

90. The Court erred in overruling defendant's special exception No. 67 to plaintiff's petition.

91. The Court erred in overruling defendant's special exception No. 68 to plaintiff's petition.

92. The Court erred in overruling defendant's special exception No. 69 to plaintiff's petition.

93. The Court erred in overruling defendant's special exception No. 71 to plaintiff's petition.

94. The Court erred in overruling defendant's special exception No. 72 to plaintiff's petition.

95. The Court erred in overruling defendant's special exception No. 73 to plaintiff's petition.

96. The Court erred in overruling defendant's special exception No. 74 to plaintiff's petition.

97. The Court erred in overruling defendant's special exception No. 75 to plaintiff's petition.

98. The Court erred in overruling defendant's special exception No. 76 to plaintiff's petition.

99. The Court erred in overruling defendant's special exception No. 77 to plaintiff's petition.

100. The Court erred in overruling defendant's special exception No. 78 to plaintiff's petition.

101. The Court erred in overruling defendant's special exception No. 79 to plaintiff's petition.

102. The Court erred in overruling defendant's special exception No. 80 to plaintiff's petition.

103. The Court erred in overruling defendant's special exception No. 81 to plaintiff's petition.

617 104. The Court erred in overruling defendant's special exception No. 82 to plaintiff's petition.

105. The Court erred in overruling defendant's special exception No. 83 to plaintiff's petition.

106. The Court erred in overruling defendant's special exception No. 84 to plaintiff's petition.

107. The Court erred in overruling defendant's special exception No. 85 to plaintiff's petition.

108. The Court erred in overruling defendant's special exception No. 86 to plaintiff's petition.

109. The Court erred in overruling defendant's special exception No. 87 to plaintiff's petition.

110. The Court erred in overruling defendant's special exception No. 88 to plaintiff's petition .

111. The Court erred in overruling defendant's special exception No. 89 to plaintiff's petition.

112. The Court erred, upon the hearing of defendant's application for a change of venue herein, in refusing to allow this defendant to prove by the witness, C. J. Johnson, the facts which it offered to prove by said witness, and which were excluded by the Court, as shown by defendant's bill of exceptions No. 5, herein.

113. The Court erred, upon the hearing of defendant's application for a change of venue herein, in refusing to allow this defendant to prove by the witness, H. M. Metz, the facts which it offered to prove by said witness, and which were excluded by the Court, as shown by defendant's bill of exceptions No. 6, herein.

114. The Court erred in overruling defendant's application for a change of venue in this case, as shown by defendant's bill of exceptions No. 7, herein.

618. 115. The Court erred in overruling defendant's application for a change of venue in this case, for the reason that, upon the hearing of said application it was shown by both the preponderance of the evidence and the manifest weight of the evidence, that there existed in Travis County so great a prejudice against this defendant that it could not obtain a fair and impartial trial of this case in said County, as appears from defendant's bill of exceptions No. 7, herein.

116. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the Articles of Incorporation of the Standard Oil Company of Ohio, as shown on pages 2-4 of the stenographer's report.

117. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the charter of the Waters Pierce Oil Company filed in the office of the Secretary of State of the State of Missouri on May 1st, 1878, and the certified copy of the amendment thereto, as shown on pages 4-5 of the Stenographer's report.

118. The Court erred in admitting in evidence, over the objections of defendant, the copy of the "Standard Oil Trust Agreements" and the supplement thereto, copied and set out in plaintiff's petition as shown on pages 5-8 of the stenographer's report.

119. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the charter and amendment thereto, of the Standard Oil Company of New Jersey, incorporated under the laws of New Jersey, as shown on pages 8-12 of the stenographer's report.

120. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her by plaintiff,
619 as shown on pages 13-17 of the stenographer's report.

121. The Court erred in admitting in evidence, over the objections of defendant, that portion of the answer of said witness to the seventh interrogatory propounded to her by plaintiff after the first sentence of said answer as shown on pages 13-17 of the stenographer's report.

122. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts to the tenth interrogatory propounded to her by plaintiff, as shown on pages 18-21 of the stenographer's report.

123. The Court erred in admitting in evidence, over the objections of defendant Exhibit "B" attached to the deposition of said witness, Ida M. Butts, as shown on pages 22-23 of the stenographer's report.

124. The Court erred in admitting in evidence, over the objections of defendant, the Exhibits, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, attached to the deposition of the said witness, Ida M. Butts, as shown in pages 23-39 of the stenographer's report.

125. The Court erred in admitting in evidence, over the objection of defendant, the answer of the witness, Ida M. Butts, to the thirteenth interrogatory propounded to her by plaintiff, as shown on pages 39-40 of the stenographer's report.

126. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts, to the fourteenth interrogatory propounded to her by plaintiff, as shown on page 40 of the stenographer's report.

620. 127. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts, to the sixteenth interrogatory propounded to her by plaintiff, as shown on pages 41-42 of the stenographer's report.

128. The Court erred in admitting in evidence, over the objections of defendant, the second paragraph of the agreement being stipulation No. 1, between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

129. The Court erred in admitting in evidence, over the objections of defendant, the third paragraph of the agreement being stipulation No. 1, between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

130. The Court erred in admitting in evidence, over the objections of defendant, the fourth paragraph of the agreement, being Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

131. The Court erred in admitting in evidence, over the objections of defendant, the fifth paragraph of the agreement, being Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

132. The Court erred in admitting in evidence, over the objections of defendant, the sixth paragraph of the agreement, being Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

133. The Court erred in admitting in evidence, over the objections of defendant, the seventh paragraph of the agreement, being Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

134. The Court erred in admitting in evidence, over the objections of defendant, the eighth paragraph of the agreement, being
621 Stipulation No. 1 between counsel for plaintiff and defendant, as shown on pages 43-46 of the stenographer's report.

135. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the charter of the Standard Oil Company of Kentucky, as shown on pages 46-47 of the stenographer's report.

136. The Court erred in admitting in evidence, over the objections

of the defendant, the certified copy of the charter of the Standard Oil Company of Pittsburg, as shown on pages 47 of the stenographer's report.

137. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the Articles of Incorporation of the Standard Oil Company of Indiana, as shown on pages 47-48 of the Stenographer's report.

138. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the Articles of Incorporation the Standard Oil Company of Iowa, as shown on pages 48-49 of the stenographer's report.

139. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the Articles of Incorporation of the Standard Oil Company of New York, as shown on pages 49 of the stenographer's report.

140. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the charter of the Atlantic Refining Company, and the various amendments thereto, as shown on pages 49-51 of the stenographer's report.

141. The Court erred in admitting in evidence, over the objections of defendant, the portion of the deposition of the witness, R. H. McNall, set out on pages 51-52 of the Stenographer's report.

142. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, E. M. Wilhoit, to the
622 sixth interrogatory propounded to him by plaintiff, as shown on page 53 of the stenographer's report.

143. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness E. M. Wilhoit, to the seventh interrogatory propounded to him by plaintiff, as shown on page 53 of the stenographer's report.

144. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, E. M. Wilhoit, to the ninth interrogatory propounded to him by plaintiff, as shown on page 57 of the stenographer's report.

145. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness E. M. Wilhoit, to the tenth interrogatory propounded to him by plaintiff, as shown on pages 54-55 of the stenographer's report.

146. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness E. M. Wilhoit, to the twelfth interrogatory propounded to him by plaintiff, as shown on page 56 of the stenographer's report.

147. The Court erred in admitting in evidence, over the objections of defendant, the portion of the answer of the witness E. M. Wilhoit, to the twelfth interrogatory propounded to him by plaintiff, and reading, "I was instructed to not make any sales in the Indian Territory or Texas, as that was the territory of the Waters Pierce Oil Company," as shown on pages 56-67 of the stenographer's report.

148. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness E. M. Wilhoit, to the thirteenth interrogatory propounded to him by plaintiff, as shown on page 57 of the Stenographer's report.

149. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Chas. F. Hatfield, to the fifty interrogatory propounded to him by plaintiff, as shown on pages 58-59 of the stenographer's report.

623 150. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Chas. F. Hatfield, to the ninth interrogatory propounded to him by plaintiff, as shown on pages 59-60 of the stenographer's report.

151. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Chas. C. Hatfield, to the eleventh interrogatory propounded to him by plaintiff, as shown on pages 60-61 of the stenographer's report.

152. The Court erred in admitting in evidence, over the objections of defendant, the portion admitted of the answer of the witness Chas. F. Hatfield, to the twenty-second interrogatory propounded to him by plaintiff, as shown on pages 63-65 of the stenographer's report.

153. The Court erred in admitting in evidence, over the objections of defendant, the judgment rendered in the case of the State of Texas against the Waters Pierce Oil Company, in the District Court of Travis County, Texas, on June 15th, 1897, as shown on pages 65-66 of the stenographer's report.

154. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the affidavit purporting to show the dissolution of the Waters Pierce Oil Company, incorporated under the laws of Missouri, on May 7th, 1878, as shown on page 66 of the stenographer's report.

155. The Court erred in admitting in evidence, over the objections of defendant, the certified copy of the mandate of the Supreme Court of the United States in the case of the State of Texas *vs.* Waters Pierce Oil Company, as shown on page 69 of the stenographic report.

156. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the

624 witness H. C. Pierce, in which he testified that when the Waters Pierce Oil Company incorporated in 1878, was organized it was agreed that the Waters Pierce Oil Company should confine its operations and transact its business within the territory in which Waters, Pierce & Company and H. C. Pierce & Company had transacted business, and wherein he undertook to describe such territory, as shown on pages 71-73 of the stenographer's report.

157. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that the Waters Pierce Oil Company, incorporated in 1878, obtained its supplies almost exclusively from the Standard Oil Company, as shown on pages 73-74 of the stenographer's report.

158. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that the Waters Pierce Oil Company obtained all of its crude petroleum for manufacturing in Mexico from the Standard Oil Company, as shown on pages 74-75 of the stenographer's report.

159. The Court erred in admitting in evidence, over the objections of the defendant, that portion of the testimony of the witness, H. C. Pierce, wherein he testified that the reason the Waters Pierce Oil Company did not contemplate doing business in Mansas City was because the original Waters Pierce Oil Company agreed that it would confine its operations to the territory in which it and its predecessors had transacted its business, as shown on pages 83-84 of the stenographer's report.

160. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that upon the organization of the present Waters Pierce Oil Company he was informed by his
625 attorney that an agreement had been made that he should transfer 68½ per cent. of the stock to some unknown party, as shown on pages 87-88 of the stenographer's report.

161. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that he was told by his attorney that he had made an agreement with the general counsel of the Standard Oil Company whereby, upon the organization of the present Waters Pierce Oil Company he (the witness) should transfer the same number of shares of stock to Mr. Pratt, of the Standard Oil Company, that the Standard Oil Company of New Jersey held in the old company, as shown on page 98 of the stenographer's report.

162. The Court erred in admitting in evidence, over the objections of defendant, that portion of the testimony of the witness H. C. Pierce, wherein he testified that according to his understanding, as he was informed by his attorney, the 2748 shares of stock referred to belonged to and was to be transferred to the Standard Oil Company, or its representatives, as shown on page 99 of the stenographer's report.

163. The Court erred in admitting in evidence, over the objections of defendant, and for the purpose stated by counsel for plaintiff when it was offered, the deposition of the witness, Wade Hamption, as shown on pages 180-218 of the stenographer's report.

164. The Court erred in admitting in evidence for the purpose for which the same was stated by counsel for plaintiff to be offered, and over the objections of defendant, the answer of the witness, Wade Hampton, to the twenty-fifth interrogatory propounded to him by plaintiff, as shown on pages 180-188 of the stenographer's report.

626 165. The Court erred in admitting in evidence, over the objections of defendant, all of the deposition of the witness, Wade Hampton, which was admitted in evidence after his answer to the twenty-fifth interrogatory for the purpose of which counsel for the State stated at the time that said portion of said deposition was offered, as shown on pages 180-218 of the stenographer's report.

166. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Maywood Maxon, to the tenth interrogatory propounded to him by plaintiff, as shown on pages 219-220 of the stenographer's report.

167. The Court erred in admitting in evidence, over the objection of defendant, the answer of the witness Maywood Maxon to the thirteenth interrogatory propounded to him by plaintiff, as shown on pages 220 of the stenographer's report.

168. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Maywood Maxon to the twenty-seventh interrogatory propounded to him by plaintiff, as shown on pages 222-223 of the stenographer's report.

169. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald to the sixth interrogatory propounded to him by plaintiff, as shown on pages 223-224 of the stenographer's report.

170. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald, to the thirteenth interrogatory propounded to him by plaintiff, as shown on page 225 of the stenographer's report.

171. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, G. J. Steigerwald, to the fifteenth interrogatory propounded to him by plaintiff, as shown on page 225 of the stenographer's report.

627 172. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald, to the sixteenth interrogatory propounded to him by plaintiff, as shown on pages 225-226 of the stenographer's report.

173. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald, to the twenty-sixth interrogatory propounded to him by plaintiff, as shown on pages 228-229 of the stenographer's report.

174. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness G. J. Steigerwald, to the twenty-seventh interrogatory propounded to him by plaintiff, as shown on pages 230-231 of the stenographer's report.

175. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness A. H. Gardner, as shown on pages 236-241 of the stenographer's report.

176. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness A. H. Gardner, to the eighteenth interrogatory propounded to him by plaintiff, as shown on pages 239-240 of the stenographer's report.

177. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness Edward P. Pratt, as shown on pages 242-248 of the stenographer's report.

178. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Edward P. Pratt, to the twenty-seventh interrogatory propounded to him by plaintiff, as shown on pages 247-248 of the stenographer's report.

628 179. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness, Anthony V. Jockel, as shown on pages 249-254 of the stenographer's report.

180. The Court erred in admitting in evidence, over the objec-

tions of defendant, the portion objected to by defendant of the answer of the witness Anthony V. Jockel, to the third interrogatory propounded to him by plaintiff, as shown on pages 249-250 of the stenographer's report.

181. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Anthony V. Jockel, to the twelfth interrogatory propounded to him by plaintiff, as shown on pages 252-253 of the stenographer's report.

182. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Francis D. Carley, to the fourth interrogatory propounded to him by plaintiff, as shown on pages 270-271 of the stenographer'n report.

183. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Francis D. Carley, to the sixth interrogatory propounded to him by plaintiff, as shown on pages 271-272 of the stenographer's report.

184. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness Francis D. Carley, to the seventh interrogatory propounded to him by plaintiff, as shown on page 272 of the stenographer's report.

185. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness W. N. Davis, as shown on pages 275-279 of the stenographer's report.

186. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness William A. Morgan, as shown on pages 279-284 of the stenographer's report.

629 187. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness William A. Morgan, to the sixth interrogatory propounded to him by plaintiff, as shown on pages 281-282 of the stenographer's report.

188. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness William A. Morgan, to the seventh interrogatory propounded to him by plaintiff, as shown on page 282 of the stenographer's report.

189. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness William A. Morgan to the eighth interrogatory propounded to him by plaintiff, as shown on pages 282-283 of the stenographer's report.

190. The Court erred in admitting in evidence, over the objections of defendant, the deposition of the witness, H. R. Knollenberg, after his answer to the second interrogatory propounded to him by plaintiff, as shown on pages 285-290 of the stenographer's report.

191. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness H. R. Knollenberg to the tenth interrogatory propounded to him by plaintiff, as shown on page 287 of the stenographer's report.

192. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness H. R. Knollenberg to the fourteenth interrogatory propounded to him by plaintiff, as shown on page 289 of the stenographer's report.

193. The Court erred in admitting in evidence, over the objec-

tions of defendant, the deposition of the witness T. R. Hopkins, as shown on pages 290-296 of the stenographer's report.

194. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness T. R. Hopkins
630 — the fifteenth interrogatory propounded to him by plaintiff, as shown on page 294 of the stenographer's report.

195. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness T. R. Hopkins, to the sixteenth interrogatory propounded to him by plaintiff, as shown on page 294 of the stenographer's report.

196. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness T. R. Hopkins, to the seventeenth interrogatory propounded to him by plaintiff, as shown on pages 294-295 of the stenographer's report.

197. The Court erred in admitting in evidence, over the objections of defendant, the agreement attached to plaintiff's petition and marked Exhibit "C," between the Eagle Refining Company and others, and A. W. Clem and the Waters Pierce Oil Company, as shown on pages 391-395 of the stenographer's report.

198. The Court erred in admitting in evidence, over the objections of defendant, the letter introduced in evidence by plaintiff in connection with the deposition of the witness E. S. Horn, as shown on pages 450-453 of the stenographer's report.

199. The Court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, with reference to the prices that were obtained for oil by the Waters Pierce Oil Company (the Old Company) prior to the time that he was engaged in the oil business, at San Antonio, as shown on pages 470-471 of the stenographer's report.

200. The Court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, as to the character of warfare and competition that the Waters Pierce Oil Company (the old Company) carried on with him in San Antonio during the year 1894, as shown on pages 472-475 of the stenographer's report.

631 201. The Court erred in permitting the witness Royer Campbell, to testify, over the objections of defendant, to statements made to him by Louis Fries with reference to the Consumers Oil Company, as shown on pages 478-485 of the stenographer's report.

202. The Court erred in admitting in evidence, over the objections of defendant, the instrument styled "Synopsis of Agreement between Roy Campbell and the Texas Oil & Gasoline Company, San Antonio, Texas, and the Waters Pierce Oil Company," as shown on pages 487-490 of the stenographer's report.

203. The Court erred in admitting in evidence, over the objections of defendant, the contract between the Waters Pierce Oil Company and Royer Campbell dated October 1st, 1894, as shown on pages 487-495 of the stenographer's report.

204. The Court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, with reference to the methods pursued by the former Waters Pierce Oil Company and the

defendant in securing information with reference to competition, as shown on pages 508-511 of the stenographer's report.

205. The Court erred in admitting in evidence, over the objections of defendant, the answer of the witness, H. C. Arnold, to the nineteenth interrogatory propounded to him by plaintiff, as shown on pages 538-540 of the stenographer's report.

206. The Court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, with reference to the character, extent and details of his oil business during the years 1890 to 1895, and the competition that he met with, as shown on pages 542-560 of the stenographer's report.

207. The Court erred in permitting the witness, A. W. Clem, to testify, over the objection of defendant, with reference to
632 the old Waters Pierce Oil Company cutting prices at Seymour and other places in the year 1891, as shown on pages 545-547 of the stenographer's report.

208. The Court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, that the old Waters Pierce Oil Company, in the year 1894, after it had bought out the business of the said A. W. Clem, advances its prices, as shown on pages 548-549 of the stenographer's report.

209. The Court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, as to the prices quoted by the Security Oil Company on nap-tha during the year 1905, and as to prices quoted by said Company on lubricating oils, as shown on pages 582-583 of the stenographer's report.

210. The Court erred in admitting in evidence, over the objections of defendant, the following letters: letter dated January 10th, 1906, addressed to C. P. Ackert, General Manager, St. Louis, Mo.; letter dated January 13th, 1906, addressed to C. P. Ackert, St. Louis, Mo.; letter dated February 15th, 1906, relating to orders Nos. 294 and 304; letter of February 17th, 1906, relating to estimated output of refinery; letter dated October 30th, 1906, to C. W. Cahoon, signed A. M. Finlay, as shown on pages 625-630 of the stenographer's report.

211. The Court erred in permitting the witness, C. W. Cahoon, to testify, over the objections of defendant, that P. W. and S. W. oils were marketed by him as agent of the defendant, as Eupion oil, as shown on pages 637-638 and on pages 690-695 of the stenographer's report.

212. The Court erred in admitting in evidence, over the objections of defendant, the letter dated February 10th, 1906, addressed to C. P. Ackert, General Manager, St. Louis, Mo., relating to Walker & Smith's Grocery Company at Brownwood, as shown on pages 647-649 of the stenographer's report.

633 213. The Court erred in admitting in evidence, over the objections of defendant, the letter dated March 7th, 1906, relating — stove gasoline addressed to C. P. Ackert, General Manager, St. Louis, Mo., as shown on pages 649 of the stenographer's report.

214. The Court erred in admitting in evidence, over the objec-

tions of defendant, the letter dated March 7th, 1905, or 1906, relating to discount to Rotan Grocery Company, Waco, addressed to C. P. Ackert, General Manager, St. Louis, Mo., as shown on pages 469-650 of the stenographer's report.

215. The Court erred in admitting in evidence, over the objections of defendant, the letter dated March 23rd, 1906, relating to discount to Snider Brokerage Company, San Angelo, as shown on page 650 of the stenographer's report.

216. The Court erred in permitting the witness, C. W. Cahoon, who was shown to be one of the general agents of defendant, in Texas*m* to testify, over the objections of defendant that at some points in Texas where there was no competition defendant's prices were higher than at points where there was competition, as shown on pages 650-651 of the stenographer's report.

217. The Court erred in permitting the witness, C. W. Cahoon, to testify, over the objections of defendant, that there were some states where *be* presumed that oil of the grade of S. W. 112 could not be sold under the law, as shown on pages 692-693 of the stenographer's report.

218. The Court erred in admitting in evidence, over the objections of defendant, the copies of contracts attached to the deposition of Chas. S. Keith as exhibits, as shown on pages 722-748 of the stenographer's report.

219. The Court erred in admitting in evidence, over the objections of defendant, the letter dated September 1st, 1904,
634 from R. H. McNall to A. M. Finlay, St. Louis, Mo., as shown on pages 804-815 of the stenographer's report.

220. The Court erred in admitting in evidence over the objections of defendant, the letter signed R. H. McNall, dated December 18th, 1902, addressed to J. P. Gruet, Secretary, St. Louis, Mo., as shown on pages 804-815 of the stenographer's report.

221. The Court erred in admitting in evidence, over the objections of defendant, the various letters shown to have been admitted in evidence on pages 817-821 of the stenographer's report.

222. The Court erred in permitting the witness, C. P. Ackert, to testify, over the objections of defendant, with reference to the operations of the International Oil Company and the International Oil Works, as shown on pages 822-823 of the stenographer's report.

223. The Court erred in refusing to permit the defendant to prove that the annual franchise taxes of the Waters Pierce Oil Company had been paid by said Company to the State of Texas for the year 1900 and each succeeding year up to the date of the trial, as shown on pages 958 of the stenographer's report.

224. The Court erred in that part of its charge to the jury wherein it instructed the jury as follows: "The state alleges that on or about January 1, 1870, John D. Rockefeller, John D. Archbold, H. H. Rogers, Henry M. Flagler and a number of other persons conceived a scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas, and that said persons to that end and for that purpose entered into a con-

spiracy among themselves and with other individual corporations, including the defendant corporation, which conspiracy, the
637 State alleges, continued in force and effect from the date of its formation until the date of the filing of the State's second amended petition in this case, and the state further alleges that in pursuance of said alleged conspiracy the defendant has done various acts and entered into various agreements which constitute violations of the anti-trust laws of Texas."

225. The Court erred in that part of its charge to the jury wherein it instructed the jury as follows: "The State further alleges that the defendant's predecessor, the Waters Pierce Oil Company, incorporated in 1878, on or about the fifth day of October, 1894, entered into a contract with the Eagle Refining Company, A. W. Clem and certain individuals named in its petition, by the terms of which defendant acquired the property of said Eagle Refining Company situated in the City of Dallas, Texas, and the right to operate its business under the name of the said Eagle Refining Company. It further alleges that the defendant did subsequent to May 31, 1900, operate said Eagle Refining Company and maintain the plant thereof at Dallas, as an apparently competing concern for various purposes prohibited by the anti-trust law."

226. The Court erred in that part of its charge to the jury wherein it instructed the jury as follows: "The State further alleges that in the year 1896 the defendant's said predecessor bought out the business of the Texas Oil and Gasoline Company and of one Roy Campbell, who were at that time doing business in the City of San Antonio and elsewhere, and entered into contracts and agreements with said Texas Oil and Gasoline Company and Roy Campbell whereby said Texas Oil and Gasoline Company was thereafter to be operated under said name by defendant as an apparently competing concern with defendant at San Antonio in the sale of the products of
638 petroleum. It further alleges that said Texas Oil and Gasoline Company was operated by defendant as a concern apparently competing with it at San Antonio subsequent to May 31, 1900, for various purposes in violation of the anti-trust laws of the State. For full particulars of the State's allegations you are referred to its second amended petition."

227. The Court erred in the second division of that portion of its charge, stating the law of the case, wherein it instructed the jury as follows: "The statute known as the anti-trust law of 1899 was in force on May 31, 1900, and thereafter remained continuously in force until March 31, 1903."

228. The Court erred in that portion of the second division of its charge, stating the law of the case, wherein it instructed the jury as follows: "For the purposes of this charge you are instructed that this act made it unlawful for any corporation transacting or conducting any kind of business in this state to enter into or become a party to any agreement or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

229. The Court erred in that portion of the third division of its charge, stating the law of the case, wherein it instructed the jury as follows: "But neither oil purchased by the defendant from the Corsicana Refinery or elsewhere in Texas, nor other merchandise purchased by the defendant at points in Texas, nor such oil or other merchandise purchased by defendant at points outside the state and transported into the state and removed from the original packages or vessels in which it was brought into the state and mingled with other property of similar character in the states is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any agreement or pool or arrangement entered
637 into by defendant with reference to such property or the sale thereof, if any such there were, would be unlawful if in violation of the anti-trust laws of this State."

230. The Court erred in that portion of the fifth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor agents prior to June 1, 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant except within the limitations and for the purposes hereinafter stated, viz: 'If you find from a preponderance of other evidence in the case independent of all declarations or statements made by any person or persons except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June 1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the state's petition to be co-conspirators with defendant relating to the management of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the state's petition to be co-conspirators with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it is worth, such acts or declarations of their authorized agents, if any, as were done or made, as the case may be, durng the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the character of said agreement, and whether or not it contemplated a violation by defendant, of the anti-trust laws of Texas.' You may further consider for what, if anythng, you think it worth as tending to show or explain the course of de-
638 fendant's dealing in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside of the state both prior and subsequent to said date. None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency."

231. The Court erred in that portion of the sixth division of its

charge, stating the law of the case, wherein it instructed the jury as follows: "No agreement made by the defendant outside the State of Texas to violate the anti-trust laws of Texas, if any such there were, can be *amde* the basis for forfeiting its permit to do business in Texas or for imposing penalties upon it, unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of the defendant; but, in as much, as the undisputed evidence in the case shows that the defendant has continuously maintained its agents in this state and prosecuted its business herein since May 31, 1900, you will be authorized to convict it of violation the anti-trust laws of Texas, if you find from a preponderance of the evidence in favor of the state on the issues submitted for your consideration in paragraphs 7, 8, 9, 10, or 11 of this charge."

232. The Court erred in that portion of the seventh division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find from a preponderance of the evidence that defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jer-
639 sey on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company, remained or continued to be party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, and, if you further find from a preponderance of the evidence that the oil with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce, you will return a verdict for the State and say by your verdict, We, the jury, find for the state on the issues submitted for our consideration in paragraph seven of the Court's charge. You are instructed in this connection that if you find in favor of the state on the issues above submitted for your consideration in this paragraph of the charge, each day embraced between May 31, 1900, and March 31, 1903, during which the defendant remained a party to the agreement or understanding herein mentioned, if there were any such agreements or understandings, and if it remained a party to same on any of said days, would constitute a separate and distinct violation of the anti-trust laws of Texas."

233. The Court erred in that portion of the eighth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents had brought about or permitted any combination or a union of its capital with the capital of the Standard Oil Company of New Jersey whereby the price in Texas of oil
640 refined from petroleum, other than oil which was subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil

would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the state and say by your verdict, "We, the jury, find for the state on the issues submitted for our consideration in paragraph 8 of the Court's charge." In this connection you are instructed that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas."

234. The Court erred in that porton of the ninth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find from a preponderance of the evidence that the defendant acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this state of the business of selling oil refined from petroleum, other than oil which was the subject of insterstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were, on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, you will return a verdict for the state, and say by your verdict, 'We, the jury, find for the state on the issues submitted for our consideration in paragraph 9 of the Court's charge.

In this connection you are instructed that if the defendant
641 became a party to a trust of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust, if there were such days, would constitute a separate violation of the anti-trust laws of Texas."

235. The Court erred in that portion of the tenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances, that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the state and say by your verdict, We the jury, find for the state on the issues submitted for our consideration in paragraph 10 of the Court's charge. In this connection you are instructed that if the defendant entered into

a monopoly of the character mentioned in this paragraph of the charge, each day between March 31, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas."

236. The Court erred in that portion of the eleventh division of its charge, stating the law of the case, wherein it instructed
642 the jury as follows: "If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on—part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned or that the effect of said combination, if such there were, tended to effect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the state and say by your verdict, "We, the jury, find in favor of the state on the issues submitted for our consideration in paragraph 11 of the court's charge." In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this papragraph of the charge, each day between March 31, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas."

237. The Court erred in the twelfth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "The evidence introduced before you does not show with sufficient definiteness that the defendant has since May 31, 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil and Gasoline Company, in such a manner as to violate the anti-trust laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts."

643 238. The Court erred in the thirteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "Evidence has been introduced before you tending to show that the defendant has given rebates and discounts in the course of its dealings; evidence has also been introduced before you tending to show that defendant has made contracts and entered into understandings other than those which have been submitted for your consideration in paragraphs seven to eleven, inclusive, of this charge. Evidence has also been introduced before you tending to show the general course of dealings of defendant in Texas and elsewhere, including some of its business methods in meeting competition. You are instructed that none of this evidence shows or tends to show any violation of the anti-trust laws of Texas, unless it tends in some degree to establish some one or more of the issues submitted for your

consideration in the last above mentioned paragraphs of this charge; you are therefore instructed to acquit the defendant and return a general verdict for it, notwithstanding any and all of said evidence, unless you find in favor of the State on the issues submitted for your consideration in some one or more of said paragraphs of the charge."

239. The Court erred in that portion of the fourteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you convict the defendant under the foregoing instructions of any violation or violations of the anti-trust law of 1899, you will specify in your verdict the date or days for which it is convicted of having violated said law, and will further specify in your verdict that for said violation or violations, if any, you find that its permit to do business in Texas shall be forfeited, and the amount of money which shall be adjudged against it as penalties for said violations, if any. In fixing the penalties, if any, which
644 you assess against the defendant for any violation of which you may convict it, of the anti-trust law of 1899, you will fix the same at not less than $200 nor more than $5000 per day for each day that you find it has violated the law.

240. The Court erred in that portion of the fourteenth division of its charge, stating the law of the case wherein it instructed the jury as follows: "If you convict the defendant of any violations of the anti-trust law of 1903, you will specify in your verdict the date or days for which it is so convicted and further specify therein that as a result of said conviction its permit to do business in Texas shall be forfeited, and the sum of money that shall be adjudged against it as a penalty for such violations, fixing said sum at $50 per day for each and every day that you convict it of having violated said law."

241. The Court erred in that portion of the fifteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find in favor of the State on all the issues submitted to you and for the entire time for which penalties are claimed by the state against the defendant in its petition, you will say: "We the jury, find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for the penalties at —— Dollars; and we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being 1488 days, and fix the penalties at $74,400. We further find that the permit of the defendant to do business in the State of Texas should be cancelled. We find for defendant upon all issues made by the pleadings and not submitted in the charge of the Court."

242. The Court erred in that portion of the fifteenth division of its charge, stating the law of the case, wherein it instructed
645 the jury as follows: "If you find in favor of the State on some of the issues submitted for your consideration relating to the alleged violations of the anti-trust law of 1899, and in favor of the State with reference to some of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

"We the jury, find in favor of the State on issues submitted for our consideration in the following papragraphs of the Court's charge: ——.

We further find that the defendant violated the anti-trust laws of Texas on the following days embraced between May 31, 1900, and March 31, 1903: ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited and that penalties should be imposed upon it in the amount of —— dollars. We further find that the defendant violated the anti-trust laws of 1903, on the following days embraced between the 30th day of March, 1903, and the 29th day of April, 1907: ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited and that penalties should be imposed upon it in the amount of —— Dollars. On all other issues raised by the pleadings, we find in favor of the defendant."

243. The Court erred in that portion of the fifteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find in favor of the State with reference to some or all of the alleged violations of the anti-trust law of 1899, submitted for your consideration, and if you find in favor of the defendant on other of said alleged violations, and if you find in favor of the defendant on the issue of all of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict: "We, the jury, find in favor of the state on the issues
646 submitted for our consideration in the following paragraphs of the court's charge: ——. We further find that the defendant has violated the anti-trust laws of Texas on each of the following days embraced between May 31, 1900, and March 31, 1903: ——. We further find that because of said violations the permit of the defendant to do business in Texas should be forfeited, and penalties should be imposed upon it in the amount of —— Dollars. We further find in defendant's favor on all alleged violations of the anti-trust laws of 1903, and on all other issues made by the pleadings."

244. The Court erred in that portion of the fifteenth division of its charge, stating the law of the case, wherein it instructed the jury as follows: "If you find in the defendant's favor on all issues submitted for your consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the state on all or some of the issues relating to defendant's alleged violations of the anti-trust law of 1903, you may use the following form of verdict: "We, the jury, find in defendant's favor on all issues submitted for our consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the state under the following paragraphs of the Court's charge: —— for alleged violations of the anti-trust laws of 1903. We further find that the defendant has violated said anti-trust laws on each of the following days embraced between March 30, 1903, and April 29, 1907. ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the sum of —— Dollars."

245. The Court erred in refusing Special Charge No. 1 requested by the defendant.

647 246. The Court erred in refusing Special Charge No. 2 requested by the defendant.

247. The Court erred in refusing Special Charge No. 3 requested by the defendant.

248. The Court erred in refusing Special Charge No. 4 requested by the defendant.

249. The Court erred in refusing Special Charge No. 5 requested by the defendant.

250. The Court erred in refusing Special Charge No. 6 requested by the defendant.

251. The Court erred in refusing Special Charge No. 7 requested by the defendant.

252. The Court erred in refusing Special Charge No. 8 requested by the defendant.

253. The Court erred in refusing Special Charge No. 9 requested by the defendant.

254. The Court erred in refusing Special Charge No. 10 requested by the defendant.

255. The Court erred in refusing Special Charge No. 11 requested by the defendant.

256. The Court erred in refusing Special Charge No. 12 requested by the defendant.

257. The Court erred in refusing Special Charge No. 13 requested by the defendant.

258. The Court erred in refusing Special Charge No. 14 requested by the defendant.

259. The Court erred in refusing Special Charge No. 15 requested by the defendant.

260. The Court erred in refusing Special Charge No. 16 requested by the defendant.

261. The Court erred in refusing Special Charge No. 17 requested by the defendant.

648 262. The Court erred in refusing Special Charge No. 18 requested by the defendant.

263. The Court erred in refusing Special Charge No. 19 requested by the defendant.

264. The Court erred in refusing Special Charge No. 20 requested by the defendant.

265. The Court erred in refusing Special Charge No. 21 requested by the defendant.

266. The Court erred in refusing Special Charge No. 22 requested by the defendant.

267. The Court erred in refusing Special Charge No. 23 requested by the defendant.

268. The Court erred in refusing Special Charge No. 24 requested by the defendant.

269. The Court erred in refusing Special Charge No. 25 requested by the defendant.

270. The Court erred in refusing to grant the defendant a new

trial under the first ground of its motion for a new trial, because, as set forth in said first ground of said motion for a new trial the verdict of the jury is not supported by the evidence in that the evidence wholly failed to show that the defendant at any time since June 1st, 1900, committed any act or did anything within the State of Texas or elsewhere which was in violation of the anti-trust laws of the State of Texas.

271. The Court erred in refusing to grant the defendant a new trial under the second ground of its motion for a new trial, because, as set forth in said second ground of said motion for a new trial the verdict of the jury is without evidence to support it in that all of the evidence introduced before the jury showed that whatever agreements, acts and transactions may have occurred between the Standard Oil Company of New Jersey and the defendant company did not
649 involve commerce in the State of Texas, but were with respect to and related to interstate commerce exclusively, and therefore they were not in violation of the anti-trust laws of the State of Texas.

272. The Court erred in refusing to grant the defendant a new trial under the third ground of its motion for a new trial, because, as set forth in said third ground of said motion for a trial the verdict of the jury is without evidence to support it in that the only evidence before the jury showing any agreement act or transaction between the defendant company and the Standard Oil Company of New Jersey was limited and confined to the fact of ownership by the said Standard Oil Company of stock in defendant company, and there was no evidence to show that through such ownership, or otherwise, said Standard Oil Company at any time did, in any way undertake or did in fact interfere with or control or attempt to control the business of the defendant company with reference to the matter of fixing, regulating or maintaining of prices, or in limiting or controlling the quantity of oil or other products of petroleum in the State of Texas in violation of the laws of said State.

273. The Court erred in refusing to grant the defendant a new trial under the fourth ground of its motion for a new trial, because, as set forth in said fourth ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the court as contained in the 7th paragraph thereof, in that there was no evidence showing that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, or that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carry-
650 ing out the same in Texas through its duly authorized agent on June 1, 1900, or on any other day or days subsequent to June 1, 1900, and prior to March 31, 1903, nor was there any evidence that the oil, with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce.

274. The Court erred in refusing to grant the defendant a new trial under the fifth ground of its motion for a new trial, because as set forth in said fifth ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 8th paragraph thereof, in that there was no evidence showing that on June 1, 1900, or on any day subsequent thereto and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or prompted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey whereby the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such soil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited.

275. The Court erred in refusing to grant the defendant a new trial under the sixth ground of its motion for a new trial, because, as set forth in said sixth ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 9th paragraph thereof, in that there was no evidence showing that the defendant, acting through its duly appointed and authorized agents, entered
651 into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil in Texas, and that the defendant remained or was a party to and acted under such combination, if any, on March 31, 1903, or on any day subsequent thereto and prior to April 29th, 1907.

276. The Court erred in refusing to grant the defendant a new trial under the seventh ground of its motion for a new trial, because, as set forth in said seventh ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the court as contained in the 10th paragraph thereof, in that there was no evidence showing that the direction of the affairs of the defendant and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any day subsequent thereto and prior to April 29, 1907, and that they were placed under such management and control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there was, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the 9th paragraph of the charge, or to fix, maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil.

652 277. The Court erred in refusing to grant the defendant a new trial under the eighth ground of its motion for a new trial, because, as set forth in said eighth ground of said motion for a new trial, the verdict of the jury is unsupported by the evidence and contrary to the charge of the Court as contained in the 11th paragraph thereof, in that there was no evidence showing that the Standard Oil Company of New Jersey had on March 31, 1903, or any day subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, nor was there any evidence showing that said stock was acquired and combination effected, if any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the kind and character of oil mentioned, or that the effect of such combination if any, tended to effect or lessen the competition in the sale in Texas of said oil.

278. The Court erred in refusing to grant the defendant a new trial under the ninth ground of its motion for a new trial, because, as set forth in said ninth ground of said motion for a new trial, the verdict of the jury, in so far as it assesses penalties against the defendant on each of the issues submitted to the jury for each of the days between May 31, 1900, and March 31, 1903, being as found by the jury, 1033 days, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it
653 violated the law in any of the respects complained of between May 31, 1900, and March 31, 1903, committed such violation on any particular day, nor was there any evidence showing that the defendant, if it violated the law in any of the respects complained of between May 31, 1900, and March 31, 1903, committed such violation for either 1033 days or any other definite number of days.

279. The Court erred in refusing to grant the defendant a new trial under the tenth ground of its motion for a new trial, because, as set forth in said tenth ground of said motion for a new trial, the verdict of the jury, in so far as it finds for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being 1488 days, as found by the jury, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it violated the law in any of the respects complained of between April 1, 1903, and April 29, 1907, committed such violations on any particular day, nor was there any evidence showing that the defendant violated, if it violated the law in any of the respects complained of between April 1, 1903, and April 29, 1907, committed such violation for 1488 days or any other definite number of days.

280. The Court erred in refusing to grant the defendant a new trial under the eleventh ground of its motion for a new trial, because, as set forth in said eleventh ground of said motion for a new trial, the verdict of the jury in assessing penalties against the defendant at the sum of $1,549,500.00 for alleged violations of the
654 law for each of the days between May 31, 1900, and March 31, 1903, was so grossly and shockingly excessive as to show

passion and prejudice upon the part of the jury against the defendant.

281. The Court erred in refusing to grant the defendant a new trial under the twelfth ground of its motion for a new trial, because, as set forth in said twelfth ground of said motion for a new trial, the verdict of the jury in assessing penalties against the defendant for alleged violation of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00 was so manifestly excessive as to amount to the deprivation of the property of the defendant without due process of law in contravention of Section 1 of the 14th Amendment to the constitution of the United States.

282. The Court erred in refusing to grant the defendant a new trial under the thirteenth ground of its motion for a new trial, because, as set forth in said thirteenth ground of said motion for a new trial, the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00 was so manifestly excessive as to amount to the imposition of excessive fines in violation of Section 13 of Article 1 of the Constitution of the State of Texas.

283. The Court erred in refusing to grant the defendant a new trial under the fourteenth ground of its motion for a new trial, because, as set forth in said fourteenth ground of said motion for a new trial, the verdict of the jury in assessing penalties against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00 and in assessing penalties against the defendant for alleged violations of law for each of the days between April 1, 1903,
655 and April 29, 1907, at the sum of $74,400.00, is so manifestly excessive as to amount to the deprivation of the property of the defendant without due process of law in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

284. The Court erred in refusing to grant the defendant a new trial under the fifteenth ground of its motion for a new trial, because, as set forth in said fifteenth ground of said motion for a new trial, the verdict of the jury in assessing penalties, against the defendant for alleged violations of the law for each of the days between May 31, 1900, and March 31, 1903, at the sum of $1,549,500.00, and in assessing penalties against the defendant for alleged violations of the law for each of the days between April 1, 1903, and April 29, 1907, at the sum of $74,400.00, is so manifestly excessive as to amount to the imposition upon the defendant of excessive fines in violation of Section 13 of Article 1 of the Constitution of the State of Texas.

285. The Court erred in overruling defendant's general exception to the motion or application of the State for the appointment of a receiver.

286. As the judgment recovered by the State of Texas against defendant on June 1st, 1897, was a personal judgment and did not attempt to foreclose the lien claimed upon defendant's property in

the State, the Court was without jurisdiction by motion filed in the same cause to appoint a receiver, and erred in considering the same and in appointing the said Eckhardt receiver upon said motion.

287. The Court erred in overruling defendant's request for a postponement of action upon the said application until defendant should have a reasonable time to file a supersedeas bond in connection with its appeal from the main judgment rendered against it on June 1st, 1907.

656 288. The Court erred in making its order granting the application of the State of Texas for the appointment of a receiver of defendant's property by its order entered on June 10th, 1907.

289. The Court erred in naming and appointing Robert J. Eckhardt to be the receiver of defendant's property by its order entered on June 13th, 1907.

290. The Court erred in refusing to consider and approve defendant's supersedeas bond in the sum of One Hundred Thousand Dollars ($100,000.00) tendered on June 15th, 1907, and in withholding its approval thereof until after the bond of the said Robert J. Eckhardt as receiver was tendered and approved on June 19th, 1907.

291. When defendant's appeal bond was approved and filed on June 15th, 1907, superseding the judgment recovered against it by the State of Texas on June 1st, 1907, in the main case, the appointment of said Robert J. Eckhardt as receiver, and all orders and proceedings theretofore had in connection with such appointment, were thereby vacated and became null and void, and the said Court erred in not entering a formal order recognizing the legal effect of the said supersedeas bond and vacating said appointment and setting aside all of its said orders, and in further considering said appointment as in force for any purpose.

292. The Act of the Legislature of the State of Texas approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in so far as it attempts to create a lien upon this defendant's property for acts committed before the said Act took effect, in violation of Sec. 16, Art. 1, of the Constitution of the State of Texas.

657 293. The Act of the Legislature of the State of Texas approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in that it attempts to create a lien upon this defendant's property for acts committed before said Act took effect, in violation of Section Ten of Article Two of the Constitution of the United States, which denies to any state the right to pass an *ex post facto* law, and the Court erred in considering said act as the basis of its orders appointing the said receiver.

294. The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in so far as it authorizes the appointment of a receiver in a suit brought to recover a personal judgment in which no lien upon defendant's property

was set up and adjudicated, and the action of the Court in appointing the said receiver in this cause was in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that it results in depriving defendant of its property without due process of law and in denying to defendant the equal protection of the law.

295. The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver, in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the Court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated in the opinion of the Court at the time said ap-
658 pointment was made, was unauthorized in law, and in violation of Section 17 of Article One, of the Constitution of the State of Texas.

296. The said Act of the Legislature, of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the Court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated in the opinion of the Court at the time said appointment was made, was unauthorized in law, and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that the result of said action was and is to deprive the defendant of its property without due process of law and to deny to defendant the equal protection of the laws.

297. The Court erred in appointing the said receiver without any evidence being introduced before it at the time said appointment was made, to show that defendant did not intend to change its status and methods of doing business so as to conform to the laws of the State of Texas, and without evidence affirmatively showing that defendant could not make use of its property and carry on its business in accordance with law, and in holding that the Court was authorized to so appoint a receiver for defendant's property in the State of Texas and deprive defendant of the instrumentalities by which it had been convicted of violating the laws of said state, based upon its past conduct and the said judgment of conviction rendered against it on June 1st, 1907.

659 Wherefore, defendant says that the said action of the Court was unauthorized and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, and has the effect of depriving defendant of its property without

due process of law, and in denying to it the equal protection of the laws.

298. The Court erred in disregarding the supersedeas bond filed by defendant in connection with its appeal from the main judgment recovered against it on June 1st, 1907, and in requiring defendant to file the additional bond in the sum of One Hundred Thousand Dollars to supersede the orders appointing the said receiver and to avoid having to surrender its property to said receiver by reason of said appointment; and this action on the part of the Court was without lawful warrant and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that the effect of such action by the Court was to deprive the defendant of its property without due process of law and to deny to it the equal protection of the law.

Wherefore, defendant prays that the judgment rendered against it and the said orders appointing a receiver, be reversed and set aside, and it will ever pray, &c.

CLARK & BOLINGER,
COCHRAN & PENN,
N. A. STEDMAN,
D. W. ODELL,
*Attorneys for Defendant.*

JNO. D. JOHNSON,
H. S. PRIEST,
*Of Counsel.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Assignment of Errors in Main case. Filed July 20, 1907, D. J. Pickle, Clerk, By J. A. Belger, Deputy.

660 *Additional Assignments of Error in Main Case.*

Filed August 7th, 1907.

In the District Court of Travis County, State of Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

In the above entitled and numbered cause, now comes the defendant and files the following additional assignments of error to the action of the Court in appointing Robert J. Eckhardt receiver of the property of defendant, to-wit:

No. 299. The Act of the Legislature of the State of Texas, approved April 11th, 1907, being Chapter 87 of the General Laws of the State of Texas, passed by the Thirtieth Legislature at its Regular Session, in so far as it authorizes the appointment of a receiver

of appellant's property in this suit or prosecution instituted against appellant prior to the passage of said Act and for offenses alleged to have been committed prior to its passage, is unconstitutional, null and void, in that it violates the Tenth Section of Article One of the Constitution of the United States, which provides that no State shall pass a bill of attainder or an *ex post facto* law.

No. 300. The said Act of the Legislature of the State of Texas, approved April 11th, 1907, is unconstitutional, null and void, in so far as it attempts to create a lien upon appellant's property for the alleged violation of the anti-trust laws of said State, in that the lien is not created by the terms of the Act, based alone
661 upon the commission of the offense, but is left to be created by the action of the prosecuting officer in filing suit to recover the prescribed penalties. The statute therefore does not prescribe a fixed and uniform rule of law, applicable to all persons alike, but is a delegation of the legislative power to officers of the executive department to create a lien, or not create it, and to arbitrarily discriminate between persons at will, and the appointment of the receiver to take charge of appellant's property under this statute, results in depriving appellant of its property without due process of law, and in denying to it the equal protection of the law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, which provisions of the Constitution of the United States are here urged and relied upon by appellant as against the validity and application of said Act of the Legislature of the State of Texas to the matters involved in this case, and to the act of the Court in appointing the said receiver thereunder.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Additional Assignments Nos. 299 & 300 in Main Case. Filed Aug. 7th, 1907. D. J. Pickle, Clerk.

662 *Additional Assignments of Error in Main Case.*

Filed August 13th, 1907.

In District Court, Travis County, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Now comes the defendant in the above entitled and numbered cause and files the following assignments of error committed by

the court on the trial of this cause, additional to the assignments hereinbefore filed.

301.

The court erred in that portion of the eighth paragraph of its charge, relating to the act of May 25, 1899, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto, and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, *had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the price in Texas of oil refined from petroleum*, other than oil which was subject of interstate as distinguished from local commerce, *was sought to be fixed or regulated.*

663

302.

The court erred in that portion of the eighth paragraph of its charge, relating to the Act May 25, 1899, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, *had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the price in Texas of oil refined from petroleum*, other than oil which was the subject of interstate as distinguished from local commerce, *would be reasonably calculated to be fixed or regulated.*

303.

The court erred in that portion of the eighth paragraph of its charge, in regard to the act of May 25, 1899, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that, on June 1, 1900, or on any date subsequent thereto and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or permitted any combination or a union of its capital with the capital of the Standard Oil Company of New Jersey, *whereby the trade in oil, refined from petroleum, in Texas, was sought to be controlled or limited.*

304.

The court erred in that portion of the ninth paragraph of its charge, relating to the act of March 31, 1903, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company
664 of New Jersey *for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum*, other than oil which was the subject of interstate

as distinguished from local commerce, and that the defendant remained or was a party to and acted under such combination, if such there were, on March 31, 1903, or on any other date subsequent thereto and prior to April 29, 1907.

305.

The court erred in that portion of the tenth paragraph of its charge, relating to the act of March 31, 1903, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respective authorized officers under such circumstances that such common management or control, if such there were, *created or tended to create or carry out restrictions in the sale in Texas of oil.*

306.

The court erred in that portion of the tenth paragraph of its charge, relating to the act of March 31, 1903, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control
665 on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respective authorized officers under such circumstances that such common management, or control, if such there were, *tended to fix, maintain or increas the price of oil in Texas, or to prevent or lessen competition in the sale of oil in Texas.*

307.

The court erred in instructing the jury, as it did, in the 14th paragraph of its charge, that if they convicted the defendant of any violation of the anti-trust law of 1899 they would assess penalties against defendant *at not less than $200 nor more than $5000 per day for each day that they should find defendant had violated the law.*

308.

The court erred in the fifteenth paragraph of its charge in instructing the jury that in assessing penalties against defendant they could assess penalties for 1,033 days, covering the period between May 31, 1900, and March 31, 1903, and for 1,488 days, covering the period between April 1, 1903, and April 29, 1907.

309.

The court erred in permitting the witness C. W. Cahoon, who was shown to have been one of the general agents of the defendant com-

pany in Texas, to testify, over the objections of the defendant, that the defendant had at some times in Texas marketed as eupion oil both P. W. and S. W. oil, both of which were shown to have been grades of oil inferior to the grade of oil usually sold under the name of eupion oil as shown on pages 637-639 and pages 690 and 695 of the stenographer's report.

666 310.

The court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her, wherein she testified that while George Rice held certificates in the Standard Oil Company a suit was brought by the Attorney General of the State of Ohio to force the Standard Oil Company out of the Standard Oil Trust, or cause it to cease doing business in the State if it remained in the trust, and that the decision of the Supreme Court of Ohio was in favor of the State as shown on pages 13-17 of the stenographer's report.

311.

The court erred in admitting in evidence, over the objections of the defendant, that portion of the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her in which she testified that, after the decision of the Supreme Court of Ohio in the suit brought by the Attorney General of that State, the Standard Oil Trust "pretended to go out of existence, and to this effect caused an order to be issued to all certificate holders, including George Rice, to exchange their trust certificates into certificates called, assignment of legal title."

312.

The court erred in admitting in evidence, over the objections of defendant, that portion of the answer of witness, Ida M. Butts, to the seventh interrogatory propounded to her by plaintiff in which she testified that, after the decision of the suit brought by the Attorney General of Ohio, the capital stock of the Standard Oil Company of New Jersey was increased and said company made to all intents and purposes the same in effect as the Standard Oil
667 Trust and that they made it the holding company for all the companies of the Standard Oil Trust.

313.

The court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her by plaintiff, wherein she testified that, "the trust is not dissolved and could not be dissolved until all trust certificates were surrendered."

314.

The court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness, Ida M. Butts, to the tenth interrogatory propounded to her, in which, after detailing the corporations and persons originally entering into the Stand-

ard Oil Trust, she testified that others were added until in the early part of the year 1906 there were twenty companies in the great grand division of the trust and naming such companies as shown on pages 18-21 of the stenographer's report.

315.

The court erred in admitting in evidence, over the objections of defendant, the third, fourth, fifth, sixth, seventh and eighth paragraphs of the agreement between plaintiff and defendant, being stipulation No. 1, as shown on pages 43-46 of the stenographer's report.

316.

The court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, that in the year 1894 when he quit buying oil from the original Waters Pierce Oil Com-.
668 pany in San Antonio, Texas, and bought from other parties to supply his trade in San Antonio, said Waters Pierce Oil Company immediately cut the price of oil from 16¢ or 17¢ to 8¢ and 10¢ per gallon, as shown on pages 470-473 of the stenographer's report. (Tr. ——.)

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Additional Assignments of Error (Main Case). Filed Aug. 13, 1907. D. J. Pickle, Clerk.

669 *Agreement to Send up Original Documents on Appeal.*

Filed June 22nd, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

It is agreed by and between the attorneys for the plaintiff and the attorneys for the defendant in the above styled and numbered cause that the following is a list of all original documents introduced in evidence upon the trial of this case material to the issues involved in this case, except as otherwise shown in the record herein.

1. Certified copy of articles of incorporation of the Standard Oil Co.; of certificates of increase of capital stock of said company, as filed in the office of the Secretary of State of the State of Ohio, said certified copy being numbered 21 for identification.

2. Certified copies of articles of association of the Waters Pierce Oil Co., incorporated May 7th, 1878; of certificate of incorporation issued to said company; of statement increasing its capital stock to $400,000.00, of certificate showing increase of capital stock to $400,000.00, as filed in the office of the Secretary of State of the State of Missouri, said certified copy being numbered 17 for identification.

3. Certified copy of certificate of incorporation of the Standard Oil Co. of New Jersey, and of certificates of amendment of said certificate of incorporation and of endorsements thereon,
670 as filed in the office of the Secretary of State of the State of New Jersey, said certified copy being numbered 6 for identification.

4. Stipulations between the attorneys for the plaintiff and the attorneys for the defendant in this case being numbered 1, 2, 3 & 4 for identification.

5. Certified copy of articles of incorporation of the Standard Oil Co. and of amendment to the articles of incorporation of the Standard Oil Co. of Kentucky, filed in the office of the Clerk of the County Court of Jefferson County, Kentucky, said certified copy being numbered 20 for identification.

6. Certified copy of articles of incorporation and amendments thereto of the Standard Oil Co. as filed in the office of the Secretary of State of the State of Iowa, same being numbered 33 for identification.

7. Certified copy of articles of incorporation of the Standard Oil Co. of Pittsburg as filed in the office of the Secretary of State of the State of Pennsylvania, same being numbered 31 for identification.

8. Certified copy of the articles of association of the Standard Oil Co. of Indiana, and of certificate of increase of its capital stock, as filed in the office of the Secretary of State of the State of Indiana, the same being numbered 32 for identification.

9. Certified copies of original certificate of incorporation of the Standard Oil Co. of New York, and of certificates of increase of its capital stock, and of certificate of increase of the number of its directors, and certificate of reduction of number of its directors, and of certificate of extension of its corporate powers, as filed in the office of the Secretary of State of the State of New York, same being numbered 27, 28, 34, 35, 36, and 37, respectively, for identification.

10. Certified copy of letters patent issued to the Atlantic
671 Refining Co.; of amendments to its charter; of its acceptance of the Constitution of Pennsylvania adopted A. D. 1873, and also of the provisions of an Act of that State of April 29, 1874, and its supplements; of election return on increase of its capital stock, and of President's return on increase of capital stock, said certified copies being numbered 15, 16, 18, 19, 23, 26, 29, and 30, respectively, for identification.

11. Certified copy of judgment of the District Court of Travis County, Texas, in cause No. 12,589, wherein the State of Texas was plaintiff and the Waters Pierce Oil Co., *et al.*, were defendants, said judgment having been rendered on the 15th day of June, 1897, same being numbered 38 for identification.

12. Certified copy of affidavit made by Andrew M. Finlay, President of the Waters Pierce Oil Co., which was incorporated May 7, 1878, showing the dissolution of said company, same being numbered 25 for identification.

13. Certified copy of articles of incorporation of the Waters Pierce Oil Co. as filed in the office of the Secretary of State of the State of Missouri May 29, 1900, same being numbered 22 for identification.

14. Certified copy of permit issued by D. H. Hardy, Secretary of State of the State of Texas, May 31, 1900, to the Waters Pierce Oil Co., incorporated in Missouri May 29, 1900, granting it permission to do business in the State of Texas, same being numbered 24 for identification.

15. Certified copy of mandate of the Supreme Court of the United States, filed in the Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas on the 25th day of April, 1900, in the case of the Waters Pierce Oil Co., appellant, *vs.* The State of Texas, appellee, No. 1974, same being numbered 7 for identification.

672 16. Letters written by R. H. McNall to various persons, in package numbered 11, for identification.

17. Letter from A. M. Finlay to H. A. Dennett numbered 36 for identification.

18. Circular letter written by H. C. Pierce, President of the Waters Pierce Oil Co., incorporated May 29, 1900, numbered 4 for identification.

19. Circular letter written May 29th, 1900, by A. M. Finlay, President of the Waters Pierce Oil Co., incorporated May 7, 1878, numbered 5 for identification.

20. Copy of the charge of the court in case No. 12589 of the State of Texas *vs.* The Waters Pierce Oil Co. and others, numbered 39 for identification.

21. Copies of letters to and from C. P. Ackert and to and from C. W. Cahoon, contained in package numbered 10 for identification.

And the attorneys for the plaintiff and the attorneys for the defendant request that the above described original documents be sent up in original form on appeal and that the Court make written direction to that effect.

R. V. DAVIDSON,
*Att'y General,*
J. P. LIGHTFOOT,
*Ass't Att'y General,*
JNO. W. BRADY,
*Co. Att'y,*
GREGORY & BATTS,
ALLEN & HART,
*Att'ys for State of Texas.*
COCHRAN & PENN,
D. W. ODELL,
CLARK & BOLINGER,
N. A. STEDMAN, &
J. D. JOHNSON,
*Att'ys for Def't.*

The Clerk is hereby directed to send up with the record in this cause the original documents introduced on the trial and enumerated in the foregoing agreement of the parties.

V. L. BROOKS,
*Judge 26th Judicial District of Texas.*

(Endorsed:) No. 24551. State of Texas *vs.* Waters-Pierce Oil Company. Agreement of Attorneys relating to sending up original documents on appeal. Filed June 22nd, 1907. D. J. Pickle, Clerk. By E. Huppertz, Deputy.

673 *Bill of Costs.*

In District Court, Travis County, Texas.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

To Officers of Court, Dr.

*Clerk's Costs.*

| | |
|---|---|
| Docketing Suit | $.20 |
| Issuing Citation and Duplicate, &c | 1.75 |
| Issuing Attachment | .75 |
| Issuing Injunction, Duplicate, &c | 1.75 |
| Issuing Notices and Copies | 5.50 |
| Issuing Notices and Duplicates, Precepts, &c | 12.00 |
| Entering Appearances | .30 |
| Entering Continuances | .40 |
| Entering Motions | 6.40 |
| Entering Orders, &c. | 40.00 |
| Filing Papers | 56.55 |
| Entering Judgment | 1.25 |
| Taking Affidavits | 8.00 |
| Issuing Subpœnas | 7.75 |
| " Additional Names | 16.95 |
| Swearing Witnesses | 6.70 |
| Issuing Copies Interrogatories and Notices | 130.35 |
| " " " " Commissions | 163.00 |
| Clerk's Costs Forward | $459.60 |

674 Clerk's Costs (Continued).

| | |
|---|---|
| Brought Forward | $459.60 |
| Swearing Jury | .35 |
| Receiving and Recording Verdict | .35 |
| Issuing 44 Witness Certificates | 22.00 |
| Approving Bonds | 4.50 |
| Copy Order Appointing Special Commissioner | 2.00 |
| Certificate to Petition | .75 |

| | |
|---|---|
| Copy Notice and Certificate | 3.25 |
| Copies Applications for Subpœnas | 39.00 |
| " " and Orders | 24.00 |
| Copy Application for Receiver | 2.50 |
| Taxing Costs | .25 |
| Copies Orders and Motions | 3.00 |
| 2 Copies Order (for Receiver) | 3.00 |
| Copies Judgment, Orders, Bonds, &c | 36.00 |
| Copy Judgment No. 12,589 | 1.50 |
| Copies Letters to go with Transcript | 7.50 |
| Certificate to Original Papers | .75 |
| Transcript (Main Case) | 385.00 |
| Certificates to Briefs | 1.50 |
| Total Clerk's Costs | $996.80 |

675 *Sheriff's and Miscellaneous Costs.*

| | |
|---|---|
| Total Clerk's Costs Forward | $996.80 |
| G. S. Matthews, Sheriff: | |
| Citation and Mileage | 1.00 |
| Notices, Precepts, Subpœnas, &c | 141.30 |
| Jury Fee (Paid by Defendant) | 5.00 |
| Stenographer Fee | 3.00 |
| H. P. Bickler, Stenographer | 468.00 |
| Witnesses: | |
| A. D. Dye | 2.80 |
| Bob Wolf | 5.60 |
| G. W. Fritts | 4.64 |
| R. C. Burleson | 3.00 |
| Charles Thiele | 2.96 |
| Nelson Houser | 5.60 |
| R. E. Lee | 5.12 |
| Jno. B. Patterson | 4.88 |
| J. L. Nichols | 3.92 |
| B. F. Cagle | 1.36 |
| T. E. Cater | 10.40 |
| Theo. C. Bohles | 5.72 |
| H. M. Metz | 2.00 |
| W. L. Dodgin | 3.20 |
| A. Fonville | 5.36 |
| Wm. Nehring | 5.12 |
| Leon Puckett | 2.56 |
| A. D. Dye | 2.80 |
| W. H. Price | 2.80 |
| E. H. Miller | 5.60 |
| F. G. Reynolds | 1.36 |
| G. Cezeaux | 2.80 |
| B. F. Cagle | 1.36 |
| J. W. Payton | 1.96 |

| | |
|---|---|
| T. J. Rowzee | 2.20 |
| J. A. McWilliams | 2.32 |
| W. B. Rainey | 2.80 |
| Ernst W. Pfluger | 3.40 |
| Ed. V. Taylor | 2.68 |
| D. H. Beckett | 1.96 |
| C. C. Baker | 2.68 |
| W. K. Beckett | 1.60 |
| Robt. L. Cloud | 3.72 |
| S. T. Carpenter | 4.88 |
| J. B. Manor | 5.40 |
| Jno. L. Martin | 1.00 |
| E. Seelig | 2.00 |
| J. C. Adrian | 4.00 |
| Geo. Mendell | 4.00 |
| W. D. Hornaday | 5.00 |
| J. Woods Smith | 8.32 |
| Ed. Schutze | 1.00 |
| C. L. Hughes | 1.72 |
| D. B. Matthews | 1.00 |
| Forward | $1769.70 |

676 Brought Forward ..... $1769.70

Notary Fees:

| | |
|---|---|
| D. J. Pickle | 21.50 |
| F. H. Sanborn (11 Depositions) | 56.70 |
| Wm. R. Condit | 20.26 |
| Robt. Frinkhausen (5 Depositions) | 44.05 |
| Jas. A. Newkirk | 17.60 |
| Geo. Barnett, Jr. | 87.00 |
| Jos. Spurgen (2 Depositions) | 9.29 |
| J. C. Brenan | 26.50 |
| E. L. King | 8.75 |
| W. S. Dianger | 6.00 |
| J. M. Gray | 10.00 |
| E. A. Neal (3 Depositions) | 18.45 |
| Geo. Burnett | 7.00 |
| Kirk Hawkins | 5.75 |
| Chas. Fox | 25.00 |
| Robt. Finkhouser | 9.95 |
| E. A. Neal | 20.92 |
| C. H. Read | 2.50 |
| Frederick H. Sanborn (Sp'l Com'r) | 200.00 |
| H. F. Lewis | 3.50 |
| Deposition Crosby | 2.50 |
| Deposition Younger | 2.50 |
| F. H. Sanborn (Special Commissioner) Deposition- of J. P. Gruet, *et al.* | 500.00 |
| Total | $2875.42 |

677 *Clerk's Certificate.*

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing on 676 pages is a true and correct transcript of all proceedings had in this court in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as same appear of record and on file in this office.

Given under my hand and seal of office, at Austin, Texas, this the 13th day of August, A. D. 1907.

[SEAL.] D. J. PICKLE,
*Clerk District Court, Travis County, Texas.*

(Endorsed on back:) Transcript Cover. No. 4212. Assignment. Waters Pierce Oil Company Appellant *vs.* The State of Texas, Appellee. From the District Court of Travis County, for the 26th Judicial District of Texas, at Austin, Texas. Applied for by Cochran & Penn Attorney- for Appellant on the 15th day of June A. D. 1907, and delivered to the above named attorneys on the 14th day of August 1907. D. J. Pickle, Clerk of the District Court of Travis County. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Sep. 10 1907. R. H. Connerly, Clerk.

678 to 681 THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

*Stenographer's Report.*

682 In the District Court of Travis County, 26th Judicial District, May Term, A. D. 1907.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

Before Hon. V. L. Brooks, Judge of Said Court.

Hon. R. V. Davidson, Attorney General; Hon. Jewel P. Lightfoot, Assistant Attorney General; Hon. J. W. Brady, County Attorney Travis County; Messrs. Gregory & Batts, and Messrs. Allen & Hart, for the Plaintiff.

Messrs. Clark & Bolinger, Messrs. Cochran & Penn, Hon. N. A. Stedman, Hon. O. W. Odell, for the Defendant.

Hon. John D. Johnson, Hon. H. S. Priest, of Counsel.

TUESDAY, *May* 21, 1907.

The jury having been selected and sworn, the pleadings were read, and the taking of testimony commenced at 2.30 P. M.

683 Mr. ALLEN: The plaintiff offers in evidence certified copy of the articles of incorporation of the Standard Oil Company, incorporated under the laws of the State of Ohio, on January 10, 1870, and the various amendments to it, as they appear.

Judge PENN: If the Court please, we object to the introduction of this charter in evidence, on the ground that it is immaterial and irrelevant to any issue in this case; on the further ground that the Waters-Pierce Oil Company is not shown to have any connection with this company; and on the further ground that this charter antedates the formation, not only of the present Waters-Pierce Oil Company, but of the Waters-Pierce Oil Company incorporated in 1878; and it is not alleged in the petition and is not shown that the Standard Oil Company of Ohio ever did any business in Texas, or contemplated doing any business in Texas, or had any authority to do business in Texas.

The COURT: Have you finished your objection?

Judge PENN: Yes, sir.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the articles of incorporation were introduced in evidence, the date thereof being January 10, 1870, the names of the incorporators being John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Stephen V. Harkness, and William Rockefeller, the purpose of the corporation being the manufacture of petroleum and to deal in petroleum and its products, the capital stock being the sum of $1,000,000.00 in shares of $100.00 each, and the place of business Cleveland, Ohio. By a certificate dated February 9, 1872, and signed by John D. Rockefeller, Henry M. Flagler, Samuel Andrews and Stephen V. Harkness, Directors, it is stated that at the annual meeting held on January 1, 1872, by a vote then and there taken, all the stockholders of the company being present and voting therefor, the capital stock was increased to the sum of $2,500,000.00, the

684 names of the stockholders being as follows: John D. Rockefeller, O. E. Jennings, B. Brewster, Wm. Rockefeller, S. V. Harkness, H. M. Flagler, S. P. Handy, S. Andrews, A. Stone, Jr., and S. Witt. Said certificate further states that the whole amount of such increase of capital stock had been paid to said company in money; that no note, bill, bond, or other security, had been taken for the same or any part thereof, and that the credit of the company had not been used directly or indirectly to raise funds to pay the same or any part thereof. By a certificate dated March 10, 1875, and signed by John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Oliver H. Payne, and Stephen V. Harkness, being a majority of the Board of Directors, it is stated that at a special meeting of the stockholders, by a vote then and there taken, all the stockholders of the company being present and voting therefor, the capital stock of said company was increased to the sum of $3,500,000.00, the

names of the stockholders being as follows: J. D. Rockefeller, S. V. Harkness, H. M. Flagler, S. Andrews, J. D. Rockefeller, Agent; J. D. Rockefeller, Trustee; O. H. Payne, B. Brewster, by J. D. Rockefeller, his attorney; T. P. Handy, by J. D. Rockefeller, his attorney; O. B. Jennings, by J. D. Rockefeller, his attorney; Wm. Rockefeller, by J. D. Rockefeller, his attorney; Jos. Stanley, by O. H. Payne, his attorney; A. M. McGregor, by his attorney J. D. Rockefeller; W. C. Andrews; A. J. Pouch, by J. D. Rockefeller, his attorney; F. A. Arter, by J. D. Rockefeller, his attorney; P. H. Watson, by H. M. Flagler, his attorney; I. A. Bostwick, by J. D. Rockefeller, his attorney; J. Huntington, by O. H. Payne, his attorney; D. M. Harkness, by H. M. Flagler, his attorney; Josiah Macey, by J. D. Rockefeller, his attorney; W. H. Macey, by J. D. Rockefeller, his attroney; W. T. Wardwell, by H. M. Flagler, his attorney; D. P. Eells, by J. D. Rockefeller, his attorney; S. F. Barger, by J. D. Rockefeller, his attorney; W. H. Vanderbilt, by J. D. Rockefeller, his attorney; H. W. Payne, by O. H. Payne, his attorney; I. J. Vandegrift, by O. H. Payne, his attorney; John Pitcairn, Jr., by O. H. Payne, his attorney; L. G. Harkness, by H. M. Flagler, his attorney. Said certificate further states that the whole amount of such in-
685 crease of capital stock had been paid to said company in money; that no note, bill, bond or other security had been taken for the same or any part thereof, and that the credit of the company had not been used directly or indirectly to raise funds to pay the same or any part thereof.)

Mr. ALLEN: We next offer in evidence certified copy of the charter of the Waters-Pierce Oil Company, filed in the office of the Secretary of State of the State of Missouri on the first day of May, 1878; and the amendment also, increasing the capital stock, is offered.

Judge PENN: We make the objection to this certified copy and the amendment that they are immaterial and irrelevant to any issue in this case, and relate to a company not a party to this suit.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the articles of association of the Waters-Pierce Oil Company were introduced in evidence, dated May 1, 1878, the objects for which the company was formed being dealing in naval stores and dealing in and compounding petroleum and other oils and all the products thereof and buying and selling the same in the State of Missouri and other States; the capital stock being $100,000.00, divided into one thousand shares of $100.00 each; the directors to manage the affairs of the company during the first year being William H. Waters, Henry C. Pierce, Horace A. Hutchins, Frank D. Carley, and William P. Thompson, and the names of the incorporators being the same as the directors. By a statement dated June 13, 188?, it is shown that at a meeting of the stockholders of the Waters-Pierce Oil Company held at the office of the company in the city of St. Louis on said date, pursuant to notice, there were present in person or by proxy William H. Waters, representing 400 shares; F. D. Carley, representing 200 shares; H. A. Hutchins, representing one share; W. P. Thompson, representing one share; and George

H. Vilas, M. R. Keith and George F. Chester, Trustees, by
686 proxy, representing 398 shares, the same being all the shares of the stock of the company; that thereupon on motion it was unanimously resolved that the capital stock of the company be increased from $100,000.00 to $400,000.00; that thereupon the additional stock was subscribed and paid for in cash as follows: Chess-Carley Company, 600 shares, $60,000.00; Wm. H. Waters, 1200 shares, $120,000.00; Trustees of Standard Oil Trust, 1200 shares, $120,000.00—aggregating $300,000.00.)

Mr. ALLEN: We next offer in evidence the Standard Oil Trust Agreement, that is copied and set out in our petition, and in that connection we offer in evidence first an agreement to the effect that this is a true copy, and some other facts in connection with it. I do not care to read at this time the Trust Agreement, it having been read, but I want to call attention to a few sections of it.

Judge PENN: If the Court please, we object to the introduction in evidence of the alleged Standard Oil Trust Agreement, on the ground that it is immaterial and irrelevant to any issue in this case; on the further ground that it appears from the face of it and from the allegations in the petition to have been made prior to the organization of this defendant; and on the further ground that it appears to have been entered into prior, not only to the present anti-trust law of this State, but prior to any other anti-trust law of this State; and on the further ground that it appears from the allegations in the petition that the Waters-Pierce Oil Company was not a party to said Trust Agreement; and on the further ground that it appears from the Agreement that the defendant was not a party to this Trust Agreement; and on the further ground that it appears from the Agreement that this Standard Oil Trust was dissolved in 1892, long prior to the organization of this defendant, and long prior to the enactment of either the anti-trust act of 1899 or the anti-trust act of 1903.

The COURT: Does it appear that the Waters-Pierce Oil
687 Company—what is the stipulation?

Mr. ALLEN: The stipulation is that the Waters-Pierce Oil Company as a corporation did not sign the Agreement, but a majority of the stock was put up under the agreement.

(The stipulation was read to the Court by Judge Penn, as follows:

"In lieu of the testimony of Mr. John D. Archbold and to avoid the expense of taking his testimony, it is agreed between the respective counsel for plaintiff and defendant in the above cause as follows:

"That the copy of the agreement commonly called the Standard Oil Trust Agreement, entered into as of the date of January 2, 1882, and the supplemental agreement dated the 4th of January, 1882, marked respectively Exhibits A and B of plaintiff's first amended original petition in said cause and set forth therein, are true copies of said agreements and may be read in evidence in this cause with the same force and effect as the originals of said agreements if properly proven up, subject to all objections that could be urged against

the originals if offered in evidence, except the proof of its execution, and the correctness of the copy and the production of the original is waived. All other objections may be urged against the introduction of this copy that could be urged against the introduction of the original.

"It is further stipulated and agreed that the Waters-Pierce Oil Company, as a corporation, did not sign either the agreement or the supplemental agreement; that Mr. Henry Clay Pierce, who at that time owned substantially 40 per cent of the stock of the Waters-Pierce Oil Company, did not sign either of said agreements nor deposit any part of his stock under either of them.

"It is further stipulated and agreed that Mr. Horace A. Hutchins and Mr. W. P. Thompson, at the date of said agreement, owned substantially 40 per cent of the stock of the Waters-Pierce Oil Company, signed said agreement and deposited their stock thereunder; that the Chess-Carley Company, at said date, owned substantially 20 per cent of the stock of the Waters-Pierce Oil Company, did
688 not sign said agreement, but deposited said shares under said agreement.

"It is further stipulated and agreed that from the date of the organization of the Standard Oil Trust, in accordance with the agreements herein referred to, the Trustees of the Standard Oil Trust owned and held substantially 60 per cent of the capital stock of the Waters-Pierce Oil Company and continued to hold and own the same until the year 1892.

"It is further stipulated and agreed that the Waters-Pierce Oil Company alluded to in this stipulation is the corporation organized under the laws of Missouri in May, 1878.

"This stipulation and the original trust agreements, as set forth in plaintiff's first amended original petition, shall be offered in evidence with the same force and effect and subject to all the objections as if the same were the testimony of said John D. Archbold and given in accordance with law in this cause.")

Judge PENN: And in this stipulation the right to make any legal objection to these copies offered in evidence is reserved, with the exception that we are not entitled to make the objection that it is a copy, and we do not make that.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Mr. ALLEN: Now, the Trust Agreement and the supplement we offer, that has been read to the jury as set out in the petition. Of course, we will not re-read it at this time, but we offer the whole of it in evidence.

Judge PENN: If the Court please, Your Honor understood our objection as going, not only to the original Trust Agreement, but to the supplement?

The COURT: The Standard Oil Trust Agreement and the agreement of counsel with reference to it?

Mr. ALLEN: There is a supplemental Trust Agreement, also.

Judge PENN: Made two days later. We intend all these
689 objections to go to the supplement to the Trust Agreement, as well as the original document.

The COURT: You may have your exception to the admission of any part of it.

Judge PENN: If Your Honor will permit, we desire to interpose an additional objection to this Trust Agreement and the supplement to it, on the ground that it appears that both the original and the supplement were made outside of the State of Texas, and do not either of them relate to any business transacted in the State of Texas.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the Trust Agreement and the supplement thereto were introduced in evidence, being the same as the exhibits attached to plaintiff's petition herein, which are here referred to in order to save repetition.)

Mr. ALLEN: We next offer in evidence the certified copy of the charter and amendments thereto of the Standard Oil Company of New Jersey, incorporated under the laws of New Jersey.

Judge PENN: If the Court please, we object to the introduction of this certified copy of the charter in evidence, and the amendments, on the ground that they are immaterial and irrelevant to any issue in this case; on the further ground that it is not made to appear, either by allegations in the petition or from this charter itself, that the Standard Oil Company of New Jersey or the Standard Oil Company ever had authority to do business in Texas, either by the terms of its charter, or by a permit obtained from the State of Texas, or that it ever contemplated doing business in Texas; and on the further ground that it appears from the face of the charter that it was not such a corporation as could obtain or could have ever obtained a permit to do business in Texas—that is, since the date on
690 which this defendant obtained its permit to do business in this State. In amplification of the objection that it was not such a corporation as could have obtained a permit to do business in Texas, we assign as one of the reasons for that objection that it appears from this charter that the company was organized, and by the various amendments to its charter authorized, to transact a large number of businesses, and that by the laws of this State a foreign corporation could not obtain a permit to do business in Texas for more than one purpose, and it is not alleged or claimed that this company, but for the matters alleged in the petition, would have ever obtained or sought a permit to do an oil business in Texas. We make the further objection that the charter of a corporation organized under the laws of a sister State can not be held to be evidence of a conspiracy to violate the laws of another State.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the charter and amendments thereto were introduced in evidence, dated August 1, 1882, the incorporators being H. M. Flagler, T. C. Bushnell and James McGee; the name of the corporation being "Standard Oil Company of New Jersey," and the business of the company to be carried on at Bayonne, Communipaw

and other points in the State of New Jersey, and in the City of New York, the principal part of the business within the State to be transacted at Bayonne. The objects for which said company was formed are stated to be, the refining of petroleum; the manufacturing of the various products thereof; the purchasing of the crude matarial and the sale of the manufactured products thereof; the manufacture of barrels, boxes, cans and other packages in which the manufactured products may be kept or transported; the manufacture and restoration of acids and whatever other substances may be used in the manufacture of the products of petroleum. The total amount of the capital stock as stated to be $3,000,000.00, divided into 30,000 shares of the par value of $100.00 each. The names and residences of the stockholders, and the number of shares held by each,
691 are as follows: H. M. Flagler of New York City, one share; Paul Babcock, Jr., of Jersey City, one share; James McGee of Plainfield, New Jersey, one share; Thos. C. Bushnell, of Morristown, New Jersey, one share; John D. Rockefeller of Cleveland, Ohio, Wm. Rockefeller of New York City, J. A. Bostwick of New York City, John D. Archbold of New York City, O. H. Payne of Cleveland, Ohio, Wm. G. Warden of Philadelphia, Pa., Benj. Brewster of New York City, Chas. Pratt of Brooklyn, N. Y., and H. M. Flagler of New York City, Trustees of Standard Oil Trust, 29,996 shares. By a certificate dated March 5, 1892, and signed by Paul Babcock, Jr., President, and attested by L. D. Clarke, Secretary, it is stated that the Standard Oil Company of New Jersey proposes to increase its capital stock by adding thereto $7,000,000.00, divided onto 70,000 shares of $100.00 each, making the entire capital stock $10,000,000.00, that amount having been determined by the Board of Directors at a meeting held March 4, 1892, to which increase stockholders owning more than two-thirds in value of the existing capital stock had assented. The assent to the increase is signed by Paul Babcock, Jr., J. H. Alexander, T. C. Bushnell, and by H. M. Flagler, W. H. Tilford, J. D. Rockefeller, John D. Archbold, H. H. Rogers, Wm. Rockefeller and O. B. Jennings, Trustees of Standard Oil Trust. By a certificate signed by Paul Babcock, Jr., J. H. Alexander and T. C. Bushnell, Directors, it is stated that the name of the corporation is changed from "Standard Oil Company of New Jersey" to "Standard Oil Company." By a certificate dated March 23, 1892, and signed by Paul Babcock, Jr., President, and attested by L. D. Clarke, Secretary, it is stated that the Board of Directors had authorized the issue of 60,000 shares to increase the capital stock, the par value of each share being $100.00. By a certificate dated March 30, 1892, signed by Paul Babcock, Jr., President, and attested by L. D. Clarke, Secretary, the number of directors of the company was increased from three to nine, the stockholders assenting
692 thereto being Paul Babcock, Jr., J. H. Alexander, T. C. Bushnell, W. H. Tilford, John D. Archbold, H. H. Rogers, O. R. Jennings, Wm. Rockefeller, Trustees of Standard Oil Trust, by Wm. Rockefeller, attorney in fact. Pursuant to a resolution passed by the Board of Directors, a meeting of the stockholders was held at the principal office of the company in Bayonne, New Jersey, on the 14th day of June, 1899, and at said meeting a resolution was adopted

changing the charter of the company. In the amendment the objects for which the company was formed are stated to be: "To do all kinds of mining, manufacturing and trading business; transporting goods and merchandise by land or water in any manner; to buy, sell, lease and improve lands; build houses, structures, vessels, cars, wharves, docks and piers; to lay and operate pipe lines; to erect and operate telegraph and telephone lines and lines for conducting electricity; to enter into and carry out contracts of every kind pertaining to its business; to acquire, use, sell and grant licenses under patent rights; to purchase or otherwise acquire, hold, sell, assign and transfer shares of capital stock and bonds or other evidences of indebtedness of corporations, and to exercise all the privileges of ownership including voting upon the stocks so held; to carry on its business and have offices and agencies therefor in all parts of the world, and to hold, purchase, mortgage and convey real estate and personal property outside the State of New Jersey." The total authorized stock of the corporation is stated to be $110,000,000.00, divided into 1,100,000 shares of the par value of $100.00 each. Of said stock, the 100,000 shares now issued and existing shall be preferred stock, and the increase of 1,000,000 shares shall be common stock. The charter was also amended in a number of particulars not deemed necessary to be set out here. These changes in the charter were assented — by more than two-thirds of the stockholders, the names of those signing the assent being as follows: Paul Babcock, J. H. Alexander, and the following, all of whom were represented and their names signed by Paul Babcock, their attor-
693 ney: John D. Archbold, Emma B. Auchencloss, Charles C. Burke, Frederick F. Brewster, E. T. Bedford, W. H. Beardsley, Wm. V. Brokaw, W. E. Bemis, George B. Bonnell, Henry H. Bonnell, James M. Constable, Charles M. Chapin, Wm. F. Cochran, John J. Carter, E. W. Conley, Robert Darling, Jessie E. Donald, Josephine W. Dean, H. M. Flagler, H. C. Folger, Jr., Martha T. Fisk, The Farmers' Loan & Trust Co., Trustee, C. A. Griscom, Chas. W. Harkness, Lamon V. Harkness, W. L. Harkness, H. A. Hutchins, Marie Antonnette Heye, Exr., Helen Jewett Hunt, Annie D. Hogg, Chas. B. Hogg, Katharine Hogg, Robert Hogg, C. M. Higgins, Anna J. Houston, Geo. B. Bonnell, Exr., Annie B. Jennings, Esther J. Jennings, Frederic B. Jennings, Mary B. Jennings, Oliver G. Jennings, Walter Jennings, Helen J. James, Salome M. Jones, William Kennon Jewett, John S. Kennedy, Mary Lily Kenan, Charles Lockhart, Kate M. Ladd, Malcolm Lloyd, Ambrose M. McGregor, V. Everit Macy, Wm. H. Macy, Jr., Exr., Wm. H. Macy, Jr., D. O. Mills, Alexander McDonald, John G. McCullogh, Lizzie D. Moffat, The New York Life Insurance and Trust Co., Trustee, Daniel O'Day, O. H. Payne, C. M. Pratt, Trustee, C. M. Pratt, Elizabeth T. Preston, A. J. Peuch, Henry H. Rogers, John D. Rockefeller, William Rockefeller, Sarah Jewett Robbins, Francis F. Robbins, L. H. Severance, Joseph Seep, George W. Smith, James Stillman, William T. Scheide, Charles A. Sterling, Charles Stone, Joseph W. Sandford, William M. Sandford, W. H. Tilford, Catharine H. Tilford, Lewis S. Thompson, United States Trust Co. of New York, William T. Wardwell, T. H.

Wheeler, Howard Willets, Joseph Bushnell, Exr., Charles E. Welling, Howard Wood, and Julia H. York.)

Mr. ALLEN: We next offer in evidence the deposition of Ida M. Butts, residing in the city of Marietta, Ohio, on interrogatories propounded to her by the plaintiff.

Interrogatory 1. What is your name and where do you live, and what business are you and have you been connected with?

694 Answer. My name is Ida M. Butts. My residence Marietta, Ohio. I am in the lumber business and have been connected with the oil business.

Interrogatory 2. If you say you have been in the oil business, state with whom you were connected in that business, and state the extent and character of his connection with that business.

Answer. With George Rice. He was a producer and refiner of petroleum. He had a refinery at Marietta, Ohio, and shipped refined oil to nearly all States in the Union, including Texas.

Interrogatory 3. State whether or not George Rice was at any time connected with the Standard Oil Trust.

Answer. He was a member of the Standard Oil Trust, in that he owned Standard Oil Trust certificates.

Interrogatory 4. In what year was the Standard Oil Trust organized?

Answer. In the year 1882.

Interrogatory 5. Is George Rice dead or alive? If dead, when did he die, and who administered upon his estate?

Answer. He is dead. He died February 27, 1905. I am administratrix of the estate.

Interrogatory 6. State whether or not at the time of his death George Rice held any Standard Oil Trust certificates, and state who has his certificates at this time, and if you say you have them, state how long you have had them, and in what capacity.

Answer. He did. I have them, since his death in the capacity of administratrix.

Interrogatory 7. State whether or not during the time the certificates were held by Mr. Rice or by you as administratrix a suit was brought in the State of Ohio to dissolve the Standard Oil Trust. If so, state the history and result of this litigation, and state what was done by the Standard Oil Trust with reference to dissolution upon that judgment being rendered, and state what has been done

695 by the trustees of the Standard Oil Trust and by George Rice and yourself as holders of the certificates aforesaid concerning these certificates.

Judge PENN: If the Court please, we desire to object to the answer of the witness to this question,—as to the answer and that portion of the question relating to asking the witness with reference to a suit to dissolve the Standard Oil Trust, and to state the history and result of this litigation, and to state what was done by the Standard Oil Trust with reference to dissolution upon that judgment being rendered. We make the objection that the statement of the witness with reference to these matters is not the best evidence, and is inadmissible for that reason; further, that her answer appears to be hear-

say; and further, that it appears to be the mere conclusion of the witness with reference to these matters; and as to the portion of the answer in which she undertakes to detail what was done by the Trustees of the Standard Oil Trust and by George Rice after the dissolution of the Standard Oil Trust, that it appears to be hearsay and merely the conclusion of the witness. With reference to the last paragraph in her answer,—the second paragraph,—we make the further objection that her answer appears to be hearsay, and merely her conclusion; and, further, that as to what laws were passed in the State of New Jersey and what was done with reference to procuring an amendment to the charter of the Standard Oil Company, her statements are not the best evidence of what was done.

The COURT: Are you objecting to the entire answer?

Judge PENN: Yes, sir. We are objecting to the entire answer and making the objection more specific as to certain portions. We object to the entire answer on the general ground that the entire answer appears to be hearsay and but her conclusions as to these matters, and then we make the more specific objections stated as to these portions.

The COURT: Is there any other part of this deposition that bears on the question of whether this is hearsay or not?

Mr. ALLEN: Not that part of it. There is some of it that later on it develops is hearsay that we will not offer, but we make the
696 contention, if the Court please, that this does not appear to be hearsay. So far as her testimony about the suit being brought, that is just incidental. It is not necessary to introduce the written record to show that. So far as what she says about the testimony of Archbold, that is not hearsay, because she makes it her own testimony by specific terms. She just simply says that Archbold gives it in better language than she could, and it is not disclosed that any part of it is hearsay by this answer. She may have been present at all these transactions and known all about them personally.

The COURT: The objection is overruled.

Judge PENN: We want to make another objection. I think I can call your attention to other parts of this that will make it appear it is hearsay, if you will give us a moment's time. If the Court please, we except to the ruling that was made, and we desire now to make more specific objections. As to the second sentence in the answer, as to what was the decision of the Supreme Court of Ohio, we make the objection again that this appears to be but the conclusion of the witness and is not the best evidence; that it is not competent for the witness to state her conclusion as to the effect of the decision or judgment of the Supreme Court of Ohio; that this should be done by properly certified or exemplified copies of that decision, so that the Court could pass upon the effect of that decision, and the Court should not be required to accept the conclusion of the witness with reference to that matter. As to the statement contained in this same sentence, as to what the Standard Oil Trust pretended to do, we object on the ground that it appears to be the mere conclusion of the witness. The witness does not claim to have been present or had any

personal knowledge of the matters in regard to which she testifies. With reference to the statement as to a large number of trust certificates being changed into assignments of legal title, we make the objection that it appears there that this is but a conclusion of the witness; that she does not profess to have been present and
697 witnessed the exchanges or the issuance of the certificates about which she testifies, that she says were given in exchange. As to the second paragraph, as to what law was passed in New Jersey, we make the objection that it is not the best evidence; that a properly certified copy of the law of New Jersey referred to would be the best evidence; further, that it is but the conclusion of the witness as to the effect of this law, and is not competent. We object to the statement in this answer that it made the Standard Oil Company to all intents and purposes the same in effect as the Standard Oil Trust, on the ground that it appears to be but the conclusion of the witness. The next sentence, "They made it a holding company for all the companies of the Standard Oil Trust," we object to on the ground that it appears to be but the conclusion of the witness about a matter about which she does not profess to have had any personal knowledge, and in which it does not appear that she was interested. We make the objection then as to her quotations of the testimony of John D. Archbold before the Industrial Commission in 1900, that the whole of her quotations from what she says was Mr. Archbold's testimony is hearsay. As to the statement contained after the quotation from Mr. Archbold's testimony, to the effect that "the Trust is not dissolved and could not be dissolved until all trust certificates were surrendered," we make the objection that it is but the conclusion of the witness. We add to the objections to her quotation from Mr. Archbold's testimony, it appears from her statement that her quotation is hearsay as to her, quoted by her from the Congressional Record, and that, even if authentic, the testimony of Mr. Archbold before this Commission would be hearsay, and not admissible as against this company in this case, it appearing that Mr. Archbold was testifying there as an individual, and not in the discharge of any duty with reference to the Standard Oil Company, or with reference to this company.

The COURT: The objection to the quotation from the testimony of Archbold is sustained. Otherwise it is overruled.

698 Judge PENN: The defendant excepts.

Mr. ALLEN: The State excepts to the sustaining of so much of the objection as is sustained.

Answer. While the certificates were held by George Rice, there was suit brought by the Attorney General of the State of Ohio in the State of Ohio to force the Standard Oil Company of Ohio out of the Standard Oil Trust or cause it to cease doing business in the State if it remained in the Trust. The decision of the Supreme Court of Ohio was in favor of the State, and the Standard Oil Trust then pretended to go out of existence, and to this effect caused an order to be issued to all certificate holders, including George Rice, to exchange their Trust Certificates into certificates called Assignment of Legal Title. A few certificates were exchanged, but both kinds were traded

in on the market and nothing more was done to liquidated the Trust until 1897, when the Standard Oil Company of Ohio was brought before the Supreme Court of Ohio in contempt proceedings brought by the Attorney General. The Standard Oil Trust then began to bestir itself and a larger number of Trust Certificates were exchanged into Certificates of Assignment of Legal Title. They then increased the capital stock of the Standard Oil Company of New Jersey, and made it to all intents and purposes the same in effect as the Standard Oil Trust. They made it the holding company for all the companies of the Standard Oil Trust. The Trust is not dissolved, and could not be dissolved until all Trust Certificates were surrendered. George Rice's estate holds one Standard Oil Trust Certificate of six shares, one certificate of the Liquidating Trustees called Assignment of Legal Title, and Scrip in the twenty different corporations then in the Trust, which he obtained by having one Assignment of Legal Title exchanged for them.

Mr. ALLEN: We do not offer about that Trust Agreement, any of the answers as to that, because we already have it in.

Mr. BRADY: That is numbers 8, 9 and 10. We want to
699 offer number 11, I think.

Mr. ALLEN: We do not offer 8, 9 and 10. (After consultation): We offer in evidence the answer to the 10th interrogatory.

Interrogatory 10. Give the names of all the parties to the original Standard Oil Trust Agreement, including the names of individuals, firms and corporations participating in the formation of that Trust, or coming into it afterwards.

Judge PENN: If the Court please, we object to the first part of this witness' answer, in which she undertakes to state the parties originally entering into this Trust Agreement, on the ground that it is not the best evidence. Second, on the ground that it encumbers the record, because what is alleged to be a true copy of the original agreement, and what has been agreed to be a true copy of the original agreement, has been admitted in evidence by Your Honor. And as to the second paragraph of the witness' answer, in which she undertakes to detail what other parties subsequently became parties to this Trust, or entered into it, we make the objection that the answer appears to be but the conclusion of the witness. She does not profess by her answer to have been present when any other person or corporation signed this agreement or any other agreement making them parties to this Trust Agreement, nor to have witnessed the deposit of any stock or other papers with the Standard Oil Trust or its trustees, but the whole answer clearly appears to be a conclusion of the witness as to this matter.

Mr. ALLEN: So far as the first part of it is concerned, if Your Honor please, we just simply offer that for the purpose of identification of the names.

Judge PENN: And, if the Court please, it appears from the terms of the Trust Agreement, which has been offered in evidence, that parties could subsequently become parties to that Trust Agreement only by an instrument in writing, and we make the further objection

that the instrument in writing by which parties subsequently
700 became parties to that instrument is the best evidence of their becoming such parties.

Mr. ALLEN: I will explain to the Court that the first part of the answer is not offered, except for identification. It is a matter of fact, and two subdivisions state the names of the parties and the corporations that are named in the Trust Agreement that has been read in evidence, but the third paragraph of her answer, that Your Honor will find there, goes on to say then that these people,—of course, it is in evidence,—that they signed that Trust Agreement, but she states as a fact then that they went into the Trust—states that as a fact—and then, in addition to that, states that others afterwards came in and became parties to the Trust, and names them, and we offer that. The other is just simply for the purpose of identification, to show the names of the parties that originally went in. We do not care so much about that, except merely for identification. So far as encumbering the record is concerned, they are exactly the same questions that have heretofore been offered. The third subdivision, all of them, are not. The sole purpose of offering it is to show who became parties to that Trust, both at its original formation and subsequently up to 1896.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Answer. (1) All the stockholders and members of the following corporations and limited partnerships, to-wit: Acme Oil Company, New York; Acme Oil Company, Pennsylvania; Atlantic Refining Company of Philadelphia; Bush & Company (Limited); Camden Consolidated Oil Company; Elizabethport Acid Works; Imperial Refining Company (Limited); Charles Pratt & Co.; Paine, Abbett & Co.; Standard Oil Company, Ohio; Standard Oil Company, Pittsburg; Smith's Ferry Oil Transportation Company; Solar Oil Company (Limited); Sone & Fleming Manufacturing Company (Limited). Also, all the stockholders and members of such other corporations and limited partnerships as may thereafter join in this agreement, at the request of Trustees therein provided for.

701 (2) The following individuals, to-wit: W. C. Andrews, John D. Archbold, Lide K. Arter, J. A. Bostwick, Benjamin Brewster, D. Bushnell, Thomas C. Bushnell, J. N. Camden, Henry L. Davis, H. M. Flagler, Mrs. H. M. Flagler, John Huntington, H. A. Hutchins, Charles F. G. Heye, O. B. Jennings, Charles Lockhart, A. M. McGregor, William H. Macy, William H. Macy, Jr., Estate of Josiah Macy, William H. Macy, Jr., Executor, O. H. Payne, A. J. Pouch, John D. Rockefeller, William Rockefeller, Henry H. Rogers, W. P. Thompson, J. J. Vandergrift, William T. Wardwell, W. G. Warden, Joseph L. Warden, Warden, Frew & Co., Louise C. Wheaton, H. M. Hanna and George W. Chapin, D. M. Harkness, D. M. Harkness, Trustee, S. V. Harkness, O. H. Payne, Trustee, Charles Pratt, Horace A. Pratt, C. M. Pratt, Julia H. York, George H. Vilas, M. R. Keith, Trustees, George F. Chester. Also, all such individuals as may thereafter join in the agreement at the request of the trustees therein provided for. (3) A portion of the stockholders

and members of the following corporations and limited partnerships, to-wit: American Lubricating Company; Baltimore United Oil Company; Beacon Oil Company; Bush & Denslow Manufacturing Company; Central Refining Company of Pittsburg; Cheesebrough Manufacturing Company; Chess-Carley Company; Consolidated Tank Line Company; Inland Oil Company; Keystone Refining Company; Maverick Oil Company; National Transit Company; Portland Kerosene Oil Company; Producers' Consolidated Land and Petroleum Company; Signal Oil Works (Limited); Thompson & Bedford Company (Limited); Devoe Manufacturing Company; Eclipse Lubricating Oil Company (Limited); Empire Refining Company (Limited); Franklin Pipe Company (Limited); Galena Oil Works (Limited); Galena Farm Oil Company (Limited); Germania Mining Company; Vacuum Oil Company; H. C. Van Tine & Company (Limited); Waters-Pierce Oil Company. Also, stockholders and members (not being all thereof) of other corporations and limited partnerships who might thereafter join in said agreement at the request of the trustees therein provided for. The above com-
702 panies, limited partnerships and individuals participated in the formation of the original trust. Others were added until in the early part of the year 1896 there were twenty companies in the great grand divisions of the Trust, as follows: The Atlantic Refining Company, Pennsylvania; The Standard Oil Company of Kentucky; the Buckeye Pipe Line Company, Ohio; New York Transit Company, New York; National Transit Company of Pennsylvania; The Solar Refining Company of Ohio; The Northwestern Ohio Natural Gas Company, Ohio; Union Tank Line Company, New Jersey; Southern Pipe Line Company, Pennsylvania; Northern Pipe Line Company, Pennsylvania; The Eureka Pine Line Company, West Virginia; Indiana Pipe Line Company, Indiana; Standard Oil Company of Indiana; Standard Oil Company of New York; Standard Oil Company of New Jersey; Standard Oil Company of Ohio; The Ohio Oil Company, Ohio; Forest Oil Company, Pennsylvania; South Penn Oil Company, Pennsylvania; The Anglo-American Oil Company (Limited).

Interrogatory 11. State whether or not the certificate owned by you as administratrix is still in your possession. If so, please attach a copy of same to your answer, and make it a part thereof, and also attach any other papers appertaining to said certificate and mark these for identification.

Answer. It is. The original Trust Certificate for six shares is in my possession, and I attach a copy of the same to my answer and make it a part hereof, marking said copy Exhibit B. There is also a copy of this same certificate contained in my Exhibit A hereto attached, at page 37 thereof. I have also one share of Assignment of Legal Title issued by the Liquidating Trustees and also Scrip or Fractional Shares in the twenty different companies in the Trust as given by them in 1896, as named in the last list in my answer to the tenth interrogatory above, but I do not consider that these appertain to that certificate.

Judge PENN: If the exhibits referred to are offered we want to make an objection.

703 Mr. BRADY: We offer them in connection with this answer.

Judge PENN: Are you offering "A"?

Mr. ALLEN: No; that is that pamphlet.

Judge PENN: You offer exhibit "B." We object to the exhibit offered in evidence, purporting to be a copy of a certificate, on the ground, first, that it is immaterial and irrelevant; second, on the ground that there is no proof of the execution of the original by the parties purporting to have executed it, and, consequently, a copy of the original is not admissible in evidence. A copy could not be admitted in evidence without proof first having been made of the execution of the original.

Mr. ALLEN: She testifies that they issued that certificate to Rice, and it is immaterial as to who executed it. She says they issued it to him.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon Exhibit "B" was introduced in evidence, and it reads as follows:

Shares $100 Each.

Standard Oil Trust.

Number 8618. Shares 6.

This is to certify that George Rice is entitled to Six Shares in the equity to the property held by the Trustees of the Standard Oil Trust, transferable only on the books of said Trustees on surrender of this Certificate. This Certificate is issued upon condition that the holder or any transferee thereof shall be subject to all the provisions of the agreement creating said Trust and of the by-laws adopted in pursuance of said agreement as fully as if he had signed the said Trust Agreement.

Witness the hands of the President, Secretary and Treas-
704 urer of the Board of Trustees, this 18th day of October, A. D. 1892, at the City of New York.

J. D. ROCKEFELLER, *President.*

H. M. FLAGLER, *Secretary.*

WM. T. WARDWELL, *Ass't Treasurer.*

(Written across face)

This certificate is issued *nunc pro tunc* in compliance with the judgment of the special term of the Supreme Court of the State of New York, City and County of New York, entered on the fourteenth day of January, 1890, in an action wherein George Rice is plaintiff and Jno. D. Rockefeller and others as Trustees of The Standard Oil Trust are defendants.

H. M. FLAGLER, *Sec'y.*

Thereupon, at 5.50 P. M., the trial was adjourned until 9.30 A. M. May 22, 1907.

WEDNESDAY, *May* 22, 1907—9.30 a. m.

Mr. ALLEN: Shall we proceed, Your Honor?

The COURT: Yes, sir.

Mr. ALLEN: Next is the twelfth interrogatory.

Interrogatory 12: If you have in your possession more than one kind of Trust Certificate, attach a copy of each to your answer, mark each for identification, and state in your answer whether or not the copy is correct.

Judge PENN: Do you propose to offer the exhibits, Mr. Allen?

Mr. ALLEN: Yes, sir.

Judge PENN: If the Court please, we object to the intro-
705 duction in evidence of the exhibits referred to in this answer, being copies, as she states, of certain instruments, on the ground that there is no proof of the execution of the originals of these instruments by the parties purporting to have executed the same, and that, the execution of the originals not being proven, the copies are not admissible in evidence; and we object to the answer, Your Honor, with reference to whether or not she has in her possession the instruments referred to, on the ground that the execution of these instruments is not proven, and their execution not being proven, the question as to whether or not she is in possession of instruments of the character described is immaterial. Here is the question and the answer objected to (handing same to the Court).

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. As stated in my answer to the seventh interrogatory, I have in my possession, besides the Standard Oil Trust Certificate of six shares, a certificate of the Liquidating Trustees, called an Assignment of Legal Title, and one certificate of ownership of fractional shares or scrip in each of the twenty constituent companies named in the last list in my answer to the tenth interrogatory above. I attach a copy of the certificate of the Liquidating Trustees and of each of said scrip certificates to this deposition as a part of my answer to this interrogatory, each marked Exhibit C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, and W, respectively, and identified further by my initials signed by me thereunder. Steps are now being taken to exchange the share of Assignment of Legal Title hereinbefore referred to into a share in The Standard Oil Company of New Jersey.

Thereupon the Exhibits referred to in the foregoing answer were introduced in evidence and read as follows:

706 EXHIBIT C.

Number A 18668.

*Assignment of Legal Title to Stocks Heretofore Represented by One Shares Standard Oil Trust.*

Whereas George Rice is the owner of equitable title to 1/972,500 of the amount of corporate stocks held by the Trustees of The Stand-

ard Oil Trust in each of the several corporations whose stocks were held by said Trust on the first day of July, A. D. 1892, which equitable ownership was represented by one shares of Standard Oil Trust surrendered for cancellation. Now we, the Trustees in whose names the legal title to said stock stands, do hereby assign and transfer to George Rice and his assigns the legal title to the aforesaid amount of the said stocks, and authorize the proper officers of the several corporations to transfer upon their books and to issue corporate certificates for the required amount of their respective capital stocks upon presentation and cancellation of this assignment. The several corporations will issue stock certificates for whole shares and scrip for fractions of shares, and upon presentation of fractional share scrip sufficient for the purpose, certificates for whole shares will be issued. When transfer of stock upon the corporate books is desired by virtue of this assignment, it must be placed in the hands of an attorney in fact both for the assignee and the undersigned Trustees, and said attorney shall first obtain the proper certificates and scrip from all the several companies, and thereupon shall deliver the certificate to the Trustees and the stock certificates and scrip to the party or parties entitled thereto.

JOHN D. ROCKEFELLER,
WILLIAM ROCKEFELLER,
HENRY M. FLAGLER,
JOHN D. ARCHBOLD,
HENRY H. ROGERS,
WESLEY H. TILFORD,
OLIVER H. PAYNE,
CHARLES M. PRATT,
CHARLES W. HARKNESS,
*Trustees.*

F. L. BARSTOW,
*Ass't Secretary.*
W. H. TILFORD,
*Attorney in Fact.*

New York, May 15, 1899.

707 (EXHIBIT D.)

No. S 18.

50,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

The Atlantic Refining Company.

*Scrip.*

This certifies that J. L. Kemper is the owner of fifty thousand 972,500ths of one share of stock in The Atlantic Refining Company. The holder or assignee of this Scrip will be entitled to a

Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Philadelphia, Pa., this 17th day of March, 1896.

JAS. McGEE, *President.*

[SEAL.]
C. E. BUSHNELL, *Treasurer.*

(EXHIBIT E.)

No. S 18.

10,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Kentucky.

Standard Oil Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of one share of stock in the Standard Oil Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

708 Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Louisville, Ky., this 17th day of March, 1896.

ALEX. McDONALD, *President.*

[SEAL.]
L. W. BOND, *Secretary.*

(EXHIBIT F.)

No. S 17.

200,000/972,500 of One Share. Whole Shares $50 Each.

Incorporated under the Laws of the State of Ohio.

The Buckeye Pipe Line Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Two Hundred Thousand 972,500ths of one share of stock in The Buckeye Pipe Line Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the cor-

porate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Lima, Ohio, this 17th day of March, 1896.

C. N. PAYNE,
*2nd Vice President.*
J. R. CAMPBELL, *Treasurer.*

[SEAL.]

H. McSWEENEY, *Secretary.*

709

(EXHIBIT G.)

No. S 16.

50,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of New York.

New York Transit Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Fifteen Thousand 972,500ths of one share of stock in the New York Transit Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by signatures of its President and Secretary, at New York City, this 17th day of March, 1896.

H. H. ROGERS, *President.*

[SEAL.]

JOHN BUSHNELL, *Secretary.*

(EXHIBIT H.)

No. S 11.

509,104/972,500 of One Share. Whole Shares $60 Each.

Incorporated under the Laws of the State of Pennsylvania.

National Transit Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Five hundred nine thousand one hundred and four 972,500ths of one share of

stock in the National Transit Company. The holder or assignee of this Scrip shall be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on
710 presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer at Philadelphia, Pa., this 20th day of February, 1896.

H. H. ROGERS, *President.*

[SEAL.]
GEO. W. COTTON, *Treasurer.*

(EXHIBIT I.)

No. S 18.

5,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Ohio.

The Solar Refining Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Five thousand 972,500ths of one share of stock in The Solar Refining Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Lima, Ohio, this 2nd day of April, 1896.

JNO. D. ARCHBOLD, *President.*

[SEAL.]
F. C. BORGES, *Secretary.*

711 (EXHIBIT J.)

No. S 17.

32,785/972,500 of One Share. Whole Shares $60 Each.

Incorporated under the Laws of the State of Ohio.

The Northwestern Ohio Natural Gas Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Thirty-two thousand seven hundred eighty-five 972,500ths of one share of stock in

The North Western Ohio Natural Gas Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Fostoria, Ohio, this 17th day of March, 1896.

C. N. PAYNE,
*Vice President.*

[SEAL.]
GEO. W. COTTON, *Secretary.*

(EXHIBIT K.)

No. S 16.

35,200/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of New Jersey.

Union Tank Line Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Thirty-five thousand 972,500ths of one share of stock in the Union Tank Line Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

712

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Bayonne, N. J., this 31st day of March, 1896.

W. H. TILFORD, *President.*

[SEAL.]
H. R. PAYNE, *Secretary.*

(EXHIBIT L.)

No. S 17.

50,000/972,500 of ...e Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

Southern Pipe Line Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Fifty thousand 972,500ths of one share of stock in the Southern Pipe Line Com-

pany. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Oil City, Pa., this 17th day of March, 1896.

H. H. ROGERS, *President.*

[SEAL.]
GEO. W. COTTON, *Treasurer.*

713 (EXHIBIT M.)

No. S 17.

10,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

Northern Pipe Line Company.

*Scrip.*

This certifies that J. L. Kemper is the owner of Ten thousand 972,500ths of one share of stock in the Northern Pipe Line Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Oil City, Pa., this 17th day of March, 1896.

H. H. ROGERS, *President.*

[SEAL.]
GEO. W. COTTON, *Treasurer.*

(EXHIBIT N.)

No. S 17.

50,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of West Virginia.

The Eureka Pipe Line Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Fifteen Thousand 972,500ths of one share of stock in The Eureka Pipe Line Company.

The holder or assignee of this Scrip shall be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

714 Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Oil City, Pa., this 17th day of March, 1896.

C. N. PAYNE,
*2nd Vice President.*
J. R. CAMPBELL, *Treasurer.*

[SEAL.]
H. McSWEENEY, *Secretary.*

(EXHIBIT O.)

No. S 17.

20,000/972,500 of One Share. Whole Shares $50 Each.

Incorporated under the Laws of the State of Indiana.

Indiana Pipe Line Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Twenty thousand 972,500ths of one share of stock in the Indiana Pipe Line Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporation books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Whiting, Ind'a, this 19th day of March, 1896.

H. H. ROGERS, *President.*

[SEAL.]
JOHN BUSHNELL, *Secretary.*

715 (EXHIBIT P.)

No. S 18.

10,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Indiana.

Standard Oil Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Ten thousand 972,500ths of one share of stock in the Standard Oil Company. The

holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Whiting, Ind., this 17th day of March, 1896.

W. H. TILFORD, *President.*

[SEAL.]
G. W. SIDHI, *Ass't Secretary.*

(EXHIBIT Q.)

No. S 18.

70,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of New York.

Standard Oil Company of New York.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Seventy thousand 972,500ths of one share of stock in the Standard Oil Company of New York. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.
716

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at the City of New York, this 17th day of March, 1896.

WM. ROCKEFELLER, *President.*

[SEAL.]
N. H. BRAINARD, *Ass't Secretary.*

(EXHIBIT R.)

No. S 18.

100,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of New Jersey.

Standard Oil Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of One hundred thousand 972,500ths of one share of stock in the Standard Oil Company. The holder or assignee of this Scrip will be entitled to a

Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Bayonne, N. J., this 17th day of March, 1896.

J. H. ALEXANDER,
*2nd Vice President.*

[SEAL.]
A. H. BRAINARD, *Ass't Secretary.*

717

(EXHIBIT S.)

No. S 17.

35,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Ohio.

The Standard Oil Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Thirty Five Thousand 972,500ths of one share of stock in the Standard Oil Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Secretary, at Columbus, Ohio, this Second day of April, 1896.

JOHN D. ROCKEFELLER, *President.*

[SEAL.]
F. B. SQUIRE, *Secretary.*

(EXHIBIT T.)

No. S 17.

80,000/972,500 of One Share. Whole Shares $25 Each.

Incorporated under the Laws of the State of Ohio.

The Ohio Oil Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Eighty Thousand 972,500ths of one share of stock in The Ohio Oil Company. The holder or assignee of this Scrip will be entitled to a Certificate of

Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

718 Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Lima, Ohio, this 17th day of March, 1896.

WM. FLEMING,
*1st Vice President.*
F. S. BATES, *Treasurer.*

[SEAL.]
H. McSWEENEY, *Secretary.*

(EXHIBIT U.)

No. S 17.

55,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

Forest Oil Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Fifty-five thousand 972,500ths of one share of stock in the Forest Oil Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer at Oil City, Pa., this Seventeenth day of March, 1896.

JNO. D. ARCHBOLD, *President.*

[SEAL.]
W. J. YOUNG, *Treasurer.*

719 (EXHIBIT V.)

No. S 17.

25,000/972,500 of One Share. Whole Shares $100 Each.

Incorporated under the Laws of the State of Pennsylvania.

South Penn Oil Company.

*Scrip.*

This Certifies that J. L. Kemper is the owner of Twenty-five Thousand 972,500ths of one share of stock in the South Penn Oil

Company. The holder or assignee of this Scrip will be entitled to a Certificate of Stock, and to have his name entered on the corporate books as a stockholder, on presentation of sufficient fractional Scrip to entitle him to one full share.

Witness the corporate seal of said Company, attested by the signatures of its President and Treasurer, at Oil City, Pa., this 17th day of March, 1896.

N. F. CLARK,
*Vice President.*

[SEAL.]
F. S. BATES, *Treasurer.*

(EXHIBIT W.)

This Certifies that J. L. Kemper has surrendered an assignment of legal title of one share of interest in the Standard Oil Trust, and is entitled by reason thereof to 26,000/972,500 of one share of stock in the Anglo-American Oil Company, Limited, and it is hereby guaranteed that said company will deliver a certificate for one share of stock to J. L. Kemper, or his assigns, on presentation of certificates of ownership of fractional interests sufficient to entitle the owner thereof to one full share of stock in said Company.

Trustees to Liquidate.

STANDARD OIL TRUST,
720 By WM. ROCKEFELLER,
*Attorney in Fact.*

April 6th, 1896.

Mr. ALLEN: Now, then, the thirteenth.

Interrogatory 13. After the formation of the Standard Oil Trust, state whether or not any other companies joined in the Trust, or were incorporated by the Trust, and if so, state what companies so joined or were created by the Trust.

Judge PENN: We object to the answer of this witness, Your Honor, to this question, on the ground that it appears to be a mere conclusion of the witness; on the further ground that it appears to be hearsay; on the further ground that it is provided by the Standard Oil Trust Agreement, which has been introduced in evidence, that persons or corporations becoming parties thereto should do so by instruments in writing, and the instruments in writing are the best evidence of other parties becoming parties to that instrument; on the further ground that the witness does not claim in her answer to have any personal knowledge of the facts which she seems to think constituted these other companies parties to this trust, and it is therefore hearsay.

The COURT: Let me see it.

Mr. ALLEN: She only gives those that are known to her.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. There were other companies. Those known to me are

the following: The Atlantic Refining Company, Pennsylvania; The Standard Oil Company of Kentucky; The Buckeye Pipe Line Company, Ohio; New York Transit Company, New York; The Solar Refining Company of Ohio; The Northwestern Ohio Natural Gas Company, Ohio; Union Tank Line Company, New Jersey; Southern
721 Pipe Line Company, Pennsylvania; Northern Pipe Line Company, Pennsylvania; The Eureka Pipe Line Company, West Virginia; Indiana Pipe Line Company, Indiana; Standard Oil Company of Indiana; Standard Oil Company of New York; Standard Oil Company of New Jersey; The Ohio Oil Company, Ohio; Forest Oil Company, Pennsylvania; South Penn Oil Company, Pennsylvania; The Anglo-American Oil Company (Limited).

Interrogatory 14. After the judgment of the Supreme Court of Ohio, state what difference, if any, was made with reference to the conduct and control of the companies which had been in the Trust by the trustees of the Standard Oil Trust, and state what is the present method of controlling and managing the companies that went into the Trust.

Judge PENN: If the Court please, we object to the answer of the witness to this question, on the ground that it does not appear that the witness has any personal knowledge of the matters therein testified to, and that it appears from the answer that it is the mere conclusion of the witness.

The COURT: The objection is overruled. What is the date of this deposition?

Mr. ALLEN: It was taken the 21st day of November, 1906.

Judge PENN: Defendant excepts to the ruling of the Court.

Answer. They made little or no change until contempt proceedings were brought in 1897, when they transferred more Trust Certificates into Assignments of Legal Title Certificates and soon thereafter closed as many of them as possible into stock in The Standard Oil Company of New Jersey, which is the present method of controlling and managing the companies now in the Trust, The Standard Oil Company of New Jersey being able to hold stock of the other companies in the Trust became the holding company.

Interrogatory 15. Do you know anything about certificates issued after the judgment of the Supreme Court of Ohio, signed by John D. Rockefeller, President, certifying that the holders were entitled
722 to certain shares in the equity to the property held by the Trustees of the Standard Oil Trust? If so, state whether or not one of these certificates was issued to George Rice or to you, and copy one of these certificates and make it a part of your answer.

Judge PENN: We have covered this same matter by previous objections, and don't care to renew it.

Answer. I do. George Rice was the owner and his estate is still the owner of one of these certificates, which is called Assignment of Legal Title. I have attached a copy of this certificate to this deposition as a part of my answer to the twelfth interrogatory, as Exhibit

"C", and hereby refer to said copy and exhibit as a part of my answer to this interrogatory.

Interrogatory 16. Give all the steps which have been taken by the Standard Oil Trust, or its trustees, or what is known as the Standard Oil interests since the rendition of the judgment by the Supreme Court of Ohio in carrying out that judgment, or in invading its provisions, or as the result of that judgment.

Judge PENN: If the Court please, we object to the answer of the witness to this question, on the ground that the witness does not appear to have any personal knowledge of the matters therein stated; that the matters stated appear to be but mere conclusions of the witness; on the further ground that it appears from the answer that these were transactions—these matters she testifies about were transactions with George Rice, who, by her previous answers, is shown to be dead; that she is his administratrix, and does not appear to have been present when any of the transactions took place or had any personal knowledge of the matter.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Answer. As a result of that judgment The Standard Oil Trust agreed to dissolve, and, in order to do this, issued certificates called
Assignments of Legal Title, signed by the Trustees to Liqui-
723 date The Standard Oil Trust to take the place of the original Standard Oil Trust Certificates. Nothing more was done, few certificates were exchanged, and both original Trust Certificates and Assignments of Legal Title Certificates were bought and sold on the market on same basis. When contempt proceedings were brought in 1897 by the Attorney General of the State of Ohio they began to get busy and changed a great many more certificates of The Standard Oil Trust into Assignments of Legal Title and then from that into the stock of The Standard Oil Company of New Jersey. Mr. George Rice insisted on having one Assignment of Legal Title transferred into corporate scrip of the various companies in the Trust, which with great reluctance they finally so transferred. This was accomplished through Mr. J. L. Kemper, in whose name the scrip in the various companies were issued, and who then transferred them to George Rice, but as they draw no dividends are probably the only ones so transferred or ever issued. The Assignment of Legal Title, marked Exhibit "C", is now in process of transfer into the stock of The Standard Oil Company of New Jersey, where it will receive dividends on the earnings of all the companies in the Trust.

Interrogatory 17. State whether or not you have in your possession as administratrix of George Rice any instruments made or executed by the Standard Oil Trust or the trustees of the Standard Oil Trust, or the trustees in liquidation of the Standard Oil Trust, or any of the successors of either of these parties concerning the matter of ownership by George Rice of an interest in the Standard Oil Trust, or any company belonging to or controlled by it. If so, attach to your answers a copy of each of these instruments, marking it for

identification, and state the circumstances under which George Rice or yourself received it.

Judge PENN: It is covered by previous objections.

Answer. I have. My answers to the former interrogatories cover all this interrogatory.

724 Mr. ALLEN: We next offer in evidence an agreement signed by counsel, being stipulation No. 1, as to stock ownership.

Judge PENN: If the Court please, we offer no objection at all to the first fact agreed to—the first paragraph in this stipulation. To the second, we object as being irrelevant and immaterial to any issue in this case—to that portion of the agreement relating to what shares of the Waters-Pierce Oil Company incorporated in 1878 were owned by the Standard Oil Company. To the third, fourth, fifth, sixth and seventh paragraphs, we object on the ground that the matters therein agreed to are immaterial and irrelevant to any issue in this case. These matters relate to the ownership by the Standard Oil Company of stock in other companies, and it does not appear that any of these other companies ever contemplated doing business in Texas, and it appears affirmatively from the agreement that neither of these companies ever did any business in Texas or ever obtained a permit to do business in Texas and never applied for a permit to do business in Texas. The eighth paragraph we object to as immaterial and irrelevant.

Mr. ALLEN: I will make the suggestion, if Your Honor please, that one purpose of offering that is to show that they never did business in Texas, any of them, except the Waters-Pierce Oil Company.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Judge STEDMAN: May it please Your Honor, in addition to the objections made by associate counsel to the stipulation showing the ownership of stock by the Standard Oil Company in certain corporations, I should like to offer the further objection that if the Standard Oil Company was authorized under the laws of the States creating those corporations to own stock in them, that the State of Texas can not raise the question of the illegality of the holding of the stock by the Standard Oil Company; and the further objection that when a

725 corporation comes into Texas and receives a permit to do business in the State, it comes with all of its capacities and functions as they exist in the State of its creation; and, further, that in the admission of foreign corporations into Texas no regard is paid by our laws to the incorporators of those companies nor to the manner of their constitution or organization.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(Thereupon Stipulation No. 1, signed by counsel for both plaintiff and defendant, was introduced in evidence. It reads as follows:

"It is agreed, for the purpose of this case, only, upon the following facts, subject to all legal objections by either party:

First. That the Standard Oil Company of New Jersey is a cor-

poration organized under the laws of New Jersey; that since its organization in 1882 it has not conducted any business in the State of Texas; that it has not applied for or been granted a permit to transact any of its corporate business in the State of Texas.

Second. That said Standard Oil Company of New Jersey did own in the Waters-Pierce Oil Company, a corporation organized under the laws of the State of Missouri, in May, 1878, 2,747 shares out of a total of 4,000 shares of the said company, and that since about the 24th day of September, 1900, it has owned 2,748 shares of the capital stock out of a total of 4,000 shares of the Waters-Pierce Oil Company organized under the laws of Missouri, May 29, 1900.

Third. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of Indiana, a corporation organized under the laws of the State of Indiana on the 11th day of June, 1889, and that said Standard Oil Company of Indiana does business in Indiana, a part of Missouri, Illinois, Iowa, Wisconsin, Michigan, Kansas, South Dakota and North Dakota, but has at no time since its organization transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Fourth. That the said Standard Oil Company of New
726 Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of New York, a corporation organized under the laws of the State of New York, on the 10th day of August, 1882; that the Standard Oil Company of New York does business in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont and New Hampshire, and it has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in the said State of Texas.

Fifth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of Kentucky, a corporation organized under the laws of the State of Kentucky on the 7th day of October, 1886, and that the said Standard Oil Company of Kentucky does business in the following States: Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi and part of Louisiana; that the said Standard Oil Company of Kentucky has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do business in said State of Texas.

Sixth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Continental Oil Company, a corporation organized under the laws of the State of Iowa in December, 1884, and that the said Continental Oil Company has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Seventh. That the said Standard Oil Company of New Jersey owns a majority of the shares of capital stock of the Republic Oil Company, a corporation organized under the laws of the State of New

York on the 4th day of June, 1901: and that said Republic Oil Company has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under
727 the laws of Texas to do any business in said State of Texas.

Eighth. That said Standard Oil Company of New Jersey has owned the said majority shares of the capital stock of the Standard Oil Company of New York, and of the Standard Oil Company of Kentucky, and of the Continental Oil Company of Iowa, and of the Standard Oil Company of Indiana, and of the Republic Oil Company of New York, since practically the dates of their respective organizations.")

Mr. ALLEN: Now, we next offer in evidence these charters of the several corporations named.

Judge PENN: If the Court please, the purported articles of incorporation of the Standard Oil Company of Kentucky, we make the objection, first, that it is immaterial and irrelevant——

The COURT: I did not understand what you said the paper was.

Judge PENN: It is what they offer as a certified copy of the charter of the Standard Oil Company of Kentucky. We make the objection, first, that it is immaterial and irrelevant. Second, there is no proof that this company was incorporated in accordance with the laws of the State of Kentucky. Third, that it appears that this company was not incorporated in accordance with the laws of the State of Kentucky. We object to the certificate attached to these copies by the Secretary of State of the State of Kentucky as to what was the law of the State of Kentucky in these respects, as being not the best evidence of what the laws of Kentucky are and as being entirely hearsay, it not being made to appear to the Court that among other duties of the Secretary of State of the State of Kentucky it was his duty to certify what the laws of that State are. We make the further objection that it does not appear that any charter was ever granted by the State of Kentucky to the Standard Oil Company therein named. We desire to add the further objection that the original charter does not appear to have ever been filed in the office of the Secretary of State of the State of Kentucky. And we add the further objection that this instrument is not authenticated
728 under the acts of Congress relating to the public acts of officers of the States, relating to the introduction in evidence of acts of public officers of one State in the courts of another State.

Mr. ALLEN: I will call your attention to one suggestion. This agreement states the date of the incorporation, and they agree that there was a corporation formed on that date, under the laws of Kentucky—agreed to as facts, that it was properly incorporated.

The COURT: The objection is overruled, except so much as relates to the certificate of the Secretary of State of the State of Kentucky, which is sustained.

Judge PENN: Defendant excepts.

(Thereupon the articles of incorporation of the Standard Oil Company of Kentucky were introduced in evidence.)

Judge PENN: If the Court please, we object to the instrument which they offer as a certified copy of the articles of association of the

Standard Oil Company of Pittsburg, on the ground, first, that it is irrelevant and immaterial to any issue in this case. Second, that this instrument does not appear to have ever been filed in the office of the Secretary of State of the State of Pennsylvania. Third, that it is not certified in accordance with the provisions of Article 906 of the statutes of the United States. To be more specific as to this objection, that it is not certified under the—has not the great seal of the State of Pennsylvania affixed to the certification nor certified by any other officer as provided by Article 906 of the statutes of the United States.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

(Thereupon the articles of incorporation of the Standard Oil Company organized under the laws of Pennsylvania on the 15th of August, 1868, were introduced in evidence.)

729 Mr. ALLEN: We offer in evidence certified copy of the articles of incorporation of the Standard Oil Company and the increase of the capital stock of the Standard Oil Company of Indiana.

Judge STEDMAN: May it please your honor, we object to the introduction in evidence of this document, for the reason that it is irrelevant and immaterial to any issue in this case. We further object that this is a charter granted by the laws of another State, and that the State of Texas can not make any inquiry into the validity of this corporation, if that is one of the purposes for which it is offered.

Mr. ALLEN: We do not offer it, of course, for the purpose of inquiring into the validity of the charter. We offer it for the purpose of showing the formation of these corporations and the carrying it out, just like provided in the original Trust Agreement, and to show stock ownership and the aggregation of the different corporations. It may be perfectly legitimate originally, but our courts have held that they can not use the corporations as a blind.

Judge STEDMAN: We further object to the introduction of this charter in evidence, for the reason that it appears from the stipulation on file in this case that the Standard Oil Company of Indiana has no permit to do business in the State of Texas and has not applied for a permit to do business in Texas.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

(Thereupon the articles of incorporation of the Standard Oil Company of Indiana were introduced in evidence.

Mr. ALLEN: Now, we offer in evidence certified copy of the articles of incorporation and the amendments thereto of the Standard Oil Company incorporated under the laws of the State of Iowa.

Judge PENN: We object, on the ground that it is immaterial and irrelevant to any issue in this case.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

730 (Thereupon the articles of incorporation of the Standard Oil Company incorporated under the laws of the State of Iowa, with amendments thereto, were introduced in evidence.)

Mr. ALLEN: We next offer in evidence original charter and the various amendments of the Standard Oil Company of New York.

Judge STEDMAN: Now, may it please Your Honor, we object to the introduction of the copy of the original charter and the copy of the certificate of extension of the corporate powers of the Standard Oil Company of New York, and to each and all of the amendments to its charter upon the ground that each and all of these documents are immaterial and irrelevant. We further object to the introduction of these documents or any of them, for the reason that, as appears from the stipulation on file, the Standard Oil Company of New York has never obtained a permit to transact any business in Texas and has never applied for a permit to transact business in Texas. And we further object to the introduction in evidence of these documents, for the reason that it appears from the certificate of the extension of corporate powers that the Standard Oil Company was incorporated and exists for purposes that would preclude its admission to do business in the State of Texas. That objection is based upon the statutory provision of Texas to the effect that a foreign corporation shall be allowed to transact business only for some single, specified purpose. The certificate of the extension of powers shows that this company is permitted to transact not merely a general oil business, but also to engage in the acquisition, holding and disposition of stocks and bonds and other evidences of debt.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(Thereupon the articles of incorporation of the Standard Oil Company of New York, with amendments thereto, were introduced in evidence.)

Mr. ALLEN: We will offer all of these. They are the articles of incorporation of the Atlantic Refining Company and the various amendments thereto under the laws of the State of Pennsylvania.

731 Judge STEDMAN: We object to the introduction in evidence, may it please the Court, of each and all of these documents. First, because they and all of them are immaterial and irrelevant; and second, because it appears from one of the documents, dated on the 20th day of April, 1870, that the company was authorized to exercise all the privileges and franchises incident to a corporation, and that a company created by the laws of another State with such extensive powers could not under the laws of Texas be admitted into Texas to do business here; in other words, that the laws of Texas would not permit the granting of a license to a corporation created under the laws of another States for such indefinite and unlimited powers as are conferred upon this corporation by this charter.

The COURT: What is the purpose of this?

Mr. ALLEN: The purpose of it is, we have charged that the Atlantic Refining Company is one of the companies that are a part of this

trust and that it entered into this agreement and the territory was parceled out, and it is shown—we expect to show by the testimony that all of the crude oil that was purchased by the Waters-Pierce Oil Company for shipment was purchased from this company and nobody else.

Mr. LIGHTFOOT: There is no stipulation here about the division of territory as to this particular company in this agreement, but we charge in the petition that it was one of the conspirators that entered into this general conspiracy which we have alleged; that is charged in the petition, that this corporation entered into the conspiracy that was entered into by all the corporations, and also the original Trust Agreement shows on its face that this particular corporation was a party to that general trust agreement.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(Thereupon the articles of incorporation of the Atlantic Refining Company, with the amendments thereto, were introduced in evidence.

732 Mr. ALLEN: We next offer in evidence portion of R. H. McNall's deposition, shown on page 5 of the questions and answers.

Judge PENN: We object, Your Honor, to the entire portion of the deposition of R. H. McNall which is offered, on the ground that all of the portions of the deposition which they offer are immaterial and irreleva[illegible].

Mr. ALLEN: That part that is offered is offered simply to show, and does show, where the Continental Oil Company and the Standard Oil Company of Iowa do business—what States.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

(Mr. Lightfoot read the questions and Mr. Allen the answers, as follows:

Q. What business was Mr. H. M. Tilford in?

A. Oil business.

Q. What company was he connected with?

A. Continental Oil Company.

Q. What State?

A. Well, they do business in the West. Their head office was at Denver. I can't say what State they were incorporated in.

Q. What other companies?

A. The Standard Oil Company of San Francisco; that is an Iowa corporation, I believe.

Q. Well, what other connections did he have?

A. I don't remember of any other connections.

Q. Wasn't he connected with the Waters-Pierce Oil Company at the time?

A. Not that I know of.

Q. What States did the Continental do business in during the time that you were associated with Mr. Tilford?

A. Colorado, Utah, Montana, New Mexico and Idaho.

Q. Did they do business in Arizona?

A. Yes, they did business in Arizona.

733 Q. Now, what States did the Standard Oil Company of San Francisco do business in?

A. Washington, Oregon, California, and I think also Arizona.

Q. Did they do business in Nevada?

A. Yes, I omitted that.")

Mr. ALLEN: We next offer in evidence the deposition of E. M. Wilhoit, taken on interrogatories propounded by the State.

Interrogatory 1. What is your name, where do you live, how long have you lived there, and where did you live prior to that time?

Answer. E. M. Wilhoit. 460 Monroe Street, Springfield, Missouri. Three years and a half. Joplin, Missouri.

Interrogatory 2. If you have stated that you lived at Topeka, Kansas (or if it be a fact), state what business you were engaged in there.

Answer. Yes, I lived in Topeka, Kansas, before coming to Joplin; was in the independent oil business a few months in Topeka, and was in the employ of the Standard Oil Company something like four years.

Interrogatory 3. If you have stated that you were agent for the Standard Oil Company, state what Standard Oil Company it was—that is to say, under the laws of what State was it incorporated—and state whether or not it is the same concern doing business in Missouri, and state whether or not the management is the same.

Answer. To the best of my knowledge it was the Standard Oil Company of Kentucky. It was under the same management that governed the Standard Oil Company in Missouri. It was the same concern.

Interrogatory 4. What was your business at Topeka, Kansas, for the Standard Oil Company?

Answer. I was agent and had full charge of their business at that station.

Interrogatory 5. State whether or not prior to your employ-

734 ment by the Standard Oil Company at Topeka you had any connection with any oil concern at any other point in Kansas. If so, state what concern it was.

Answer. The Standard Oil Company at Wichita, Kansas.

Interrogatory 6. If in answer to the preceding question you say that you were employed at Wichita, Kansas, by the Consolidated Tank Line Company, state what became of this company, what was done with its property, and who succeeded to its business.

Judge PENN: We object to the answer to that question, Your Honor, on the ground, first, that it is irrelevant and immaterial to any issue in this case; second, that it appears that the Consolidated Tank Line Company was a company doing business entirely in other States, and the matters as to what may have become of the Consolidated Tank Line Company can not be material to any issue in this case, and whatever may have been done with the Consolidated Tank Line Company could not constitute a violtaion of the laws of this State.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. The Standard Oil Company absorbed the Consolidated Tank Line Company. I was employed by the Consolidated Tank Line Company at the time it was absorbed by the Standard.

Interrogatory 7. If in answer to the preceding question you state that you were located at Wichita, Kansas, state what territory was included within the agency at Wichita, and state whether or not the Indian Territory was included within this territory.

Judge PENN: We object to that, Your Honor, as irrelevant and immaterial.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. I traveled out of Wichita for several years and Wichita's territory was exclusively Southwest Kansas. The Indian Ter-
735 ritory was not included in the Standard's territory.

Interrogatory 8. If you say that the Indian Territory was not included in the territory of the Consolidated Tank Line Company, state what oil company did business in that territory.

Answer. The Waters-Pierce Oil Company.

Interrogatory 9. State whether or not while you were working for the Consolidated Tank Line Company, or the Standard Oil Company, you ever filled any orders for the Waters-Pierce Oil Company, and if so, state what action, if any, was taken by you with reference to the labeling of the goods.

Judge PENN: That is interrogatory No. 9. We object to the answer to this interrogatory, on the ground that the interrogatory inquires about and the answer relates only to business done in States other than Texas, either entirely intrastate business in another State or interstate commerce, and that whatever may have been done with reference to business done entirely in another State or interstate business could not constitute a violation of the laws of the State of Texas.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. Wichita's station of the Consolidated Tank Line Company or Standard Oil Company frequently received orders mailed direct from dealers in the Indian Territory, which were filled by the Consolidated Tank Line Company, but not in the name of the Consolidated Tank Line Company. They were filled from the storage tanks of the Consolidated Tank Line Company, but a label of the Waters-Pierce Oil Company was used on the barrels in which shipment was made, as the Consolidated Company at that point was provided with Waters-Pierce Oil Company's labels. Such shipments as mentioned were charged to the Waters-Pierce Oil Company and were not billed direct to the customer.

Intrrogatory 10. State whether or not you ever had any inquiries from the Panhandle country of Texas, and if so, state whether
736 this country was included within the Waters-Pierce Oil Company's territory, or in the territory of the Consolidated Tank Line Company or the Standard Oil Company, and state what action, if any, was taken by you with reference to the trade in the Panhandle.

Judge PENN: If the Court please, we object to the answer to this

question, on the ground that it relates entirely to interstate commerce, and whatever may have been done could not constitute a violation of the laws of this State; on the further ground that the entire answer is immaterial and irrelevant. We object further to the statement, "I was instructed to make trips, which I did make, and inasmuch as the inquiries were for car-lots" and so on—statement here as to his instructions—on the ground that it is hearsay; and in the last sentence of the answer, after the comma, on the ground that it is hearsay.

Mr. ALLEN: It states that those instructions were given by the manager of the Standard.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. Yes sir, we had inquiries from the Panhandle country of Texas, which was the Waters-Pierce Oil Company's territory, and two different years on receipt of such inquiries I was instructed to make trips, which I did make, and inasmuch as the inquiries were for car-lots, and was given a schedule of prices to sell on, by the Consolidated Tank Line Company or Standard Oil Company, and was instructed by their manager, if necessary, to shade the prices liberally to secure the orders, as it was in the territory of the Waters-Pierce Oil Company, which we had no right to make shipments into, but if such shipments were secured, it would greatly increase the gallonage output of the Standard, and to wire my orders in, in order that they might be filled if possible before being detected by the Waters-Pierce Oil Company. I made trips two seasons in succession, making sales, and on asking to go third season, they stated that the Waters-Pierce Oil Company had gotten on to us and could not make further shipments to that territory.

737 Interrogatory 11. If in answer to the last question you state that you made one or more trips into the Panhandle of Texas, state at whose instance you went, and state what you did there, and state if your action was with the concurrence and consent of the Waters-Pierce Oil Company, or if it was taken with the expectation and intention that that company would not know of your sales in the Panhandle of Texas.

Answer. I believe I have answered that in the preceding paragraph.

Interrogatory 12. Have you any knowledge of the dividing line between the territory assigned to the Standard Oil Company and the Waters-Pierce Oil Company? If so, state where it is, and state how you acquired your knowledge.

Judge PENN: We object to that, Your Honor, as being irrelevant and immaterial, and as relating entirely to business outside of the State of Texas and interstate commerce; and we object further specially to the statement contained in this answer, "I was instructed to not make any sales in the Indian Territory or Texas, as that was the territory of the Waters-Pierce Oil Company," as being hearsay.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. I have no knowledge of a dividing line except as I came in contact with it through instructions from the Standard and since being in the independent business, observing that the Standard sold goods in a certain territory and such territory was not invaded by the Waters-Pierce and the Waters-Pierce's territory was not invaded by the Standard; and while with the Standard and Consolidated Tank Line Company, I was instructed to not make any sales in the Indian Territory or Texas, as that was the territory of the Waters-Pierce Oil Company, and the only sales I was permitted to make in such territory were those I have previously outlined. The territory or boundary line, such as we have observed, the State line of Texas,
North line of Indian Territory, the East line of the extreme
738 Southern part of Kansas running North to between Lamar and Jasper, Missouri, thence Northeasterly across the State of Missouri, being the dividing line between the Waters-Pierce and Standard Oil Company's territories, the Waters-Pierce Oil Company operating South of this line and the Standard Oil Company North.

Interrogatory 13. In what parts of Missouri and Kansas have you sold oil? At what points have you been in competition with the Waters-Pierce Oil Company and at what points have you been in competition with the Standard Oil Company? State whether or not you have ever at any point been in competition with both companies.

Judge PENN: We make the same objections, Your Honor—that it is immaterial and irrelevant and relates to business transacted outside the State of Texas.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. I have sold oil at Topeka, Kansas, as business headquarters; now have distributing points at Springfield and Joplin, Missouri. At Topeka, Kansas, the Waters-Pierce to my knowledge never made a sale. At Joplin and Springfield, Missouri, I have never known the Standard to make a sale. Joplin, Missouri, being but eight miles from Galena, I have never known the Standard to make a sale at Joplin; while at Galena, eight miles distant and just across the Kansas line, I have never come in contact with where the Waters-Pierce have made a sale. At Carthage, Missouri, and Jasper, Missouri, the Waters-Pierce sells no doubt ninety per cent. of the oil that is consumed; and at Lamar, Missouri, a few miles distant North, the Standard sells all the oil that is sold. I have never known them to market oil both in the same territory or come in competition with each other except in the Panhandle of Texas, as previously outlined.

Mr. ALLEN: We next offer in evidence the deposition of CHARLES F. HATFIELD.

739 Interrogatory 1. What is your name, residence and business?

Answer. Charles F. Hatfield; residence 216 Delmar; Secretary Eidson Publishing Company.

Interrogatory 2. State whether or not you have ever had any position with the Waters-Pierce Oil Company, and if so, state for what period and the character of your employment.

Answer. Yes. 1889, October 1st, to November 1st, 1904; the first six months at Marshall, Texas, as assistant manager, title of chief clerk, this being the division headquarters of the East Texas and Louisiana division of the Waters-Pierce Oil Company; after that until November of 1904 in the general offices at St. Louis, part of the time as assistant to the vice president, and afterwards in charge of the freight and claim department, and other statistical work, also embracing special work for various offices like the collecting of large railroad accounts and sales made to railroads.

Interrogatory 3. Before you became employed by the Waters-Pierce Oil Company state what your business was. State where you were employed.

Answer. Private Secretary to Col. W. P. Thompson. New York and Cleveland.

Interrogatory 4. If you have said, or if it be a fact, that you were employed at 26 Broadway, New York City, by what name the building was generally known?

Answer. Standard Oil Block.

Interrogatory 5. If you have said that you were employed as the private secretary of Col. Thompson, state who Col. Thompson was. State what his business was when you first knew him, and state what connection, if any, he had with the Standard Oil Company.

Judge PENN: We object to that as being irrelevant and immaterial to any issue in the case.

The COURT: The objection is overruled.

740 Judge PENN: Defendant excepts.

Answer. Principally Chairman of the committee known as the Domestic Trade Committee. He was also in general charge of the traffic arrangements of the Standard Oil Company, a director in a large number of other companies, oil, banks, trusts, like the Mercantile Trust, railroads, and generally a very busy man. When I first knew him he was secretary of the Standard Oil Company at Cleveland; afterwards vice president of that company until he removed to New York to take charge of the D. T. Committee, as above.

Interrogatory 6. Did you know H. E. Felton? If so, state by whom and where he was employed.

Answer. Yes. I first knew him in the Cleveland office and afterwards in New York, in the employ of the Standard Oil Company.

Interrogatory 7. If you say that he was employed by the Standard Oil Company, or was employed at 26 Broadway, state what department he was in.

Answer. I think it was in the traffic, or the Union Tank Line—I have really forgotten exactly which.

Interrogatory 8. State whether or not you ever had any occasion to know anything about the trade territory of the Waters-Pierce Oil Company, and if so, state how you know, and state what the territory was.

Answer. I had a general knowledge through the correspondence that the Waters-Pierce Oil Company territory was West of the Mississippi River, taking in half of Missouri and including Oklahoma

and Indian Territory, Arkansas, Texas, Louisiana, down to about Morgan City, and Old Mexico.

Interrogatory 9. If in answer to the preceding question you say that you first became familiar with the matter by reason of handling the correspondence of Col. Thompson in settling a controversy concerning this territory, state between what companies the controversy was, and state all the circumstances connected with Col.
741 Thompson's disposition of this controversy.

Judge PENN: If the Court please, we object to the answer to this interrogatory No. 9 as being irrelevant and immaterial; and on the further ground that the matters therein testified to appear to relate to matters entirely outside of the State of Texas, namely, in the State of Missouri; and on the further ground that it does not appear from the answers of the witness when the transactions testified to by him in this answer occurred.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. Between the Waters-Pierce Oil Company and the Consolidated Tank Line Company, operating in the West and, I think, taking in the Northern part of Missouri, Iowa, Kansas, and West; the dispute was over some county in Missouri, and the matter of adjustment was referred to Colonel Thompson by both above companies, he being the Eastern director of both of these companies, to which all general correspondence of such character was referred. The adjustment was made by the Colonel's having a map made showing the dividing lines in Missouri, a copy of which was sent to both companies and one kept in the New York office. My answer covers the facts, there is lots of detail to it, but I don't remember all this.

Interrogatory 10. State whether or not you ever had any other occasion to become informed of the division of the territory for trade purposes between the Waters-Pierce Oil Company and the Standard Oil Company and its dependent companies, and if so, state what the occasion was, and state how you ascertained the facts connected with the matter, and state the territory conceded by the Standard Oil Company to the Waters-Pierce Oil Company.

Answer. Only in general correspondence, running over eight or nine years, and so many times that I could not remember the circumstances.

Interrogatory 11. Have you any knowledge of the scheme
742 or plan by which the Waters-Pierce Oil Company became familiar with the operation of its competitions? If so, state how you became familiar therewith, and state minutely and in detail the plan pursued.

Judge PENN: If the Court please, we object to the answer to that interrogatory on the ground that it is irrelevant and immaterial to any issue in this case; and that the plans or schemes of the Waters-Pierce Oil Company for obtaining information with reference to the operations of their competitors could not constitute any violation of the anti-trust laws or any other laws of this State.

The COURT: The objection is overruled.

Judge STEDMAN: Please note our exception, Your Honor.

Answer. That's a broad question, that I could not answer fully. I can merely say that through the agents of their own and friendly companies they had a general knowledge of the movements of competitive —. The data was systematically compiled and submitted to the proper officials, but the use made by them of this could only be surmised by me. My connection was simply in compiling statistics that were furnished me, working under the instructions of the president and vice president of the Waters-Pierce Oil Company.

(Interrogatories Nos. 12 and 13 omitted.)

Interrogatory 14. From whom did you receive instructions or directions in discharging the duties assigned to you by the Waters-Pierce Oil Company?

Answer. At different times I received instructions from every officer of the company from the president down to the general manager, as I was general utility man on account of my acquaintance with the railroad people.

Mr. ALLEN: The fifteenth says he didn't have any direct knowledge; we don't offer that.

(Interrogatories Nos. 16 and 17 omitted.)

743 Interrogatory 18. If in answer to any question you have stated that you are familiar with the trade territory occupied by the Waters-Pierce Oil Company, then state whether or not you had occasion while employed in Col. Thompson's office to make any character of writing defining such territory; if so, state what it was and the circumstances under which it was made.

Answer. Too long ago for me to remember details, but in the general correspondence lasting for many years it was generally conceded that the territory as I have stated above was a matter about which there was no discussion to my knowledge, except in the special incident mentioned above where the Missouri line was not thoroughly defined. While I was in Texas there was a dispute with the Standard Oil people at New Orleans as to the exact dividing line in Southeast Louisiana, which was adjusted while I was there.

Interrogatory 19. When you left 26 Broadway, New York, where did you go, and in what companies' employ did you enter?

Answer. I'll answer it in my own way. Col. Thompson was elected president of the National Lead trust, I think, in May, 1889, and from that time until the latter part of August of that year my time was divided between #26 Broadway and the office of the National Lead trust. I resigned my position with the Colonel to accept the position that had been tendered to me some months previously by Mr. Pierce, in connection with the Waters-Pierce Oil Company. That explains it.

Interrogatory 20. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that you went to St. Louis and entered the employ of the Waters-Pierce Oil Company, then state whether or not you saw in the office of the Waters-Pierce Oil Company any writings, maps or other documents which had been prepared at 26 Broadway; if so, state what they were and what they referred to.

Judge PENN: Just a moment, Mr. Allen.

Mr. ALLEN: We don't offer any part of it, except that
744 about the map.

Judge PENN: Well, go ahead.

Answer. The map referred to above. I didn't quite understand the question, but the map referred to is the only document that I remember that referred to the territorial lines of the company.

Interrogatory 21. How long did you work for the Waters-Pierce Oil Company, and when did you sever your connection with them?

Answer. It is answered above, but I'll repeat it: from October 1st, 1889, to November 1st, 1904. I want to add to that, and I desire to state in this connection that I resigned my position to go into business for myself, with a letter of regrets from the president. I want to make this record so that there will be no opportunity for assuming that I am in any way unfriendly to the Waters-Pierce Oil Company or its officials, and, in fact, I am an unwilling witness in this case.

Interrogatory 22. Give in detail your knowledge of the plans of organization of the business at 26 Broadway, stating what companies were represented at that place, and who represented them at the time you were employed there, and state whether or not the Waters-Pierce Oil Company was represented by any officer or agent in that organization.

Judge PENN: We object to the answer of this witness, Your Honor, in so far as he undertakes to detail the plan of organization at 26 Broadway, on the ground that it appears to be but a conclusion of the witness from which he has no personal knowledge. We make the further objection that the entire answer is immaterial and irrelevant, and the further objection that it appears from the previous answers of the witness that he left the employ at 26 Broadway October 1, 1889, prior to the organization of this defendant.

Judge STEDMAN: And prior to the enactment of the law.

Judge PENN: Yes, sir, and prior to the enactment of the law under which this defendant is being prosecuted.

The COURT: What is the number of the interrogatory?

Mr. LIGHTFOOT: It is the last one—No. 22.

745 Judge PENN: And we make the further objection that there is nothing detailed here that could have been an offense under the laws of this State.

The COURT: The objection is overruled, except as to that clause marked in parenthesis.

Judge PENN: If the Court please, we could hardly without complicating matters make specific objection to a sentence here without the other. We desire to object to the second sentence in the answer because it appears that it is hearsay, in addition to the other objections.

Mr. ALLEN: We submit that that is not hearsay, because he starts out with the proposition that what he states is from his own personal knowledge in a general way, and that he is familiar with the plan of work and things in a general way what it was, and must be taken in connection with the other testimony, and detailed fully his means of knowledge, in other words, in previous answers.

The COURT: The objection is sustained.

Judge PENN: We except to the ruling of the Court as to the first objections made.

Answer. Only in a general way can I answer this question from personal knowledge, as it has been conceded that the organization of the Standard Oil Company and its interests is one of the greatest from a business standpoint in this or any other country. These companies were represented by various officials connected with several committees, such as the domestic trade committee, the manufacturing committee, lubricating oil committee, cooperage committee, and many others, all of which were the same as various departments are handled in a large business house, only instead of one officer looking after the sales, another after the supplies, another after the manufacturing, committees did this work,—all of the committees reporting, of course, to the executive committee, of which it was under-
746 stood Mr. John D. Rockefeller was Chairman. For instance, if the domestic trade committee and the manufacturing committee disagreed on any point and could not adjust this disagreement, it would be referred to the executive committee, whose decision was final. So that there might be a clearing house to adjust differences between various subsidiary companies and the different territories, there was one man representing one or more of these, as a member of the domestic trade committee, of which Col. Thompson was Chairman. He also represented the Consolidated Tank Line Company, the Waters-Pierce Oil Company, the Camden Oil Company, I think it was, at Parkersburg, and, I believe, the Baltimore United Oil Company. Mr. H. A. Hutchins represented, for instance, the Standard Oil Company of Chicago, Cleveland, and some others which I don't recall. I think Mr. H. M. Tilford largely represented the Western companies, like the Continental, with headquarters at Denver, and the San Francisco interests. After I left # 26 Broadway, I think it was, the Standard Oil Trust was dissolved, and I have no personal knowledge of the manner in which the business was handled, but what companies, or what representatives, I could not state. During the entire time that I was connected with the Standard Oil Company at Cleveland and New York, the Waters-Pierce Oil Company was represented by Colonel W. P. Thompson—at least, all the correspondence was addressed to him that came into his department or his committee. I do not know that they would place their orders for supplies with him, as there was a General Distribution Department; orders, at that time, being received in this Department from all subsidiary companies, and shipments made from whatever refinery had the stock and was nearest to the point of destination. Remember, that it has been many years since I was at # 26 Broadway.

Mr. ALLEN: We next offer in evidence the judgment rendered in the case of the State of Texas against the Waters-Pierce Oil
747 Company on the 15th day of June, 1897.

Judge PENN: We object to that judgment as irrelevant and immaterial to any issue in this case, as being a judgment in a suit to which this defendant was not a party.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the judgment rendered in cause No. 12,589, the State of Texas *vs.* Waters-Pierce Oil Company, dated June 15, 1897, was introduced in evidence.)

Mr. ALLEN: We offer in evidence certified copy of an affidavit purporting to show the dissolution of the Waters-Pierce Oil Company incorporated under the laws of Missouri, on the 7th day of May, 1878.

Judge PENN: We object to that as irrelevant and immaterial, relating to the dissolution of the prior corporation.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the certified copy of affidavit of dissolution of the Waters-Pierce Oil Company was introduced in evidence.)

Mr. ALLEN: Then we offer in evidence next the charter of the Waters-Pierce Oil Company, to which you say you have no objection. It is the present company. It was executed on the 28th day of May, 1900; filed in the office of the Secretary of State of the State of Missouri on May 29th, 1900; and filed in the office of the Secretary of State of the State of Texas on the 31st day of May, 1900.

(Thereupon the charter of the present Waters-Pierce Oil Company was introduced in evidence.)

Mr. ALLEN: Then we offer in evidence a certified copy of
748 the permit of the present Waters-Pierce Oil Company.

Judge PENN: There is no objection to it.

(Thereupon the certified copy of the permit of the present Waters-Pierce Oil Company was introduced in evidence.)

Mr. ALLEN: We next offer in evidence the mandate from the Supreme Court of the United States in the case of The State of Texas against the Waters-Pierce Oil Company,—certified copy of it.

Judge PENN: We make the same objection to this instrument that we did to the copy of the original judgment introduced in the District Court of Travis County, and which was introduced in evidence,—that it is immaterial and irrelevant to any issue in this case, and is the final judgment in a suit to which this defendant was not a party.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the Mandate of the Supreme Court of the United States in the case of The State of Texas *vs.* Waters-Pierce Oil Company was introduced in evidence.)

Thereupon the Court adjourned until 9.30 A. M. May 23, 1907.

THURSDAY, MAY 23, 1907.

The COURT: We will proceed, Gentlemen.

Mr. ALLEN: Now, we next offer in evidence portion of the deposition of H. Clay Pierce taken in the case of the State of Missouri against the Standard Oil Company of Indiana, the Waters-Pierce Oil Company and the Republic Oil Company, which is offered by agreement that it may be used the same as if taken in this case.

Mr. LIGHTFOOT (to the Stenographer): We want you to take this down.

Mr. ALLEN (reading): Be it remembered, that on Mon-
749 day, the 19th day of March, 1906, at the Southern Hotel in the City of St. Louis, Missouri, this cause coming on for further hearing before Hon. Robert A. Anthony, Commissioner appointed and qualified by the Supreme Court of Missouri to hear the same, the following among other proceedings were had and entered of record, to-wit:

HENRY CLAY PIERCE, being produced, and duly sworn by the Commissioner, on his oath testified for the respondent, Waters-Pierce Oil Company, as follows:

Direct examination by Mr. JOHN D. JOHNSON:

Q. State your name, please.
A. Henry Clay Pierce.
Q. Your residence?
A. St. Louis.
Q. You spend most of your time in New York City, don't you?
A. All of it.
Q. What is your connection at the present time with the Waters-Pierce Oil Company?
A. Chairman of the Board of Directors.

Mr. ALLEN (reading): The further hearing of this cause was adjourned until Tuesday, March 29, 1906, and from time to time from that date until the 10th day of September, 1906, when the hearing of this cause was resumed at the Southern Hotel in the City of St. Louis, Missouri, and the following further proceedings among others were had and entered of record, to wit:—

Mr. ALLEN: Judge Stedman, I suggest that if you have a copy of this testimony in this form it would be very much better, because I am going to jump by pages here, and I don't know how you can keep up with it in any other way.

Judge STEDMAN: I have it only in printed form.

Mr. ALLEN: We have it marked simply with reference to this paging.

Judge STEDMAN: Well, we will do the best we can.

750 Mr. ALLEN: Well, the first question, then, is on page 2. It's about the third or fourth question, Judge.

Judge STEDMAN: All right.

(Mr. Lightfoot read the questions and Mr. Allen the answers.)

Q. Mr. Pierce, you may state your name, age, and place of residence.
A. Henry Clay Pierce; St. Louis; fifty-seven.
Q. Are you a stockholder in the Waters-Pierce Oil Company?
A. I am.
Q. It is a company organized under the laws of the State of Missouri, is it?
A. It is.

Mr. ALLEN: Now, about three pages of this is skipped.

Mr. LIGHTFOOT: On page 3.

Mr. ALLEN: Page 3 or 4—it's page 4.

Mr. LIGHTFOOT: There is one question on page 3, Mr. Allen.

Q. Does the Standard Oil Company of New Jersey own any stock in the Waters-Pierce Oil Company.

Mr. LIGHTFOOT: Now, the answer is on the next page.

A. I understand that certain shares of stock in the Waters-Pierce Oil Company standing on its books in the name of M. M. Van Beuren has been admitted in this case to be the property of the Standard Oil Company of New Jersey.

Q. Can you state the number of those shares?

A. I believe the number is 2746.

Q. Substantially that?

A. Substantially. I am not sure as to the exact number.

Q. What number of shares do you own?

A. 1250.

Q. Now, Mr. Pierce, will you please explain the relations between the Waters-Pierce Oil Company and the Standard Oil Company of New Jersey, and, in order that you may be brief, if you have prepared a memoranda shortly detailing that, I will say that
751 you may refer to that memoranda and read it.

A. I have a memoranda answering that question, which I will read. During the Fall and Winter of 1877 and 1878 I organized under the laws of the State of Missouri the first Waters-Pierce Oil Company, which succeeded to the business of Waters, Pierce & Company. The original capital was one hundred thousand dollars, of which amount Waters, Pierce & Company subscribed for forty per cent., Horace A. Hutchins and William P. Thompson of Cleveland, Ohio, subscribed for forty per cent., and Chess, Carley & Company of Louisville, Kentucky, subscribed for twenty per cent. The first officers of the first Waters-Pierce Oil Company were: William H. Waters, director and President; H. Clay Pierce, Director and Vice-President; Charles M. Adams, Secretary and Treasurer; Horace A. Hutchins, Director; William P. Thompson, Director, and Francis D. Carley, Director. Some time after the organization of the first Waters-Pierce Oil Company the forty per cent. belonging to Hutchins and Thompson, and the twenty per cent. belonging to Chess, Carley & Company, was transferred to the Trustees of the Standard Oil Trust, and I purchased the interest of William H. Waters in the forty per cent. belonging to Waters, Pierce & Company. So that, when, on May 29th, 1900, the first Waters-Pierce Oil Company was liquidated, the assets were distributed in these proportions.

Mr. ALLEN: Now, then, it skips a page, Judge.

A. It simply refreshes my memory. When the license of the first Waters-Pierce Oil Company to do business in Texas was revoked, and I sought to settle with the State, so that we could continue our business there, I was told very frankly by a prominent citizen of Texas that the people of that State would not tolerate the methods of the Standard Oil Company, and that no corporation controlled by that company would be permitted to carry on business in Texas. I explained this situation fully to the Executive Committee of the

Standard Oil Company, and they agreed that I should organ-
752 ize a new company, the stock of which I should hold, and that I should manage and control the company absolutely free from any dictation or direction of the Standard Oil Company.

Mr. ALLEN: It skips down then to the next answer.

A. Up to the Spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management.

"Mr. HADLEY: Up to when?"

A. Up to the Spring of 1904, the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters-Pierce Oil Company, but at that time they transferred the stock which had stood in my name to Mr. M. M. Van Beuren, and began in other ways to assume a control over the affairs and operations of the company. I protested against this conduct as a violation of their agreement with me, and as contrary to the representations which I had made to the people of Texas.

Q. A great deal, Mr. Pierce, has been said in this case about the division of territory between the Standard Oil Company of Indiana and the Waters-Pierce Oil Company. State as briefly as you can when the territorial operations of the Waters-Pierce Oil Company began and to what territory it extended.

A. When, in 1878, I organized the first Waters-Pierce Oil Company, its predecessors, Waters, Pierce & Company and H. C. Pierce & Company, had already established business in all of the territory in which the present Waters-Pierce Oil Company now operates, and it was agreed and understood between myself and the representatives of the Standard Oil Company of Ohio, I think, at least it was the only Standard Oil Company that I knew of as being in existence at that time, that the first Waters-Pierce Oil Company would confine its operations and transact its business within the certain territory which Waters, Pierce & Company and H. C. Pierce & Company had transacted their business. In other words, the Waters-
753 Pierce Oil Company organized in 1878 was to take over the business of Waters, Pierce & Company. In pursuance of this understanding, certain lines were agreed upon in the State of Illinois, which comprised parts of, I think, Madison and St. Clair Counties, including East St. Louis——

Q. Wait a minute, Mr. Pierce. Have you that map, Mr. Hadley?

"Mr. HADLEY: Yes sir. (Handing Mr. Priest map, Exhibit "A.")"

("Witness here examines map marked Exhibit "A.")

"Mr. HADLEY: The red line with the black marks across it is the line drawn by Judge Johnson, as I understand it."

Q. Mr. Pierce, describe generally, without being particular, the divisional line of territory agreed upon at that time.

A. This map, as presented to me, is not correct. I am sufficiently familiar with it to state that. The original map is in my possession, or was, and I suppose search will disclose it. I will be very glad to produce it.

"Mr. HADLEY: It was in response to the original notice that one was offered here, from which this was determined."

A. That was without my knowledge. I will be glad to produce it if it can be found. It only came to my knowledge a half hour ago that this map was presented here. It was probably caused by the business falling into the hands of people who were not familiar with the original agreement. I doubt if any of the company's officers have seen the map within the last twenty years.

"The COMMISSIONER: I would suggest that if Mr. Pierce from his memory can give his recollection of the lines that he do so."

A. Mr. Commissioner, I will give it generally——(Judge Stedman interrupts.)

Judge STEDMAN: Your Honor, we object to that testimony, indicating certain territory, for the reason that it is immaterial and irrelevant; and, further, because it relates to transactions
754 with the Waters Pierce Oil Company which has ceased to exist, and which is not a party to this suit.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts to the ruling of the Court.

(Mr. Allen read portion of the answer, as follows:)

A. The line within the State of Missouri commenced at a point just South of Hannibal, on the West bank of the Mississippi River, and ran according to county lines South-west to the Western border of Missouri, bordering upon Kansas a short distance South of Fort Scott.

Q. Continue with respect to the other territory, Mr. Pierce. That included the parts in Illinois that you have described, and the parts in Missouri you have described, and what other territory?

A. The State of Arkansas; what is now the Indian Territory and Oklahoma; the State of Texas; all of the State of Louisiana West of the Mississippi River, and the Republic of Mexico.

Q. Has there been any change in that territory since it was then established?

A. There has not.

Q. Pursuant to that division of territory the Waters-Pierce Oil Company confined its operations to building up the trade within that territory?

A. It did.

Q. When the Waters-Pierce Oil Company, the old company, was organized in 1878, it succeeded the partnership of Waters, Pierce & Company?

A. It did.

Q. And Waters, Pierce & Company had succeeded the firm of——

A. H. Clay Pierce & Company.

Q. From what source did the Waters-Pierce Oil Company obtain its supplies of refined oils at that time?

Judge STEDMAN: We object to that as immaterial and irrelevant, and further, because it relates to transactions with the Waters-
755 Pierce Company of 1878, which has been dissolved and is not a party to this suit.

The COURT: The objection is overruled.
Judge STEDMAN: We except.

A. Almost exclusively from the Standard Oil Company.
Q. And from what sources has it since that time obtained its supplies of refined oils?
A. Almost exclusively from the Standard Oil Company and its allied interests.
Q. Did the old Waters-Pierce Oil Company or the present Waters-Pierce Oil Company refine any oil or manufacture any of the products of petroleum in the United States?
A. It did not manufacture refined oils. It did manufacture lubricating oils and greases.
Q. All of these other oils were obtained from the Standard Oil Company and its allied interests, Standard Oil Company of New Jersey?
A. All of the refined oils, naphthas, gasolines and most of the lubricating oils were obtained from the Standard Oil Company and its allied interests.
Q. In other words, the Waters-Pierce Oil Company was engaged exclusively as a merchant of manufactured products in the United States?
A. Within the United States, almost exclusively so.
Q. Did the Waters-Pierce Oil Company establish any refinery in the Republic of Mexico?
A. It did, several.
Q. From what source did it get the crude petroleum to refine in the Republic of Mexico?

Mr. ODELL: We object, if the Court please, to any testimony concerning business done by this company in the Republic of Mexico, for the reason that it is immaterial and irrelevant, and any business done in a foreign country in the refining of oil by this com-
756 pany can have no possible applicability to this case or throw any light on the issues in the case.
Judge STEDMAN: And for the further reason, Your Honor, that this testimony relates to transactions with the old original Waters-Pierce Oil Company of 1878, now dissolved, and not a party to this suit.
The COURT: The objection is overruled.
Mr. ODELL: We except.

A. Because crude petroleum was not produced within the Republic of Mexico, the Waters-Pierce Oil Company obtained all of its crude petroleum for manufacturing in Mexico from the Standard Oil Company.
Q. How was the crude petroleum taken to Mexico for refining?
A. In bulk steamer belonging to the Waters-Pierce Oil Company, built by and belonging to the Waters-Pierce Oil Company.
Q. And all of the supplies of the Waters-Pierce Oil Company sold in the Republic of Mexico was refined by it in the Republic of Mexico?
A. All, of all kinds.

Q. The present Waters-Pierce Oil Company in 1900 succeeded to an established business of the old Waters-Pierce Oil Company and since that time it has confined itself exclusively to building up the business within the territory formerly occupied by the old Waters-Pierce Oil Company, is that true?

A. That is correctly stated.

Q. Will you tell me approximately the amount of sales in gallonage of the Waters-Pierce Oil Company in the United States territory?

A. I have not a division of the business between the United States and the Republic of Mexico, but I can state the gross sales of both.

Q. What are they, Mr. Pierce?

A. I have not refreshed my memory recently, but I recall that in the year 1902 the gross sales amounted to 2,677,362 barrels.

Q. How many gallons to the barrel?

A. Fifty.

757 Mr. LIGHTFOOT: Now, we skip about a page.

Mr. ALLEN: Skip a page to the continuation of the Direct Examination by Mr. Priest.

Q. Mr. Pierce, personally you have been engaged in the oil business in the territory in which the Waters-Pierce Oil Company is operating, either in its name or in the name of preceding firms you have mentioned, for how many years?

A. Thirty-seven.

Mr. LIGHTFOOT: Then we skip about half a page.

Q. Who were the first board of directors of the Waters-Pierce Oil Company organized in 1878, do you recall?

A. William H. Waters, H. C. Pierce, William P. Thompson, Horace A. Hutchins, Francis D. Carley.

Q. How long did those gentlemen continue as directors of the Waters-Pierce Oil Company, if you recall?

A. W. H. Waters until I purchased his interest.

Q. To shorten that answer and abbreviate the testimony, I will ask you if the first directors you named did not continue to act as such until 1885? (Handing witness a paper.)

A. All of the first directors continued from their election in the year 1878 until the annual meeting of the company in the year 1885.

Q. Where did Francis D. Carley live?

A. Louisville, Kentucky.

Q. Where did H. A. Hutchins live?

A. Cleveland, Ohio.

Q. Where did W. H. Waters live?

A. St. Louis, Missouri.

Q. Where did W. P. Thompson live?

A. Parkersburg, West Virginia, and Cleveland, Ohio.

Q. And you resided in St. Louis?

A. St. Louis, Missouri.

758 Q. Did Mr. W. H. Waters take any active part in the management of the company?

A. He did not.

Q. During the period he was a director. So that you were the only person present of the directors during that year in charge of the property?

A. During what year, Judge?

Q. During those years, 1878, 1879, 1880, 1881, 1882, 1883, 1884 and 1885.

A. Mr. Waters made his office headquarters in the office of the Waters-Pierce Oil Company, but he did not take any active part in the management of the business.

Q. In 1885 the directory continued as it was before except that W. H Tilford was elected instead of Francis D. Carley, did it not?

A. At the annual election in the year 1885 W. H. Tilford of New York succeeded F. D. Carley of Louisville.

Q. In 1887 Mr. Cowles took the place of H. A. Hutchins in the directory, did he?

A. Yes, sir, he did.

Q. Where did Mr. Cowles live?

A. Either in Cleveland, Ohio, or New York, I don't remember which.

Q. The same directory continued in 1888 except that H. M. Tilford was substituted for W. H. Tilford?

A. That is correct.

Q. Where did H. M. Tilford live?

A. New York City.

Q. Is he a brother of W. H. Tilford?

A. He is.

Q. The following year Mr. Silas H. Paine took the place of H. M. Tilford, did he not?

A. He did.

759 Q. Where did Silas H. Paine live?

A. New York City.

Q. In 1889 the directory continued substantially as it was in 1888?

A. I believe so.

Q. Now, in 1890 Mr. A. M. Finlay was elected instead of W. H. Waters, was he not?

A. That was in the year 1890?

Q. Eighteen hundred and ninety?

A. In that year I purchased the interest of W. H. Waters in the Waters-Pierce Oil Company; succeeded him as President; brought Mr. Finlay, who had been manager of a Texas division during a number of years, to St. Louis, and made him Vice-President and Director of the company.

Q. And Mr. G. F. Gregory succeeded Mr. W. H. Tilford in the directory?

A. That is correct.

Q. Otherwise the directory continued as the year previous?

A. That is true. Mr. Gregory lived in New York.

Q. In 1891 the directory consisted of yourself, Mr. Finlay, Mr. H. M. Tilford, Mr. Silas H. Paine and Mr. C. M. Pratt?

A. It did.

Q. Did any of those directors except yourself and Mr. Finlay reside in St. Louis?

A. They did not.

Q. Or take any part in the active management of the property?

A. Others than Mr. Finlay and myself did not take any active part in the management of the company.

Q. In 1892 the directory consisted of yourself, Mr. Finlay, Mr. H. M. Tilford, Mr. C. M. Adams and Mr. J. P. Gruet, is that correct?

A. That is correct.

Q. And Mr. Adams and Mr. Gruet both resided in St. Louis?

A. Mr. Adams and Mr. Gruet both resided in St. Louis.

760 Mr. Adams had been with the company as its secretary from the date of its organization—as its treasurer and secretary—and later as treasurer, and Mr. Gruet had been with the company some years as auditor and later as secretary.

Q. And the directory as constituted in that year continued until the year 1900?

A. That directory continued until the dissolution of the first Waters-Pierce Oil Company in the year 1900.

Q. Now, in the new Waters-Pierce Oil Company, organized in 1900, who were that directors?

A. H. C. Pierce, Andrew M. Finlay, C. M. Adams, J. P. Gruet, John D. Johnson.

Q. And Mr. H. M. Tilford in 1900?

A. I have answered it correctly.

Q. This memoranda is wrong, then?

A. The memoranda relates to the old company prior to May 29th, 1900, when the old company was dissolved.

Q. And the directory as thus constituted continued until 1904, the Spring of 1904?

A. It did.

Q. In 1904 Mr. W. F. Taylor took the place of Mr. J. D. Johnson and Mr. R. P. Tinsley took the place of Mr. J. P. Gruet?

A. They did.

Mr. LIGHTFOOT: Now, we skip about a page.

Q. Can you give me approximately the quantity of oils of different kinds, or the products of petroleum, that the Waters-Pierce Oil Company since 1900 has purchased from the Standard Oil Company of New Jersey and its allied companies—the Standard Oil Company of New Jersey and Standard Oil Company of Indiana, I mean?

A. Do you intend to say annually or in the aggregate?

Q. You can put it annually. I do not want you to be precise and definite, of course you could not be, but approximately?

761 A. I have not recently examined the books, but, as I testified this morning, the Waters-Pierce Oil Company sold during the year 1902, which was the last date I recall, about two million six hundred and seventy-seven thousand barrels of all kinds of oils and petroleum products in this country and in Mexico, and with the exception of fuel oil, which was purchased both from the Stand-

ard Oil Company and from producers generally in the Texas field, practically all of the crude oil which entered into the manufacture of the refined products in the Republic of Mexico and all of the refined oils and lubricating oils sold by the Waters-Pierce Oil Company within the United States were purchased from the Standard Oil Company.

Q. You mean the Standard Oil Company and the Standard Oil Company of Indiana?

A. The Standard Oil Company of Indiana and its allied interests.

Mr. ALLEN: Skip about three pages.

Q. Now, Mr. Pierce, did you make any effort at any time to extend the business of the Waters-Pierce Oil Company outside of the territory which you defined this morning?

A. Since the organization of the first Waters-Pierce Oil Company in the year 1878, neither myself or any one connected with the Waters-Pierce Oil Company, so far as I know, and certainly never with my authority, ever made any attempt to sell oil, to locate stations or in any manner transact business outside of the territory in which the present Waters-Pierce Oil Company now operates.

Mr. LIGHTFOOT: Skip four or five pages there.

Mr. ALLEN: It skips about four to five pages, then I take up the answer which begins, "In the United States the Waters-Pierce Oil Company has occupied"—it's a long answer. The answer explains itself.

A. In the United States the Waters-Pierce Oil Company has occupied the position of merchandising petroleum and its pro-
762 ducts. In the Republic of Mexico the Waters-Pierce Oil Company first occupied a similar position, but when the consumption of petroleum products in Mexico justified it established there four refineries, located at the principal cities, and purchased crude petroleum on the Atlantic Seaboard from the Standard Oil Company, or its allied interests, and transported the crude petroleum in the Waters-Pierce Oil Company's own steamers to Vera Cruz and Tampico, in Mexico, to supply its refineries there, and at points in the interior of Mexico and in Mexico the Waters-Pierce Oil Company has, since the establishment of those refineries, manufactured all of the products of petroleum of all kinds sufficient to supply all of the requirements for such products within the Republic of Mexico, and is doing so at this time.

Q. Now, Mr. Pierce, the Waters-Pierce Oil Company, the firms which preceded the Waters-Pierce Oil Company, and the old Waters-Pierce Oil Company, organized in 1878, undertook to merchandise within the territory then allotted to it the products of the Standard Oil Company, and it has continued to occupy relatively that position ever since, is that true?

Judge STEDMAN: We object to that as immaterial and irrelevant; and, further, upon the ground that the transactions with companies or corporations prior to the organization of the present Waters-Pierce Oil Company can not be visited upon this defendant; and,

further, that those companies and corporations are not parties to this suit.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

A. The firms which preceded the first Waters-Pierce Oil Company purchased crude oil, crude petroleum, from parties other than the Standard Oil Company, because in the beginning the Standard Oil Company did not have an existence, and refined and manufactured such crude oils into refined oils at their refineries located in St. Louis on the ground between Thirteenth and Fourteenth and
763 Austin and Gratiot streets, and sold that oil wherever it could. When the firm of W. H. Cobb & Company was organized in 1869 and succeeded to the firm of John R. Finlay & Company it for a time continued the same method of transacting its business, but when the Standard Oil Company came into existence the firm of W. H. Cobb & Company commenced purchasing crude petroleum and its refined products from the Standard Oil Company, and also continued purchasing from other parties. This method continued until the organization of the first Waters-Pierce Oil Company in 1878. Does that answer your question sufficiently?

Q. Now, since 1878?

A. During and since 1878 the Waters-Pierce Oil Company within its United States territory has acted almost solely as merchandisers for the products of the Standard Oil Company, and in Mexico since the establishment of refineries there it has purchased crude oil outright from the Standard Oil Company and has manufactured and sold it in Mexico to the full extent of the demand.

Mr. LIGHTFOOT: Now, about two pages, Judge.

Q. Have you estimated and can you give me the proportion of oil sold by the Waters-Pierce Oil Company in Missouri to that of its competitors?

A. I have not the figures covering recent periods, but for many years, when I was more actively attending to the business, it was from ninety to ninety-eight per cent. The average for several years was about ninety-seven and one-half per cent.

Mr. LIGHTFOOT: Now, four or five pages—about seven or eight pages there, Judge.

Mr. ALLEN: Mr. Hadley says, "Answer the question." "Question repeated by the Stenographer."

Judge STEDMAN: Is that in the cross examination?

Mr. ALLEN: Yes, sir. There is a long statement there by Judge Priest, and then "Mr. Hadley—Answer the question." Now,
764 we offer the answer, because it makes sense.

A. The Waters-Pierce Oil Company has been, and now is, dependent upon the Standard Oil Company for almost its entire supplies, and as I have already stated, the territory within which the Waters-Pierce Oil Company, present and its predecessors, were to operate was established twenty-eight years ago and has not been changed. I, as the manager of the Waters-Pierce Oil Company,

did not deem it expedient to do business beyond the territory wherein the Waters-Pierce Oil Company was thoroughly and fully equipped.

Q. Why didn't you deem it expedient?

A. Well, my judgment was against it, General.

Q. Why was your judgment against it?

Mr. ALLEN: Well, we don't care for this. There is a lot of objections. Just read that question over there—"Mr. Hadley—Why didn't you deem it expedient?"

Q. Mr. Hadley—Why didn't you deem it expedient to extend your equipment and do business at other points in the State of Missouri?

A. It is a very difficult matter, General Hadley, to specifically define the basis of a judgment arrived at which is based upon a great many years of experience, but if the question is to be answered from the standpoint of today, it would be that the Waters-Pierce Oil Company is not equipped to do business in Kansas City.

Q. Why haven't you equipped it to do business there?

A. Because the Waters-Pierce Oil Company never contemplated doing business in Kansas City.

Q. Why didn't it contemplate doing business in Kansas City?

A. Because the original Waters-Pierce Oil Company agreed—(Judge Stedman interrupted).

Judge STEDMAN: We object to that answer, because it is immaterial and irrelevant, and because it relates to transactions with the Waters-Pierce Oil Company of 1878, which is dissolved, and
765 because that company is not a party to this suit.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

A. Because the original Waters-Pierce Oil Company agreed it would confine its operations to the territory in which it and its predecessors has transacted its business.

Q. Who did it agree with?

A. It agreed, I should say, with Colonel Oliver H. Payne. The individuals I presume you are asking for?

Q. The representative of what company?

A. At that time the Standard Oil Company of Ohio.

Q. As a result of that agreement the Waters-Pierce Oil Company, in the State of Missouri, has confined its business to certain territory, and the Standard Oil Company has confined its business to certain territory?

A. As to the Waters-Pierce Oil Company, yes. As to the Standard Oil Company I have not now, and have never had, any means of knowing the reasons for its operations.

Q. So far as the Waters-Pierce Oil Company is concerned, your testimony is that according to an agreement it has not sold in the State of Missouri?

A. That was only the initial reason. I gave you the main reason first.

Q. But there was an agreement in the matter?

A. I have stated so.

Q. Since the organization of the Waters-Pierce Oil Company in 1878 down to the time of the disorganization you were a minority stockholder, were you not?

A. I was.

Q. And what was the percentage of your holdings at the beginning of the organization of the Waters-Pierce Oil Company?

766 A. Practically forty per cent.

Q. What was it at the time of the organization of the Standard Oil Trust in 1882?

A. The same.

Q. Did it continue the same down to the time of the reincorporation in 1900?

A. It did.

Q. And the assets of the company was at that time divided upon that basis?

A. I have so stated.

Q. And on the reorganization of the company on May 29th, 1900, how much stock did you then own?

A. One hundred per cent.

Q. Did you own that yourself?

A. I subscribed for and gave my own check, which was honored at the bank, for the total amount; received the certificates in my name and held them.

Q. How soon did you transfer any portion of those certificates to anybody else?

A. The transfer I suppose you mean endorsed on the back, and hand the certificates to other people?

Q. Yes, sir.

A. Several months afterwards.

Q. How long?

A. Three, four or five months.

Q. Do you remember what month it was?

A. I do not.

Q. To whom did you deliver the stock certificates that you did deliver?

A. To Mr. Garth, Cashier of the Mechanics' National Bank, New York.

Q. Representing whom?

767 A. That I can not say.

Q. How many shares of stock did you transfer?

A. Sixty-eight and one-half per cent.

Q. Practically leaving you owning how much?

A. Thirty-one and one-half per cent.

Q. Why did you transfer that stock?

A. I transferred the stock because it was understood that I would do so.

Q. At the time of the organization of the new company?

A. Not verbally or by any understanding, but tacitly so understood?

Q. With whom?

Judge STEDMAN: Now, this answer—I would like for Your Honor

to examine it—shows that the witness has no knowledge of the matter, and we object to it because it shows he has no personal knowledge of the transaction, and it is hearsay.

Mr. ALLEN: It is disclosed a little further on, Your Honor. It shows that it was an arrangement by his attorney with the attorney of the Standard Oil Company. It is disclosed further on exactly how it came to his knowledge, that it was an arrangement made by Mr. Johnson, attorney of the Waters-Pierce Oil Company, with the attorneys of the Standard Oil Company.

Mr. LIGHTFOOT: And he became a director, also.

The COURT: What is the question you object to?

Judge STEDMAN: It's the answer.

The COURT: To which question?

Mr. LIGHTFOOT: "With whom?"—with whom did he have the understanding.

The COURT: The jurors want to retire, Mr. Sheriff.

(The jury retired.)

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(The jury returned.)

768 Mr. ALLEN: To get the connection, Mr. Lightfoot, you had better go back a question or two.

Q. Why did you transfer that stock?

A. I transferred the stock because it was understood that I would do so.

Q. At the time of the organization of the new company?

A. Not verbally or by any understanding, but tacitly so understood.

Q. With whom?

A. I think I shall have to refer that to my attorney, Mr. J. D. Johnson.

Q. We will refer it to his Honor, the Commissioner.

A. I don't know. I was trying to help the General.

Q. I hadn't asked for assistance, Mr. Pierce. Didn't you know to whom you were to transfer that stock?

A. There never was any understanding to whom I was to transfer the stock.

Q. I didn't ask that. I asked you if you didn't know to whom you were to transfer the stock.

A. If you will make your question specific, I will answer it.

Q. Answer that question.

A. I don't know.

Q. Do you know to whom you transferred it?

A. I have answered that, I transferred it to Mr. Garth.

Q. Did Mr. Garth become the owner of that stock?

A. So far as I know, yes.

Q. How long did Mr. Garth continue to own that stock?

A. I do not know. The stock continued in my name. I had no more reason or ability to know who held the certificate than I would if I had passed the certificate to any bank or any individual in this or any other city.

769 Q. Then, if I understand you, you were informed by your attorney that an agreement had been made by which, upon the organization of the new company, you should transfer sixty-eight and one-half per cent. of the stock to some unknown party?

Judge STEDMAN: Wait a moment. We object, Your Honor, to the question because the question calls for hearsay, and the answer gives hearsay,—asks for information from his attorney and he answers that the information was given by his attorney.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. Practically, yes.

Q. That was the information to you?

A. Practically.

Q. Your testimony is now, that within a few months after the organization of the new company you parted with the controlling interest to some party whose identity was not disclosed to you and whose identity is not disclosed now?

A. Practically that is correct.

Q. When did you become aware of the identity of this mysterious person?

A. In the month of June, 1904.

Q. By what means—a telegram?

A. Telegram from my son from St. Louis, stating that the stock had been presented to the Secretary and transferred from my name to the name of Mr. M. M. Van Beuren.

Q. Did you know who Mr. M. M. Van Beuren was?

A. I had never heard of him.

Q. Have you learned since who he was?

A. Only through the public press.

Q. That he was the son-in-law of John D. Archbold?

A. I have seen it so stated.

770 Q. Did you receive any dividends between the time that you transferred the stock to Mr. Garth and the time you were informed by your son that it was held by Mr. Van Beuren?

A. You mean on the stock that was transferred by me to Mr. Garth?

Q. Yes, sir.

A. I did.

Q. What did you do with the dividends?

A. Transferred them to another party in New York.

Q. To whom?

A. I think Mr. Bayne, who was connected with the Seaboard National Bank of New York. I don't know what his position is.

Q. How did you happen to give them to Mr. Bayne?

A. Under request.

Q. From whom?

A. I am not sure whether it was through some representative of the Waters-Pierce Oil Company in this office, or through Mr. Tilford in New York.

Q. Mr. Tilford? Who is Mr. Tilford?
A. I know four Mr. Tilfords.
Q. Who was the Mr. Tilford who ordered you to give the dividends on this stock to Mr. Bayne?
A. I do not recall whether it was Mr. W. H. or H. M. Tilford.
Q. It was one or the other?
A. I think so, or it may have been a notice from my office. I spent a great deal of time in New York, and the dividends were remitted to me in the East, and it may have been that the information came to me from the office in St. Louis.
Q. What business was W. H. and H. M. Tilford in?
A. They are connected with the Standard Oil Company.
Q. Of New Jersey?
A. Really, I couldn't locate the corporation.
Q. Have they offices at 26 Broadway?
771 A. I think so.
Q. They are members of the Domestic Trades Committee of the Standard Oil Company?
A. I think not.
Q. What committees?
A. I believe Mr. W. H. Tilford is a member of the Executive Committee. I do not know the position occupied by Mr. H. M. Tilford.
Q. He has some position with the Standard Oil Company at 26 Broadway?
A. I could not say.
Q. During the time between the incorporation of the company and the transfer of this stock to this gentleman who you have mentioned, Mr. Garth, what did you do with the dividends you received upon the stock, if you received any?
A. My impression is that they were paid to——

"Mr. PRIEST: That question assumes that there were dividends paid. There has been no evidence that there were dividends paid."

A. I do not know that I received any dividends.
Q. Do you remember whether you did or not?
A. No, I do not recall.
Q. Turning to the stock-book of the Waters-Pierce Oil Company which has been introduced in evidence, I will ask you to look at the stamps upon the back of this Certificate No. 3 in that book issued to H. C. Pierce, and look at the endorsement upon the cancellation stamp, and then state when it was that you transferred that stock, refreshing your recollection by that endorsement. (Handing stock-book to witness). Look at this revenue stamp upon the back of No. 3 and state if that is your handwriting.

Judge STEDMAN: Wait one moment.—Go ahead.

A. I think it is. (Mr. ALLEN: That is, he thinks it is his handwriting.)
Q. Read what it says.
772 A. "H. C. P., Sept. 4th, 1900."
Q. Is that the date when you transferred that stock?

A. I could not say.

Q. Is that the date when you canceled that stamp by writing your initials and date upon it?

A. It is evidently the date I canceled the stamp.

Q. Turning to the stock certificate itself and the endorsement upon it, it seems that the date of the transfer was about in July, 1904. I will ask you what explanation you have to offer as to why it was you were canceling the stamp, noting the transfer of the stock in 1900, and dating the transfer in 1904?

A. If the notation on the stamp referred to covers the date at which I dispossessed myself of the certificate by handing this certificate to Mr. Garth, I should infer that the other endorsement which indicates that this certificate was returned to the Waters-Pierce Oil Company canceled and other certificates issued in its place, was on the 12th day of July, 1904.

Q. That endorsement says that you transferred it, "I hereby sell, transfer and assign upon July 12th, 1904, this certificate" to Mr. Tinsley and Mr. Tilford and H. C. Pierce.

A. The writing you have just referred to is not my own. I do not know by whom or when it was placed there.

Q. I have not read the writing, but mostly the printing, "I hereby transfer, sell and assign."

A. The signature H. C. Pierce, put there by myself, was put there, I infer, on the 4th day of September, 1900.

Q. Did you date the assignment at the time of the transfer?

A. You mean the cancellation of the stamp or the assignment in writing on the back of the certificate?

Q. The assignment in writing on the back.

A. I did nothing more than cancel the stamp, as shown
773 hereon, and hand the certificate in blank to Mr. Garth.

Q. At the time these certificates were issued, representing the 2,750 shares of the stock of the Waters-Pierce Oil Company, up until September, 1900, where were they?

A. Beyond my knowledge, General.

Q. Did they remain in your possession any length of time after they were issued?

A. The certificates were issued, I should say, on the 29th day of May, 1900.

Q. The first of June, 1900?

A. The first of June.

"COMMISSIONER: I notice there are a number of stamps on the back of that certificate. Are they all canceled on the same date?

"Mr. HADLEY: Yes, sir; that has been gone over before.

"COMMISSIONER: Were they not required to be placed upon the certificate at the date of its original issue?

"Mr. HADLEY: Yes, sir; on June 1, 1900.

"COMMISSIONER: Is that the date of the certificate?

"Mr. HADLEY: Yes, sir.

"Mr. PRIEST: The revenue law required the stamp to be placed on the certificate when issued. Those stamps bear the date of cancellation—June 1, 1900. The revenue law required the certificate to

be stamped when it was transferred. That stamp bears date of September 4, 1900, and that is the date when Mr. Pierce signed his name to the blank transfer. The date of September 4, 1904, was added by the party who held possession of the certificate when he asked it to be transferred upon the books of the company."

Q. I wish you would examine certificate No. 1 of the Waters-Pierce Oil Company, and state for what amount that certificate,—what number of shares it called for.

A. One thousand.

774 Q. Is there a stamp upon the face of that certificate showing the date when it was issued?

A. The certificate is dated June 1, 1900.

Q. Then let me ask you, were the 4,000 shares of the stock of the Waters-Pierce Oil Company issued when the company was incorporated,—the new company?

A. I think so.

Q. That is your recollection, is it, Mr. Pierce?

A. The certificate book shows that they were issued to me on the first of June, which was the date succeeding the incorporation of the present company.

Q. Go back to certificate No. 2, and state the date of that certificate.

A. June 1, 1900.

Q. Is there a cancellation stamp on the face of that certificate?

A. There is.

Q. What is the date of it?

A. June 1, 1900.

Q. That certificate is for how much?

A. One thousand shares.

Q. Turn to certificate No. 3, and state how many shares that calls for.

A. Seven hundred and forty-eight.

Q. Is there a stamp upon the face of that certificate?

A. Yes.

"Mr. PRIEST: What do yo umean by stamp?

"Mr. HADLEY: Revenue stamp."

Q. What is the date of the cancellation of that stamp?

A. June 1st. There are several stamps.

Q. June 1, 1900?

A. Yes, sir.

775 Q. Now, turn to certificate of stock No. 5, and state what is the date of the issue of that stock.

A. June 1, 1900.

Q. Is there a revenue stamp upon the face of that certificate showing the date of its issue?

A. Yes.

Q. What is the date of that?

A. June 1, 1900.

Q. How much does that call for?

A. One share.

Q. That makes a total of 2749 shares, does it not?

A. I have not figured it.

Q. Well, certificate No. 1 calls for 1,000 shares; certificate No. 2 calls for 1,000 shares; No. 3 calls for 748 shares; certificate No. 5 calls for one share, making a total of 2749 shares. I will ask you to look at that stock book and find a single other share of stock with a revenue stamp on the fact of it showing the date of the issue of the stock.

"Mr. PRIEST: I am at a loss to discover the relevancy of this, General.

"Mr. HADLEY: You will see the relevancy of it later on."

A. What was your question, General?

Q. Look at the certificates of stock in that book and see if you can find another share of stock besides the 2,749 that had a revenue stamp placed on the face of it, showing the date of issue.

A. Certificate No. 4, issued June 1, 1900, appears here without any revenue stamps, either on the face or on the back. Certificate No. 8——

Q. What is the alleged date of that issue, or the date upon which it appears to have been issued—that is, the certificate No. 4?

A. June 1, 1900.

776 Q. And yet it has not a revenue stamp on it?

A. Are you referring, General, to the stubs or the certificates that remain in the book?

Q. The certificates remaining in the book.

A. Certificate No. 8, June 1, 1900, has a revenue stamp, marked W. P. O. Co., June 1, 1900.

Q. That makes 2,750 shares, does it not, Mr. Pierce?

A. Really, I have not figured it.

Q. Well, go ahead.

A. No. 9, dated January 14, 1904, which I assume was subsequent to the stamp requirement. Do you wish me to go further?

Q. That has none, of course?

A. That is all there are in the book.

Q. Now, look at these certificates which were issued on June 1, 1900,—that bore a revenue stamp on their face. I will ask you to look in the book of these certificates and state if all of them have revenue stamps on them, bearing date September, 1900.

A. Which ones are you referring to?

Q. That would be certificate No. 1.

A. The question is, have they revenue stamps on the back?

Q. Yes, sir.

A. Certificate No. 1 has a revenue stamp on the face and two on the back.

Q. Certificate No. 2, how about that?

A. You asked for the date of No. 1, didn't you, General?

Q. Yes, sir.

A. Really, I can't make out that date.

Q. Certificate No. 2, look at that.

A. Certificate No. 2 has a stamp on the face.

Q. Has it a stamp upon the back, showing transfer?

A. Certificate No. 2 has two stamps on the back, General.

777 Q. Can you make out those dates?

A. I can not.

Q. Is that transfer signed by you?

A. I signed the transfer in blank.

Q. Did you date it?

A. I did not.

Q. Look at certificate No. 3 and see if that has stamps on the back.

A. There are several stamps on the back, all of which are canceled.

Q. Can you make out the date on those that are canceled?

A. I can on part of them. Those I can make out are September 4th, 1900.

Q. Did you date that transfer?

A. I did not.

Q. Look at certificate No. 4 and state to whom that was originally issued, when, and the number of shares?

A. Certificate No. 4, issued June 1, 1900, to H. C. Pierce; 1248 shares.

Q. Does that bear a stamp on the face of it showing the date of its issue?

A. Not now.

Q. Has it a stamp upon it anywhere?

A. Not now.

Q. Did it ever have to your knowledge?

A. I do not recall.

Q. What was the date of its cancellation?

A. There is a red ink notation on the face, stating it was canceled June 13, 1904, I believe.

Q. At the time of the disincorporation of the Waters-Pierce Oil Company organized in 1878, how many shares of stock did the Standard Oil Company of New Jersey own in it?

A. I think the trustees of the Standard Oil Company of New Jersey held 2778.

778 Q. 2748, wasn't it?

A. 2748.

Q. Then, upon the reincorporation of the new company in 1900, the first three certificates called for 2748 shares, and they were signed by you and issued June 1, 1900, bearing the stamp upon the face, and were transferred by you, according to the stamp on one of them, in September, 1900?

A. How do you mean, signed by me as President or individual?

Q. Signed by you as President and endorsed by you on the back.

A. All certificates were signed at that time by me as President.

Q. And they were endorsed by you on the back, were they?

A. Certificates Nos. 1, 2 and 3, totaling 2748 shares, were signed by me at the bottom of the blank transfer on the back of each certificate.

Q. And the cancellation stamps upon certificate No. 3 show that they were canceled in September, 1900?

A. Stamps on the back of certificate No. 3 show that they were cancelled September 4, 1900.

Q. Now, when were you informed by your attorney that you were to assign that number of certificates to Mr. Garth or some person whom you did not know?

A. I think at the time——(Judge Stedman interrupted the reading.)

Judge STEDMAN: Wait a moment. We object to the question and answer, for the reason that it calls for hearsay and the answer gives hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. I think at the time of the organization of the present Waters-Pierce Oil Company.

Q. Were you paid anything for those shares?

A. I was.

Q. Who paid you?

779 A. Mr. Garth.

Q. Had you ever known Mr. Garth before that?

A. I had not.

Q. Did you make any inquiry as to who Mr. Garth represented?

A. I did.

Q. Did you find out who he represented?

A. I was told he represented Mr. Charles Pratt.

Q. Who was Mr. Charles Pratt?

A. Mr. Charles Pratt's home was in Brooklyn. He was connected with the Standard Oil Company.

Q. So, then, your understanding, to come down to the gist of the matter, Mr. Pierce, was that upon the reorganization of the company you should transfer the same number of shares of stock to Mr. Pratt of the Standard Oil Company that the Standard Oil Company of New Jersey held in the old company?

Judge STEDMAN: May it please Your Honor, we object to the question because it calls for hearsay, and the answer gives hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. I was told by my attorney, Mr. John D. Johnson, that he had made such an arrangement with the general counsel of the Standard Oil Company.

Q. And you carried out that agreement?

A. I did.

Q. So that upon the reorganization of the new Waters-Pierce Oil Company the proportion of your ownership in the stock was the same as in the old company?

A. You mean as represented by the certificates?

Q. No, as represented by actual facts.

A. As represented by the certificates, my ownership in the new company represented on the books of the Waters-Pierce Oil

780 Company, my ownership in the new company was 3996 shares——

Q. But in reality——

A. According to my understanding—— (Judge Stedman interrupted reading.)

Judge STEDMAN: We object to that, because the question gives hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. According to my understanding, as I was informed by my attorney, Mr. J. D. Johnson, the 2748 shares which have just been referred to was to be transferred, belonged to and was to be transferred to the Standard Oil Company or its representatives.

Q. Then, to come down to the facts in the case, and that is what I want to get at, the Standard Oil Company of New Jersey, or the Standard Oil Company, continued to have the same interest in the new company that it had in the old?

A. I believe so.

Q. And you so understood at the time?

A. I understood either at the time or shortly afterwards——

Judge STEDMAN: We object now to what he is informed by his attorney. That answer is hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. (concluded). When I was informed by my attorney, Mr. Johnson.

Mr. ALLEN: Did you read all of that answer?

Mr. LIGHTFOOT: Yes, sir.

(The answer was re-read, as follows):

A. I understood either at the time or shortly afterwards, when I was informed by Mr. Johnson, my attorney.

Q. Then from the time of the organization of the new company up to the present time, the Standard Oil Company has remained the owner of that 2750 shares of stock, has it not?

A. Not so far as the books of the company is concerned,
781 but so far as my belief and understanding is concerned.

Q. How long did Mr. Pratt hold them in his name?

A. They were never in Mr. Pratt's name.

Q. Who succeeded Mr. Pratt——

A. The certificates remained in my name from the date on which I handed them to Mr. Garth, which I assume was September 4, 1900, until some time in June, 1904, when they were transferred from my name to the name of Mr. M. M. Van Beuren. My knowledge of who held these certificates, the certificates themselves, in the interim, is beyond me.

Q. And all that time the dividends that you were paid upon this stock went to a representative of the Standard Oil Company?

A. Any dividends upon the 2748 shares which came into my possession was immediately transferred by me to the Seaboard National Bank of New York.

Q. And you understood, did you not, that you were transferring it there for the Standard Oil Company?

A. I presume so.

Q. When did this percentage of ownership between you and the Standard Oil interests arise in the Waters-Pierce Oil Company, the old company I mean, the 1250 and the 2750 shares?

A. Immediately subsequent to my purchase of Mr. Waters' interest in the forty per cent. originally subscribed in the first company by Waters, Pierce & Company.

Q. That was in what year?

A. I do not recall.

Q. Well, that was in 1887, was it not? It is when you succeeded Mr. Waters. No, that was in 1890, when Mr. Waters ceased to be a director or stockholder.

A. If that was the year, that was the time.

Q. That was the year he ceased to be a director?

A. Then it was during that year that the percentage of
782 the ownership in the company between the Standard Oil Company and myself was fixed.

Q. Became 1250 as against 2750?

A. Yes.

Q. Prior to that it had been forty per cent. and sixty per cent.?

A. Prior to that it had been forty and sixty, and prior to that it had been forty, forty and twenty, according to the original division.

Q. So from 1890 to the present time the Standard Oil Company or its representatives have held the 2750 shares, or a controlling interest in the Waters-Pierce Oil Company?

A. In the first Waters-Pierce Oil Company and in the second Waters-Pierce Oil Company, yes.

Q. Now, why was it on the organization of the new company you did not have the ownership of the Standard Oil Company appear upon the books of your company?

"Mr. PRIEST: I do not think that is material in this case.

"I think the question is proper."

Q. Answer the question, Mr. Pierce.

A. Are you asking for my personal reasons, General?

Q. Yes, sir. I am asking for the reasons.

A. My personal reasons were that it had been—— (Judge Stedman interrupted the reading.)

Judge STEDMAN: We object to that question, Your Honor, because it is hearsay.

The COURT: Let me see the answer. (Examines the answer.) The objection is overruled.

Judge STEDMAN: We except.

A. My personal reasons were that it had been agreed by my attorney and the general counsel of the Standard Oil Company that the stock should stand in my name.

Q. Was that to cover up something, Mr. Pierce?

A. It was for the purpose of enabling me to absolutely
783 own, control and operate the Waters-Pierce Oil Company.

Q. How did that enable you to own, control and operate the Waters-Pierce Oil Company, when in September the stock was transferred, in accordance with the previous agreement, over to Mr. Pratt, a representative of the Standard Oil Company?

A. It is notoriously known that people in whose name stock appears, whether they own it or not, do own and control and vote the stock so long as it stands in their name, and the mere fact that they have parted with the certificates does not take from them the power to vote and control the stock.

Q. But during that period I have understood you to say that the Standard Oil Company, in reality, owned that stock?

A. My understanding is that they did.

Q. Why didn't you want that fact to appear upon the records of the Waters-Pierce Oil Company?

A. Because I wished myself to own, control, direct and vote the stock which represented the ownership of that company.

Q. Although you had endorsed the stock, signed your name to the transfer, and the stock itself had passed out of your possession?

A. Exactly.

Q. And remained in the possession of Mr. Garth, representing Mr. Pratt, who represented the Standard Oil Company?

A. I do not know. Whether the certificates remained in his name I do not know; but I do know that I controlled and operated the property under my ownership until the stock was transferred out of my name, when I became a minority instead of a majority stockholder in the company.

Q. You never was a majority stockholder in the company, except in fixing this transfer?

A. I paid for all the stock with my own check, and the stock remained in my own name and I managed the company through my stock ownership.

784 Q. You understood that you should not remain the owner of any larger proportion than you held in the old company?

Judge STEDMAN: We object, may it please the Court, because it calls for hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

A. I had the understanding through my attorney that I was to remain the owner of record of the stock, and to control the company and continued to do so so long as the stock remained in my name; that was the object of putting the stock in my name.

Q. It was not to enable you to get a license in the State of Texas that you handled the transaction in that way, was it, Mr. Pierce?

"Mr. PRIEST: We object to that as entirely immaterial.

"COMMISSIONER: The objection is sustained."

Q. You said in your direct examination, "Up to the Spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters-Pierce Oil Company, but at that time they transferred the stock which had stood in my name to Mr. M. M. Van Beuren, and began in other ways to assume a control over the affairs and operations of the company." In that answer you referred, did you not, to the same stock that you have spoken of as having been transferred to Mr. Garth?

A. I did. Not transferred, General, on the book, but transferred so far as the certificates themselves are concerned.

Q. Transferred by endorsement. So your statement, then, Mr. Pierce, as I understand it, is that in both the old company and the new company you continued in charge of its operations up until 1904?

A. That is correct.

Q. And whatever the company did from 1900 up until 1904, it did under your management and control?

A. I believe so.

785 Q. Then you say the Standard Oil Company transferred this stock that you had endorsed in blank, to M. M. Van Beuren, and began in other ways to assume a control over the affairs and operations of the company. In what other ways did they begin to assume a control over the affairs and operations of the company?

A. I said that the Standard Oil Company transferred to M. M. Van Beuren the stock which I had endorsed in blank. This is the reverse of your statement.

Q. I was simply giving your statement.

A. I did not endorse it in blank to M. M. Van Beuren.

Q. No, you endorsed it in blank to the Standard Oil Company.

A. I endorsed it to no one. I endorsed it in blank.

Q. I read the statement as it was given.

A. Your statement was that it was endorsed in blank to M. M. Van Beuren.

Q. No, sir. You are getting off the question.

A. I do not wish to get off the statement. I endorsed the certificates in blank, and they were afterwards transferred to M. M. Van Beuren.

Q. I asked you in the other question, in what other ways besides securing the transfer of this stock to M. M. Van Beuren did the Standard Oil Company begin to assume a control over the affairs and operations of the Waters-Pierce Oil Company.

A. Ousting directors that I had elected, and substituting those of its own selection, and in sending men here to manage the Waters-Pierce Oil Company, sending men into the territory of the Waters-Pierce Oil Company.

Q. Anything else?

A. Everything that would follow such a changed condition of affairs.

Q. Did they change in any way the conduct of the business of the Waters-Pierce Oil Company besides changing the personnel of the management?

786 A. Very materially.

Q. Did they begin to sell oil in competition with the Standard Oil Company of Indiana?

A. I could not say as to that, General. I was not here at the time.

Q. And did they enlarge or change the territory of the Waters-Pierce Oil Company?

A. I could not say as to that, either. I was not here.
Q. Did they commence to get oil from any different sources?
A. That I can not say. I presume not. You mean other sources than themselves?
Q. Yes, sir, than themselves.
A. I presume not.
Q. You said in your answer this morning, "I protested against this conduct as a violation of their agreement with me and as contrary to the representations I had made to the people of Texas." Now, when had they made such an agreement with you?
A. In 1878, when the first Waters-Pierce Oil Company was organized.
Q. That was the agreement you referred to, was it?
A. Certainly.
Q. With whom was it made?
A. The individuals of the Standard Oil Company of Ohio.
Q. Name some of them.
A. Colonel Oliver H. Payne.
Q. He is now dead, is he?
A. Very much alive. His father, General, is dead,—the ex-Senator.
Q. Who else?
A. Colonel W. P. Thompson.
Q. Is he dead?
A. Unfortunately, yes. Mr. Horace A. Hutchins.
Q. Is he dead?
A. Alive. To a certain extent, Mr. John D. Rockefeller.
787 You are speaking now of 1878?
Q. Yes.
A. I think that comprises the gentlemen I made my transactions with.

Mr. LIGHTFOOT: Skip about half a page.
Judge STEDMAN: Where does it begin?
Mr. LIGHTFOOT: At "Who audited the books."

Q. Who audited the books of the Waters-Pierce Oil Company?
A. The auditors of the Waters-Pierce Oil Company for the Waters-Pierce Oil Company and the auditors of the Standard Oil Company for and on behalf of the Standard Oil Company.
Q. How often did the Standard Oil Company audit the books of the Waters-Pierce Oil Company?
A. As often as it saw fit to do so.
Q. And after the reorganization who audited the books of the Waters-Pierce Oil Company?
A. So far as I know, and up to the time I ceased to handle the details of the Waters-Pierce Oil Company, only the auditors of the Waters-Pierce Oil Company.
Q. Did you ever have any knowledge of any Standard Oil Company auditors auditing the books of the Waters-Pierce Oil Company?
A. Not between 1900 and 1904.
Q. Did you after 1904?
A. Yes.

Q. Were you here all the time from 1900 up until 1904?

A. Very little of the time, General.

Q. Did you say that during that period you were in control of the Waters-Pierce Oil Company?

A. I did.

Q. And do you say you have no knowledge of the auditing of the books of the Waters-Pierce Oil Company by auditors of the Standard Oil Company?

788 A. I have no knowledge of the auditing of the books of the Waters-Pierce Oil Company by the auditors of the Standard Oil Company between the first of June, 1900, and some time during the year 1904.

Q. For the purpose of refreshing your recollection, Mr. Pierce, I will ask you if you do not remember on the 24th day of November, 1903, of being notified by Mr. J. P. Gruet in a letter written by him in St. Louis and sent to you in New York that an auditor from the Standard Oil Company office had been detailed to audit the books of the Waters-Pierce Oil Company, and that he arrived in the City of St. Louis on the 20th day of November for that purpose, and calling upon you to send some notes here in order that the books of the Waters-Pierce Oil Company might appear straight?

A. I have no knowledge of any such letter. I doubt very much if it was ever received. During that time, General, I was very ill, and for months, one period more than a year, I was unable to be seen or consulted in regard to business. That condition lasted over a period of three or four years.

Q. I will ask you if on November 30th you did not answer that letter by sending to Mr. Gruet the notes referred to?

A. I have no remembrance of it.

Q. Do you remember the circumstances of sending any notes to Mr. Gruet in response to a request from him?

A. I do not remember having been requested to do so, verbally or in writing, or having complied with the request or in any manner anything concerning it.

Q. But you did learn that the auditors of the Standard Oil Company afterwards were auditing the books of the Waters-Pierce Oil Company?

A. I was informed verbally and by communications during the year 1904 and the fore part of the year 1905 that the Standard Oil Company auditors were auditing the books of the Waters-Pierce Oil Company.

Q. Did you learn the individuals who were doing this?

789 A. I did not. I did not ask or was not advised.

Q. Did you protest against that?

A. I do not remember that I did, General. I may have done so.

Q. Did the old Waters-Pierce Oil Company have any representative at 26 Broadway?

A. Do you mean a special representative?

Q. Yes, sir.

A. To whom it paid a salary?

Q. Yes, sir.

A. I think, General, that for a great many years the first Waters-

Pierce Oil Company did pay to one or more, probably several, employes of the Standard Oil Company at 26 Broadway for special services rendered by such employes to the Waters-Pierce Oil Company in connection with purchases of supplies for the Waters-Pierce Oil Company and the shipment of those supplies to Mexico. I will explain that we shipped nearly everything that went into the upkeep of refineries in Mexico from New York, and the tin for the manufacture of cases went from there and iron for tanks, in fact everything that entered into the manufacture of oil down there was shipped from New York, and we employed Standard Oil representatives who were familiar with our requirements to purchase and forward those supplies, bill them against the St. Louis office, and it is my impression that we paid such employes from the St. Louis office during a number of years prior to the dissolution of the first Waters-Pierce Oil Company.

Q. They were not regular employes of the Waters-Pierce Oil Company?

A. I should say they were to the extent of the employment.

Q. That is, when they would do work for you their time for doing that work would be charged against the Waters-Pierce Oil Company?

A. Only.

Q. Did you make any reports to 26 Broadway to any representative of the Standard Oil Company prior to 1900?

790 A. Myself, personally?

Q. No, the company.

A. I think I did regularly.

Q. And to whom were those reports made?

A. An auditor of the Standard Oil Company or the Comptroller of the Standard Oil Company, or various heads of departments of the Standard Oil Company.

Q. And what did those reports disclose, Mr. Pierce?

A. They disclosed a synopsis of the Waters-Pierce Oil Company's business as it related to these various departments to whom the Waters-Pierce Oil Company reported.

Q. Those reports showing the general conduct of the business of the Waters-Pierce Oil Company went to H. M. Tilford, did they not?

A. That I am not sure of. I had no occasion to know. I do not know to what particular individuals they were sent.

Q. Was not W. H. Tilford regarded as the man to whom the reports of the Waters-Pierce Oil Company came finally for supervision?

A. I think the reports were mailed to the heads of the departments who were interested in the character of the report.

Q. And H. M. Tilford had been a director of the company?

A. W. H. Tilford and H. M. Tilford both had been. You are speaking of the old or new company?

Q. I am speaking of the old company.

A. Both had been directors.

Q. But H. M. Tilford was a director up until 1900?

A. I think so.

Q. During that time the reports of the Waters-Pierce Oil Com-

pany's business went to the various heads of departments at 26 Broadway?

A. Such reports as it gave to the Standard Oil Company went to the various heads of departments, but those reports covered only a very limited part of the Waters-Pierce Oil Company's business.

791 Q. Did you make a marketing report?

A. I presume so, although I do not remember the details. At one time I perhaps could have enumerated most of them to you. There were a good many.

Q. Did you make a report as to salaries?

A. I think the reports as to salaries were made once a year.

Q. To whom?

A. I am not sure, but I think to Mr. H. M. Tilford.

Q. Did you make a lubricating oil report?

A. I don't remember that we did; possibly.

Q. Did you make a specialty report, report as to the sale of specialties?

A. Not to my knowledge.

Q. You don't know that you did not?

A. I do not know that we did not. We made generally whatever reports were desired.

Q. Whatever were called for?

A. Yes, sir.

Q. After the organization of the new company was there any change in that system of reports to 26 Broadway?

A. After the new company was organized the reports and communications were sent to Mr. R. H. McNall, 26 Broadway, instead of the various heads of departments of the Standard Oil Company, as had been the case during the existence of the old Waters-Pierce Oil Company.

Q. What was the purpose of that change, Mr. Pierce?

A. The purpose of the change was that the growth of the Waters-Pierce Oil Company's business had very largely increased the correspondence with the various heads of the Standard Oil Company, and in addition a multiplicity of manufacturing and refining plants of the Standard Oil Company as sources from which the Waters-Pierce Oil Company received its supplies had increased very largely

792 the correspondence between the Waters-Pierce Oil Company and the various interests and the individuals of the Standard Oil Company, and practice proved that very frequently delays in receiving orders, transmitting orders, shipping and otherwise handling the business between the two occurred, and as a business transaction it was found expedient, and so, upon my advice, a representative was selected, to be called Commercial Agent of the Waters-Pierce Oil Company, who was to reside in New York, have his office at 26 Broadway, the home of the Standard Oil Company, through whom all communications from the various Standard Oil Company interests, plants and heads of departments were to be transmitted to the home office of the Waters-Pierce Oil Company in St. Louis, and to whom similar reports and communications from the home office in St. Louis of the Waters-Pierce Oil Company were to be transmitted

to the various refineries, plants and heads of departments of the Standard Oil Company. Mr. McNall was selected for the position because, as chief clerk to Mr. H. M. Tilford, Mr. McNall had become familiar with most of the transactions which it was thus sought to consolidate, and Mr. McNall was engaged by me; his salary was fixed; he was furnished with stationery, and, until he resigned this year, Mr. McNall continued to be the New York representative of the Waters-Pierce Oil Company, not only in connection with those transactions with the Standard Oil Company but to a very large extent Mr. McNall represented the Waters-Pierce Oil Company in purchasing supplies of every kind and character used by the Waters-Pierce Oil Company in its business in Mexico.

Q. He had been a clerk of Mr. Tilford before that, had he?

A. I think his position was assistant to Mr. H. M. Tilford.

Q. He continued, after he became the Commercial Agent of the Waters-Pierce Oil Company, in the office of Mr. Tilford?

A. I always found Mr. McNall in one of the offices of Mr. Tilford. You mean actually in the room?

Q. Yes, sir.

793 A. He did.

Q. Why was it the reports to Mr. McNall from the Waters-Pierce Oil Company were addressed to him at 75 New Street?

A. That is beyond my knowledge. I only learned it through your developments.

Q. You were running the company here, Mr. Pierce?

A. General, I have been living in New York for the last three or four years, or rather that is where I spend most of my time. My health has required me to be there.

Mr. LIGHTFOOT: We skip the next.

Q. You say you were not aware that these reports to Mr. McNall were addressed to him at 75 New Street, the rear of 26 Broadway?

A. Not until I read it in the newspapers.

Q. When did Mr. McNall cease to be the Commercial Agent of the Waters-Pierce Oil Company?

A. I do not recall, General, the exact time, but——

Q. It was this year, was it, after the institution of this suit?

A. It was during this year. It was February, March, April or May.

Q. And during the time that Mr. McNall held the position of Commercial Agent there were full reports as to the business of the Waters-Pierce Oil Company sent to him, were there not?

A. No, they were not full reports of the business. Very meager percentage of the reports were sent to him.

Q. Reports were sent to him showing the financial condition of the business, were there not?

A. That I do not know.

Q. You were in charge of the company?

A. I was in charge of the company, but I could be in charge of a good many companies and not be on the spot.

Q. Here are a lot of reports furnished me as reports made to Mr.

McNall by the Waters-Pierce Oil Company, and I will read
794 the headings of them. Take for instance the first one here, "Sales and deliveries of refined oil by Waters-Pierce Oil Company during the month of ——." Do you remember of that report being made to Mr. McNall?

A. I do not.

Q. Here is the next report, a report as to the marine sales?

A. If you will pardon me, I am quite willing to say that they were all sent to him. If my attorney handed you those blanks, I am willing to say that they were all sent.

Q. Here is a report as to the barrels as compared with the same month of the year before. Do you know of that report being sent?

A. Won't you accept my general statement as to that, General?

Q. Here is a report showing the balance of the money on hand, sent to Mr. McNall?

A. I am not personally familiar and have not been for years familiar with the character of the reports that were furnished.

Q. Then you are not prepared to say that full reports were not sent to Mr. McNall?

A. I repeat again that reports of only a small percentage of the transactions of the Waters-Pierce Oil Company were sent.

Q. The results of the conduct of the business of the Waters-Pierce Oil Company, you say, were not reported to Mr. McNall?

A. The results of some parts of the business of the Waters-Pierce Oil Company were always reported by the first Waters-Pierce Oil Company to the Standard Oil Company representatives, the heads of departments. Reports covering a part of the business of the second Waters-Pierce Oil Company were sent to Mr. R. H. McNall.

Q. At 26 Broadway?

A. 26 Broadway was the last address that I knew of.

Q. Do you say that reports as to the financial condition of the Waters-Pierce Oil Company were not sent to Mr. McNall?

A. In a general way, General Hadley. I know of the
795 character of the reports that were formerly sent from the St. Louis office by the old company to the Standard Oil Company and by the new company to Mr. McNall, and when I say that they coverd only a small per cent. of the business, I am referring to the business in its entirety. The details of the business, the method of enlarging the business, the policy of the business, and matters of that kind, were not reported to Mr. McNall or the Standard Oil Company, but only results of transactions already had were reported.

Q. That is what I am getting at. The result of the conduct of the business of the Waters-Pierce Oil Company was reported?

A. Only a part of the business, a small part of the business.

Q. I find here a monthly report of delivery of wax candles, grease, etc. Do you remember that report being sent?

A. I presume it was sent.

Q. And a report of deliveries of lubricating oil during a certain month?

A. I presume it was sent.

Q. And reports of outside oils?

A. I presume it was sent.
Q. Delivery of specialty oil?
A. I presume it was sent.
Q. Marine sales I have already mentioned?
A. I know nothing about that, General.
Q. Comparative sales of barrels, of fifty gallons each, for a certain period as compared with the same period the year before?
A. I think those were sent.
Q. Those were sent to Mr. McNall? Reports of the total sales and net results of the business of the stations of the Waters-Pierce Oil Company?
A. Perhaps that was sent.

Q. The statement showing the cost of barreling and marketing oil sold by the Waters-Pierce Oil Company during a certain month. Do you know of that being sent?

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A. I am willing to repeat my offer to presume all reports were sent which you have there, which you say were handed to you by my attorneys, the attorneys of the Waters-Pierce Oil Company.
Q. We do not agree that they show the entire business of the Waters-Pierce Oil Company?
A. No, for the result is a small part of the business. The business consists much more largely of preparatory work and of execution than it does of results. The results are of very little consequence aside from the profits.
Q. Isn't that what men are in business for?
A. I am, and have been for these many long weary years.
Q. And that is what the Standard Oil Company is in business for?
A. It is so reported.
Q. Here is a report of milk cans, turpentine, fuel, oil, etc. That was sent with your knowledge?
A. I presume it was sent. Not to my knowledge, however.
Q. Here is another report as to deliveries of refined oil and naphtha by tank wagons?
A. That is smaller and more insignificant than anything that has come to my knowledge.
Q. You are somewhat surprised at the detail and insignificant matters that were reported to Mr. McNall?
A. Not at all. Mr. McNall was furnished anything and everything that he asked for as the representative of the Standard Oil Company and its various heads.
Q. Now, here is a report as to the sale and deliveries of naphtha, lubricating oils, other outside oils and merchandising?
A. I presume it was sent.

Q. Now, here is a report of refined oil and naphtha delivered by tank wagons, the semi-annual statement showing the cost of barreling and marketing oil. Do you know of that being sent?

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A. I do not know, but I presume it was.
Q. Now, here is a report showing the monthly statement of the result of the sales and deliveries of refined oils.
A. I do not know concerning it, General. I presume it was sent.

Q. Now, here is a report of the deliveries of lubricating oils, outside oils, refined oil and petroleum merchandised to marine trade?

A. I do not recall that. I did not know we were reporting marine business. I presume it was sent, however, General.

Q. And any system of reports that the different heads of departments at 26 Broadway would call for would be sent to them?

A. The different heads of the different departments of the Standard Oil Company of New Jersey were in the habit of communicating through Mr. McNall, who was stationed at 26 Broadway, their desires, and, as the manager of the Waters-Pierce Oil Company, it was my understanding that the heads of departments requested such information as the Standard Oil Company of New Jersey, who was a minority stockholder in the Waters-Pierce Oil Company, desired to have——

Q. Minority or majority?

A. Majority—desired to have, and, recognizing the right of the largest stockholder in the company to have such information concerning its operations as it desired, I very readily instructed the various heads of the departments of the Waters-Pierce Oil Company to send such information as was asked for.

Q. And that system continued during the entire life of the new company, or since its organization?

A. I can not speak, General, as to the interim during the years commencing with 1904 and ending in June, I think, 1905, or early in 1905.

Q. That was the time that the Standard Oil Company sent
798 out Tinsley and Backus, and some of the older employés of the Waters-Pierce Oil Company were ousted, was it?

A. I think it occurred during that period.

Q. Are you familiar with this cash statement made by the Waters-Pierce Oil Company, a copy of which I hand you?

A. I am.

Q. Did you know that that daily cash statement was sent to Mr. McNall, your Commercial Agent?

A. I did.

Q. And that disclosed, did it not, Mr. Pierce, the financial condition each day of the Waters-Pierce Oil Company?

A. Financial condition of the St. Louis office only.

Q. That was the home office, was it not?

A. It was the home office in this country. In Mexico the City of Mexico was the home office.

Q. Were reports made from the City of Mexico to St. Louis?

A. Always.

Q. Then the result of the conduct of the business in Mexico would be reported to St. Louis?

A. Always.

Q. And then the report from St. Louis went to 26 Broadway?

A. Well, you are asking about this particular report?

Q. Yes, sir.

A. I can not say that this particular report included the cash condition in Mexico.

Q. But the cash conditions in Mexico were reported here?

A. Always.

Q. And this was the controlling office of the Waters-Pierce Oil Company, was it not?

A. It was. That is a part of the percentage of business, General, which I excepted from your statement that we reported everything.

799 Q. Was not the business in Mexico part of the business of the Waters-Pierce Oil Company?

A. Yes, but it would not necessarily be included in a report of that character.

Q. Do you say it was not?

A. No, sir, I do not.

Q. The conduct of the business of the Waters-Pierce Oil Company has been profitable, has it not, Mr. Pierce?

A. It has been satisfactory to me, General.

Q. The dividends of the new company have run something like four hundred per cent. a year, have they not?

A. Do you mean more or less?

Q. Well, about that?

A. Hardly.

Q. How much?

A. Are you asking what they have been?

Q. Yes, sir.

A. From six to seven hundred per cent.

Q. I was too low, then? Why hasn't the Waters-Pierce Oil Company developed oil fields and refined oils?

A. Well, I have not thought it to the interest of the Waters-Pierce Oil Company to do so.

Q. You say the development of oil wells and the establishment of refineries near the point of consumption lessens the cost?

A. The Waters-Pierce Oil Company was not in the business of refining oil in the United States.

Q. You were authorized to do it in your charter?

A. We were authorized to do a good many things we did not do.

Q. Why did you think it not advisable to do so? Was it because you agreed with the Standard Oil Company not to do so?

A. No, sir; there was no such agreement ever made be-

800 tween myself and the Standard Oil Company. On the contrary, the Waters-Pierce Oil Company has built and is operating four very large refineries on its own account absolutely without hindrance of the Standard Oil Company, and has been doing so for the past twenty-five years.

Q. And that has lessened the cost to the consumer?

A. Very materially.

Q. Why haven't you established refineries in Texas, then?

A. Because the Waters-Pierce Oil Company was not prepared to establish oil refineries. It had no facilities for doing so, and it was receiving its refined products from the Standard Oil Company promptly and of good quality and in a way to enable it to care for all of the business that I thought it advisable for the Waters-Pierce Oil Company to engage in, and other people than the Standard Oil

Company, as well as the Standard Oil Company, was refining oil in the State of Texas, and the Waters-Pierce Oil Company has taken from the Standard Oil Company the production of the refinery at Corsicana, and all the products of the Security Oil Company in Texas, and there was no occasion for the Waters-Pierce Oil Company to go into the refining business and invest capital when it could purchase oil from them more cheaply.

Q. At all events, in all of the territory in the State of Missouri in which your company has sold oil it has no refinery, and it has sold no oil which it has refined itself?

A. No burning oil, General. The Waters-Pierce Oil Company manufactures lubricating oils and a great many kinds of oils other than burning oil which it sells within the State of Missouri.

Q. In your territory in Missouri you have sold the refined products that you have gotten from the Standard Oil Company?

A. I think almost entirely.

(Skipped about half a page.)

Q. Prior to 1878 the Standard Oil Company of Ohio had an office here and sold oil here?

801 A. Prior to the organization of the first Waters-Pierce Oil Company the Standard Oil Company of Ohio had an office for one year, or about one year, in the city of St. Louis.

Q. And they sold oil here?

A. It did.

Q. Did Pierce & Company have a refinery here at that time?

A. H. C. Pierce & Company had a refinery; Waters, Pierce & Company had a refinery, but I am not sure if Waters, Pierce & Company ever operated that refinery so far as refining oil was concerned.

Q. Who was in charge of the business of the Standard Oil Company prior to 1878?

A. Where?

Q. Here?

A. William H. Cobb.

Q. Was Mr. C. M. Adams connected with that company?

A. During the year prior to May, 1878, I think Mr. Adams was bookkeeper for Mr. Cobb, for the Standard Oil Company in St. Louis.

Q. On the organization of the Waters-Pierce Oil Company in 1878, the Standard Oil Company ceased to do business in St. Louis, did it not?

A. It did.

Q. And Mr. Adams became connected with the Waters-Pierce Oil Company as Secretary, did he not?

A. He became connected with the company, I think, as Secretary, although I do not remember the exact time.

Q. And from that time up to the present has the Standard Oil Company, to your knowledge, had a tank station or office in St. Louis?

A. I know that it has not.

(Skipped about half a page.)

Q. Did you know the firm of Scofield, Shurmer & Teagle?

A. I knew several members of that firm.

Q. Did you know that they had a place of business here?

802 A. I knew they had a place here and in Springfield, Missouri.

Q. They had tank stations, did they not?

A. Both places.

Q. The same as your company?

A. No, sir; both inferior.

Q. They had some of the same kind?

A. No, sir; not of the same kind. They had tank stations.

Q. From which they distributed oil?

A. Yes, sir.

Q. And the Republic Oil Company succeeded to the business of Scofield, Shurmer & Teagle?

A. I do not know.

Q. Any way, Scofield, Shurmer & Teagle went out of business in 1901 and the Republic came in, did it not?

A. I do not recollect the date. I know that Scofield, Shurmer & Teagle ceased to do business in the Waters-Pierce Oil Company's territory in Missouri, and I know some time afterwards the Republic Oil Company commenced to do business in the city of St. Louis.

Q. Did you know that after the Republic Oil Company took over Scofield, Shurmer & Teagle its tank station at Springfield, Missouri, was discontinued?

A. I know that the tank station of Scofield, Shurmer & Teagle at Springfield was discontinued before the Republic commenced business in St. Louis.

Q. Do you know that the tank station of Scofield, Shurmer & Teagle was not discontinued until after the Republic took over those properties?

A. The Waters-Pierce Oil Company——

Q. Answer the question.

A. I am doing so, directly. The Waters-Pierce Oil Company purchased the Scofield, Shurmer & Teagle plant at Springfield, Missouri, and absorbed it into its own business.

803 Q. Do you say that the Republic Oil Company did not do business for a while in Springfield?

A. So far as I know they did not, and I think I know.

Q. Isn't it a fact that the Republic Oil Company took over the property of Scofield, Shurmer & Teagle at Springfield, and operated that for a while, and then discontinued and removed the tank station?

A. I think I can state positively that it is not a fact, and that the Waters-Pierce Oil Company had no dealings with the Republic Oil Company either at Springfield or elsewhere.

Q. The Republic Oil Company is owned by the Standard Oil Company of New Jersey, is it not?

A. I do not know. I accused the Standard Oil Company of owning the Republic Oil Company and it denied it.

Q. Not in the present year, though?

A. I have not communicated with the Standard Oil Company concerning it during the year 1905.

Q. Does your company own what is known as the International Oil Works?

A. It does.

Q. And operates that as an independent concern?

A. It does not.

Q. How does it operate it?

A. Mr. Grenner is employed on a salary and conducts the business for the Waters-Pierce Oil Company.

Q. How long has that been going on?

A. I should say twelve or fifteen years.

Q. And it sells oil here as a separate concern, does it?

A. I believe it sells oil under the name of International Oil Works.

Q. And maintains a separate office?

A. I think it does.

Q. And maintains tank wagons of its own?

A. Yes, I think so.

804 Q. And yet that company is owned by the Waters-Pierce Oil Company?

A. Yes.

Q. What is the purpose of that concealment?

A. It is not a concealment.

Q. Why, then, do you carry on the business of the Waters-Pierce Oil Company under an alias?

A. Business reasons, all of which are good and sufficient to the management.

Q. Is there any other portion of the business of the Waters-Pierce Oil Company being done under the name of some other company?

A. Locate it, please.

Q. In St. Louis?

A. I can not recall any, General. If I could I would cheerfully do so.

Q. Or in the State of Missouri?

A. That I do not know.

Q. You did operate the Inland Oil Company, did you not?

A. I think not. I think perhaps the Inland Oil Company was absorbed by the Waters-Pierce Oil Company. I do not think it ever owned or operated the Inland Oil Company.

Q. Isn't it a fact that you did operate the Inland Oil Company for a while and its operations were discontinued by orders from 26 Broadway?

A. That is not within my knowledge.

Q. And was not that order sent in a letter addressed to you as President of the Waters-Pierce Oil Company?

A. If it was I never received it.

Q. What is your recollection as to whether the Inland Oil Company was operated for a while and then discontinued?

A. My recollection is very distinct that the Waters-Pierce Oil

Company never owned or operated the Inland Oil Company until it purchased the Inland Oil Company and placed Mr. Gunni-
805 son, its former manager, upon a salary.

Q. Is it operating that company now?

A. I do not think so, although I may be mistaken.

(Skip half a page.)

Q. Do you know John D. Archbold?

A. Very well.

Q. What position does he occupy?

A. I do not know his official title, General. I do know that he was a member of the Executive Committee of the Standard Oil Company. I also know that at various times he has been president of companies connected with the Standard Oil Company.

Q. Did you hear his statement made in this case?

A. I did not hear the statements of any of the gentlemen you have had the honor to examine.

Q. His statement is that the independent refineries in the United States could supply all the business in refined oil in the United States. Did you ever investigate the statistics as to the capacities of the independent refineries?

"Mr. PRIEST: I do not think it is proper, if Your Honor please, what Mr. Archbold says.

"COMMISSIONER: Objection overruled.

"To which action the respondents excepted."

Q. Did you ever investigate the statistics as to the capacities of the independent refineries in the United States?

A. I have not recently investigated the statistics as to the percentage of petroleum products manufactured by the Standard Oil Company and other oil companies in the United States.

Q. Are you able to state that it is not a fact that during the entire existence of the new Waters-Pierce Oil Company that the independent refineries in the United States had a capacity sufficient to supply all the trade in refined oil?

806 A. I am not able to state, because I have not made any investigation.

Q. You are not stating that that is not a fact?

A. No, sir. I have very carefully guarded against making statements I did not know to be correct. I have made no investigations along that line. I had no occasion to do so.

(Skips about half a page and begins with an answer.)

A. No. The first refineries from which the first Waters-Pierce Oil Company received its oil were all located at Cleveland, Ohio. Afterwards, when oil was discovered in the vicinity of Parkersburg, West Virginia, then a number of supplies, certain kinds of supplies, particularly the best brand of Eupion oil, was shipped from Parkersburg, West Virginia. Later, when crude oil was discovered in Ohio and Indiana, and the Standard Oil Company constructed a refinery at Whiting, at a less distance, consequently cheaper, a large percentage of the supplies of the Waters-Pierce Oil Company came

from Whiting, Indiana. So that those three points were practically the sources from which the Waters-Pierce Oil Company, during twenty-five years, received its supply of oil. The supply of oil for the Waters-Pierce Oil Company's territory in Mexico, or its Mexican territory, was all shipped from Philadelphia in the crude state in Waters-Pierce Oil Company's steamers to Vera Cruz and Tampico and afterwards handled exclusively, manufactured and sold, by the Waters-Pierce Oil Company in Mexico. So that the sources from which the Waters-Pierce Oil Company has received its supplies from the Standard Oil Company, up until three or four years, has been almost entirely from Cleveland, Ohio; Parkersburg, West Virginia, and Whiting, Indiana.

Q. There were independent refineries at Cleveland, were there not?

A. In the early days, yes. I think not within the last fifteen or twenty years.

Q. Didn't Scofield, Shurmer & Teagle have one of the largest refineries there?

807 A. They had a very insignificant refinery so far as our requirements were concerned.

Q. It did have a refinery, however?

A. It did.

Q. Did you get any oil from any other refineries besides the Standard Oil Company at Cleveland, Ohio?

A. I think we did.

Q. In the last four years?

A. That I do not recall, General.

Q. There are independent refineries in the State of Kansas?

A. So I have been told.

Q. Did you ever get any oil from them?

A. I think not.

Q. Your oil now comes from Sugar Creek and Neodesha?

A. Neodesha, Kansas; Corsicana, Texas; Beaumont, Texas; Atlantic Refining Company, Philadelphia, and several other points, where the Standard Oil Company now supplies.

Q. And the shipment of these oils is directed by Mr. McNall from 26 Broadway, is it not?

A. Not at the present time.

Q. Up until the commencement of this suit it was, was it not?

A. No, it has never been directed by Mr. McNall. All shipments made to the Waters-Pierce Oil Company, to whatever point, were made under directions from the officials of the Waters-Pierce Oil Company in the St. Louis office.

Q. At whatever price the Standard Oil Company wanted to bill it?

A. At whatever price was the current price of the goods upon the day the order was received.

Q. You did not know that until the order was received, did you?

A. Nearly always we did, because we had the current price of the Standard Oil Company, and we knew.

808 Q. That is, the Standard would sell it at the quoted price?

Mr. ALLEN: That question is not answered.

Q. Now, during the existence of the Waters-Pierce Oil Company, the old one or the new one, did you have the territory in Colorado and New Mexico?

A. Not during the existence of the new Waters-Pierce Oil Company. I think I have during the existence of the first Waters-Pierce Oil Company.

Q. Didn't the old Waters-Pierce Oil Company sell oil a while in the State of Colorado and New Mexico until the Standard Oil Company took it away from them?

A. I think not. I do know that the firm of Waters, Pierce & Company, and its predecessors, sold a great deal of oil, and personally I organized for H. C. Pierce & Company a good deal of territory in Colorado.

Q. But after the organization of the new company that territory was taken over by the Standard, was it not?

A. I think not. I think it was many years after the organization of the first Waters-Pierce Oil Company when the Standard Oil Company, under any name, did business in the territory to which I refer as being operated in by H. C. Pierce & Company.

Q. Did the Continental Oil Company sell oil there?

A. I think not in 1878. The Continental was not in existence at that time.

Q. Has some of the territory in Louisiana been recently taken away from it?

A. None of it.

Q. You still sell oil there?

A. The Waters-Pierce Oil Company sells in Louisiana West of the Mississippi River.

Q. But you don't sell East of that?

A. We have never done so.

809 Q. That is Standard territory?

A. I do not know. I know that the Waters-Pierce Oil Company does not claim it as its territory.

(Skips about a page.)

Q. I am talking United States. Then the fact that the Waters-Pierce Oil Company did from ninety to ninety-eight per cent. of the business was not due to the fact that there were not competitors that had tank wagons and tank stations to supply the trade?

A. At the time the Waters-Pierce Oil Company did the percentage of business you just mentioned there were very few competitors of the Waters-Pierce Oil Company within the territory within the United States in which it did its business.

Q. I am talking of the new company?

A. I am speaking of the new company as well as the old. I doubt if the new company did anywheres near ninety-eight per cent. of the business.

Q. What has the new company done?

A. I should think eighty or eighty-five per cent.

Q. These conditions which you say contributed to the large percentage of the business have not existed since the new company has been in existence?

A. You mean the equipment?
Q. Yes, sir.
A. They have been largely increased and improved. The difference in percentage in former years and now is due almost entirely to the discovery of crude oil in the States of Texas, Louisiana, Kansas and in the Indian Territory and Oklahoma, which has caused a starting up of a great number of small refineries, all of which endeavor to do, and do, a considerable amount of business within the territory in the United States wherever the Waters-Pierce Oil Company operates.

(Skips about two pages.)

810 Q. You could have bought from any one you pleased, but you did not please to buy it from any one but the Standard?
A. Precisely.
Q. And the Standard could have sold to any one they pleased, but its products were almost exclusively handled through the Waters-Pierce Oil Company?
A. I think it was wisdom on the part of the Standard Oil Company to utilize the services of such a good merchant as myself.

(Skips next question and answer.)

Q. What is the cost of producing refined oil?
A. I could not tell you.
Q. Isn't the cost of producing a gallon of refined oil at Whiting about four cents a gallon?
A. I could not tell you.
Q. You said the cost of refined oil in the city of St. Louis has been about eight cents a gallon?
A. I did not.
Q. What was it?
A. I said I did not know. I think Mr. Johnson was kind enough to advance that information, but what it was I do not know. I said I had sold millions of gallons and hundreds of thousands of barrels at four and a half cents a gallon delivered to people in storage cans at their houses, including Kirkwood and Webster, which are several miles in the country.

(Skips nearly four pages.)

Q. How much of the time, Mr. Pierce, between June 1st, 1900, and the month of March, 1905, did you spend in St. Louis?
A. Between what dates?
Q. June 1st, 1900, the date of the organization of the new company, and the time of the commencement of this suit?
A. As I recollect, I was here nearly all of the year 1900.
811 Q. How about 1901?
A. I think the greater part of 1901.
Q. How about 1902?
A. A part of 1902.
Q. What part?
A. One-half or two-thirds.
Q. How about 1903?

A. In 1903 and 1904 I was ill East and unable to be in St. Louis.

Q. When was it that Mr. Finlay became president of the company?

A. The first time or second time, General?

Q. The second time?

A. I think February, 1904.

Q. February, 1904?

A. That is my remembrance.

Q. And in 1905 were you here in St. Louis?

A. In 1905 I was here in the month of June——

Q. Month of June?

A. July,——

Q. Were you here prior to June?

A. —and August. I think so, although I am not sure.

Q. What time?

A. Perhaps June was the first time I was here during the year 1905.

Q. During the years I have asked you about you were also in the railroad business, were you not?

A. I was.

Q. Were you giving personal attention to the management of the railroad business of the Mexican Central?

A. To a certain extent, to the necessary extent.

(Skips about half a page.)

Q. Was it made known to you prior to your seeing this system of reports which were made to 26 Broadway, on yesterday,
812 that those reports were made?

A. I do not comprehend your question.

Q. Prior to bringing them to your attention yesterday, by showing you these reports, had you known what reports were made to 26 Broadway?

A. In a general way I knew of all reports at one time, but as those reports have been covering a period of twenty-five or twenty-six years, I did not give my personal attention to any additions or deductions from the volume of reports which were currently sent to the Standard Oil Company.

Q. Then you were not familiar with what reports were made?

A. I did not make any such statement.

Q. I asked you the question if you were?

A. I was familiar with the fact that a great many reports were sent, but the exact headings of the reports were of no importance to me. I simply approved of the sending of the reports, but what the headings were I was not familiar with.

Q. That was the extent of your information upon that subject, was it?

A. Yes.

Q. Were you familiar during this period I have mentioned with this circumstance of the business, of orders being received by your company—by that I refer to the Waters-Pierce Oil Company—from persons who did business in the Standard Oil Company's territory and orders being received by the Standard Oil Company from per-

sons residing in the Waters-Pierce Oil Company's territory and what was done, if you know, in transferring those orders from one company to another?

A. I do not think, General, that I ever had personal knowledge of transactions of either character. All I know concerning it is principally what I have read in the press since these proceedings commenced. I am quite sure I never had personal knowledge of transactions of that kind.

Q. Do you refer to what you read in the press of admissions
813 made here by counsel of the Waters-Pierce Oil Company that such orders were handled in the way I have indicated?

A. No. I refer to your charges.

Q. You did not see the admissions made by counsel that they were handled in that way?

A. Not at all.

Q. If such orders were handled in that way by the Waters-Pierce Oil Company and the Standard Oil Company of Indiana, that fact has not come to your knowledge?

A. It has not.

Q. Were you aware of any change in the system of paying the auditors of the Standard Oil Company who audited the books of the Waters-Pierce Oil Company after the reorganization?

A. Won't you make that a little more explicit as to what you mean by "system"?

Q. When auditors came here from 26 Broadway prior to June 1st, 1900, to audit the books of the Waters-Pierce Oil Company, who paid those auditors?

A. I always supposed the Standard Oil Company paid them.

Q. The Waters-Pierce Oil Company did not pay them?

A. So far as I knew, they did not, and I should have made objection to any payment to the Standard Oil Company's auditors.

Q. After 1900 how was it handled?

A. It was not within my knowledge until since these proceedings commenced that any change from my former understanding had been made. I have been informed that at a date, which I assume was since the organization of the present Waters-Pierce Oil Company, the Standard Oil Company auditors were paid by the Waters-Pierce Oil Company, but it was without my knowledge, and certainly would have been stopped had I known at the time of the charges being made. I should not have permitted them.

814 Q. Then has it come to your knowledge since testimony has been taken in this litigation that when the Standard Oil Company, through Wade Hampton, the General Auditor, wanted to audit the books of the Waters-Pierce Oil Company, Mr. Hampton would send an auditor here and direct that he should be placed upon the pay-roll of the Waters-Pierce Oil Company while he was auditing the books of the Waters-Pierce Oil Company?

A. That was not in my knowledge in any instance since the organization of the first or second Waters-Pierce Oil Company until the past few months.

Q. Then, for the first time, it came to your knowledge?

A. Yes, sir.

Q. So if that system was carried on from the time of the organization up to the time of the commencement of this suit, that was a detail of the business also that you did not know?

A. General, I doubt if that system was inaugurated very soon after the incorporation of the present Waters-Pierce Oil Company, but whether or not it was, it was not within my knowledge—it was not reported to me.

Q. Now, I am not certain whether I asked you yesterday, and my recollection is that I did not, as to whether you knew of the dividends which were declared by the Waters-Pierce Oil Company being regularly reported to the Commercial Agent at 26 Broadway?

A. I did not know that they were reported specifically as dividends. I knew that upon the days dividends were paid that a cash statement, which was sent to the Commercial Agent—I presume you refer to Mr. McNall?

Q. Yes, sir.

A. Included the disbursements, the cash disbursements, of that day, and, as a rule, at least the report sent to me, showed the amount of dividends and to whom it was remitted.

Q. Do you now recall, Mr. Pierce, that you did know that
815 daily cash statements were sent to Mr. McNall?

A. No, I do not recall that they were.

Q. Until I showed you the reports yesterday?

A. Oh, no, I beg your pardon, General. I do not want to answer in that way. Daily cash statements have always been sent to the Standard Oil Company and I knew they were sent daily to Mr. McNall, and I so testified yesterday.

Q. I may not have correctly recollected your testimony, then. But you did not know that reports of dividends were regularly made except as they might appear in the daily cash statements made to Mr. McNall?

A. How do you designate a report, General—by letter?

Q. By letter or any other means of communication—telegrams?

A. I never knew that they were reported by letter. They were not reported to me by letter. They were reported simply by having attached to the daily cash statements——

Q. I was not asking about your——

"Mr. PRIEST: Let him answer the question.

"COMMISSIONER: He can answer the question. I think he has a right to complete that answer."

A. The dividends were made usually upon regular days in each month, and upon the day a dividend was made, a memorandum of disbursements for that day was attached to the cash statement which I received, and I presume a similar one was sent to the Standard Oil Company, or to whatever name represented the Standard Oil Company, that we were authorized to send it to, and that statement was the only notice of dividends which I understood was

sent to the Standard Oil Company or to Mr. McNall, or whoever might be its representative to receive dividends.

Q. Did you understand that dividends were reported only in that way?

A. Did I understand that they were reported in that way?

Q. Yes.

A. I never knew that they were otherwise reported.

816 Q. Did you know that they were in that way reported to Mr. McNall?

A. I assume that they were.

(Skip about three pages.)

Q. Were you familiar with the form of the reports that were made to Mr. McNall in reference to the business of the Waters-Pierce Oil Company in this, that in addition to the letters to him a duplicate copy, without address or signature, was also sent?

A. To whom?

Q. To Mr. McNall?

A. I was not familiar with it, General.

Q. That was also a method of reporting the business of the Waters-Pierce Oil Company, or communicating with the Standard Oil officials with reference to the business of the Waters-Pierce Oil Company, that was not within your knowledge?

A. I have not admitted that such reports were sent.

Q. Assuming that they were and assuming that the evidence shows it?

A. I have no knowledge of it.

Q. You have no knowledge of that?

A. No, sir.

Q. When did Mr. Tinsley come to St. Louis to take charge or to become connected with the management of the business of the Waters-Pierce Oil Company?

A. Mr. Tinsley came to St. Louis, as I remember, in April, 1904, to assume charge of the accounting department as successor to Mr. Gruet.

Q. Did he remain from that time?

A. I think Mr. Tinsley remained from the time he first came until the month of June, 1905, or perhaps he left as early as April or May, 1905.

Q. But you think Mr. Tinsley, from the time that he came in April, 1904, remained in connection with the management of the business of the Waters-Pierce Oil Company until after the

817 commencement of this litigation?

A. From the time he came in 1904 until he left St. Louis finally, Mr. Tinsley remained in the office of the Waters-Pierce Oil Company, but not at all times in connection with the management of the Waters-Pierce Oil Company.

Q. When did he become an officer?

A. I think in February, 1904, he was elected Vice President.

Q. He was elected Vice President, was he not, Mr. Pierce, before Mr. Van Beuren became the owner of this stock or before it was transferred to him upon the stock books?

A. Several months before.

Q. Well, then, was it against Mr. Tinsley's coming here to take charge that you protested?

A. Not at all. I acquiesced in it. I want to answer that differently. Mr. Tinsley did not come here to take charge of the business of the Waters-Pierce Oil Company. Under an agreement with me, Mr. Tinsley was suggested by the S. O. Company, or rather by Mr. W. H. Tilford——

Q. Representing the S. O. Company?

A. Representing the Standard Oil Company, as an entirely competent man to succeed Mr. J. P. Gruet, who, for a long time, had been the Secretary of the Waters-Pierce Oil Company, but because of unfortunate infirmities had become disqualified to longer hold the position. I had never met Mr. Tinsley. I had never heard of Mr. Tinsley, but, as I secured Mr. Gruet originally from the Standard Oil Company and took him upon the recommendation of its then auditor, I also accepted Mr. Tinsley to succeed Mr. Gruet upon the recommendation of Mr. W. H. Tilford, who represented the Standard Oil Company, and it was distinctly understood between Mr. Tinsley and myself that Mr. Tinsley was to come here as the auditor or comptroller of the company and to have only to do with
818 the books and accounts of the company; that under no circumstances was he to interfere with the management of the company, and the position of Vice President was given to Mr. Tinsley simply to supply the position which would be made vacant by Mr. Gruet's retirement and my retirement from the presidency of the company, which I held up to that time, and Mr. Andrew M. Finlay's election to succeed me, Mr. Finlay having been Vice President since the organization of the present company.

Q. What was the date then when the Standard Oil Company began to assume a control over the affairs and operations of the company?

A. Mr. Tinsley did not come here immediately upon his election in February. He was not in the city when he was elected. I was ill, as I recall, and unable to be here, and sent instructions, to perhaps Mr. Finlay, the Vice President, and Mr. J. D. Johnson, the General Counsel, as to how the election should be conducted and sent the proxies for my stock, which at that time amounted to within four shares of the entire four hundred thousand dollars of capital stock, or four thousand shares, and it was voted under my proxies for Mr. Tinsley.

Q. That was at a directors' meeting?

A. No, sir, stockholders' meeting. Voted for Mr. Tinsley as director, and the election of officers occurred at the same time. My health having continued such as to make it impossible for me to give close attention to the business, as the business required, Mr. Finlay was placed in my position and Mr. Tinsley was elected as Vice President. Mr. Tinsley did not come to St. Louis, as I recall, until perhaps two months afterwards, and when he came he was assigned by the President, Mr. Andrew M. Finlay, to the position in reference to the accounts which had been made vacant by the retire-

ment of Mr. Gruet. Mr. Tinsley at first made no objections to taking charge of the books as the request was made, but finally Mr. Tinsley refused to take charge of the books and accounts.

819 Q. You haven't touched upon an answer to my question. My question was, when was it the Standard Oil Company began to assume a control over the affairs and operations of the company against which you protested, as testified to by you from your written statement on yesterday, what day?

A. The action of Mr. Tinsley in refusing to perform the duties which it was agreed between Mr. Tilford, on behalf of the Standard Oil Company, and myself on behalf of the Waters-Pierce Oil Company, that he should perform, caused a great deal of distress to Mr. Finlay, the President of the company, and in the course of time, Mr. Finlay failing to enforce his authority as against Mr. Tinsley's stronger character so wrought upon Mr. Finlay as to completely break down his health, resulting in Mr. Finlay being obliged to go abroad, where he remained several months.

Q. I do not care about the condition of the health of the gentleman. Tell me when it was they commenced to assume this management and control against which you protested.

(Colloquy between counsel shown in the testimony being read is omitted by agreement of counsel in this case.)

A. Immediately upon Mr. Finlay's departure for Europe for the purpose of restoring his health, Mr. Tinsley openly assumed charge of the office of the Waters-Pierce Oil Company in all departments. He first took over the management of the Mexican department, removed it entirely from—he took away from General Manager Ackert the management of the Mexican division and assumed entire charge of it himself. He sent to Mexico as manager under the local general manager of Mexico a Standard Oil Company employé from Cleveland, Ohio, who was entirely unfamiliar with Mexico, its customs, people, languages or the business of the company in Mexico. The effect of that was to cause the very efficient manager of the company to resign his position. The answer to your question

820 as to dates is being given as explicitly as is possible, as the period covered all the time from the time Mr. Finlay went abroad until Mr. Tinsley was removed from his position.

Q. When did Mr. Finlay go abroad?

A. I think in the month of May or June.

Q. 1904?

A. Yes. I am not through with my answer.

Q. You have given the answer the question called for.

A. The resignation of the General Manager in Mexico left that department practically without a proper head. Mr. Tinsley proceeded at different dates to remove old and important officers, or rather employés, of the company, heads of departments, and substitute in their places inefficient, incompetent and inexperienced men. The number of changes in the management of the company equaled two or three hundred in the aggregate, and in nearly all cases those substituted were Standard Oil Company employés.

When this information came to my knowledge sufficiently to enable me to take action I protested to the officials of the Standard Oil Company in New York against the unwarranted action of Mr. Tinsley in violating the agreement entered into between the Standard Oil Company and myself at the time of the organization of the first Waters-Pierce Oil Company in 1878, and the implied continuation of that understanding at the time the present Waters-Pierce Oil Company was organized.

Q. Now, are you through? When did you make your protest?

A. At the time.

Q. At what time?

A. I made a protest, I think, in the month- of April, May and June.

Q. 1904?

A. 1905.

Q. 1905?

A. 1905.

Q. That was a year after it occurred?

821 A. I beg your pardon. Mr. Finlay did not leave until the Fall—I am not sure when Mr. Finlay left. If I knew when Mr. Finlay left I could tell.

Q. You didn't understand me. Your protests were made a year after Mr. Tinsley came here?

A. I did not answer that way. If I knew when Mr. Finlay went on his vacation I could tell you more clearly.

Q. It was in the Spring of 1904?

A. That Mr. Finlay went on his vacation?

Q. I understood you to say so.

A. That is not the date. I am very positive of that.

Q. Do you know?

A. I can easily ascertain, and then I will have some premise from which to answer your question.

Q. Was it the date when the stock was put in the name of M. M. Van Beuren that you protested?

A. Not at all. The stock was put in Mr. Van Beuren's name, I think, in the month of June, 1904. Mr. Tinsley's usurpation of the management of the business did not commence until very late in the Fall of 1904, and was not vicious until the beginning of the year 1905, and my protest—you asked the date of my protest?

Q. Yes.

A. My protest was made in the most positive manner in the month of May and in the month of June, 1905.

Q. That is, after the commencement of this suit?

A. I believe so. I do not recall the date of the suit.

Q. Let me call your attention to your testimony on yesterday when you made this statement, "Up to the Spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters-Pierce Oil Company, but at that time they transferred the stock which had stood

822 in my name to M. M. Van Beuren and began in other ways to assume control over the affairs and operations of the com-

pany. I protested against this conduct." But this protest was not made until the year after the Spring of 1904?

A. There is nothing in that statement which specifies that the protest was made in the year 1904. The stock was transferred in the month of June, 1904, I think. That specifies the first of April. That statement was intended to cover the time when Mr. Tinsley first came to St. Louis, but Mr. Tinsley did not immediately upon his arrival in St. Louis, or some considerable time afterwards, undertake to supersede the President in the management of the business, and he did not actively do so until Mr. Finlay's health compelled Mr. Finlay to absent himself, when Mr. Tinsley, as Vice President of the company, became the executive of the company and was in full power to enforce all of his wishes.

Q. Then it was in the Fall of 1904 and in the early part of 1905 you say the management of Mr. Tinsley became vicious?

A. Correct.

Q. When did you learn of the transfer of this stock to Mr. Van Beuren—on the day it was made?

A. On the day it was made.

Q. Did you protest against that?

A. I did not. There was no occasion for me to protest.

Q. What did you mean when you said in your written statement on yesterday, "At that time"—referring to the Spring of 1904—"they transferred the stock which had stood in my name to M. M. Van Beuren. I protested against this conduct." Did you mean you protested against the transfer of the stock?

A. I may have protested against the transfer of the stock as being contrary to the understanding with me. The specific methods of protest or the dates of the protest are not now within my mind. It would be very easy to recall them.

823 Q. Who did you protest to against the transfer of this stock to Mr. Van Beuren?

A. If I made a protest, I protested to Mr. Rogers or Mr. Archbold or Mr. W. H. Tilford.

Q. Why did you protest to them?

A. Because I assumed that they were the people responsible to me for the keeping of the agreement that was made when this company was organized.

Q. I understood you to say yesterday that you did not know who Mr. M. M. Van Beuren was?

A. I did not mention Mr. Van Beuren's name. You are not following the facts.

Q. You follow the question and I will take care of the facts.

A. I will.

Q. Did you know who Mr. Van Beuren represented when this stock was transferred to him?

A. I want the privilege of correcting your statement.

Q. I will stand by my statement, you correct your own.

A. I did not mention Mr. Van Beuren's name. I said Mr. Archbold.

Q. Why did you protest to Mr. Archbold against the transferring

of the stock to Van Beuren if you did not know who Mr. Van Beuren represented?

A. I repeat that at that time I did not know who Mr. Van Beuren was, and it was necessary for me to make an investigation to ascertain who Mr. Van Beuren was. I did not protest because the stock was transferred to Mr. Van Beuren. I protested, if I made any protest, against the stock being transferred out of my name to any one.

Q. Let me see, I want to get this matter straight. Did you or did you not protest against the transfer of this stock to Mr. M. M. Van Beuren?

A. I certainly protested against the transfer of the stock to M. M. Van Beuren, but I do not recall if I protested at the time.

824 You have undertaken to fix the date as April, 1904, as being the date of the protest in the statement which I yesterday read. I now wish to say that I do not recall the reason the protest was made at that time or whether it was made subsequently or what time subsequent, if at all.

Q. So you can not make the statement when a protest was made, if one was made?

A. Except generally.

Q. You stated yesterday that you did not know who Mr. Van Beuren was until it was admitted by Mr. Rogers in the testimony taken in New York in March, 1906, that Mr. Van Beuren held this stock for the Standard Oil Company of New Jersey?

A. I did not know who Mr. Van Beuren was. I do not now know who Mr. Van Beuren is except by hearsay. I have never been informed except through the press as to who Mr. Van Beuren is.

Q. When you did protest against this transfer of stock to Van Beuren did you go to Rogers, Archbold and Tilford?

A. I was protesting against the transfer. In the first place, I do not say that I did protest. I do not recall whether I did or not at that time. Subsequently I am very sure that I did protest against the transfer of that stock, and possibly I protested in writing, but I went to Mr. Rogers, Mr. Tilford and Mr. Archbold to file my protest because they were the people responsible to me for the keeping of the Standard Oil Company's agreement with me.

Q. Did you go to them because you thought Mr. Van Beuren represented them?

A. Ask that again

Q. Did you go to them because you thought Mr. Van Beuren represented them?

A. Not at all. Mr. Van Beuren was a quantity of no value in my mind.

Q. You never made any inquiry of them as to who he was?

825 A. I did not. Afterwards I asked them who Mr. Van Beuren was.

Q. You knew that the stock was Standard Oil Company's stock, did you not?

A. I did not know to whom the Standard Oil Company had transferred the stock. I did not know whether Mr. Van Beuren was a broker or whether he was connected with the Standard Oil Company.

I knew nothing about the disposition of the shares of stock after I passed them over to Mr. Garth in the year 1900.

Q. For Mr. Pratt or for the Standard Oil Company?

A. I did not pass them over to Mr. Pratt for the Standard Oil Company.

Q. Who did you pass them to?

A. I sold those certificates of stock for a cash consideration, paid at the time by Mr. Garth, Cashier of the Mechanics National Bank, as I testified yesterday. Mr. Pratt went with me there and was present and the money was paid to me by Mr. Garth, not paid by Mr. Pratt. The certificates were handed by me to Mr. Garth and not to Mr. Pratt.

Q. When did you get the check?

A. The moment of transferring the certificates.

Q. When did you transfer the certificates?

A. As I recall, it was during the Summer of 1904. Those certificates will show. I don't recall the exact date, General. 1900, I mean—not 1904.

Q. Didn't you get a check for $274,800.00?

A. I do not recall the amount. I got a check for the value of the stock at par.

Q. Just the par value of the stock?

A. That is correct.

Q. Didn't you get that check, Mr. Pierce, at the time the new company was organized?

A. I did not. I did not receive any money. When the new company was organized I gave my own check on the Fourth
826 National Bank for four hundred thousand dollars. That check was charged to my account and it was taken over by the treasurer of the new company as the full capital stock. I held the certificates of stock in my own possession from that date, from the date of the organization of the present Waters-Pierce Oil Company, until I transferred the twenty-seven hundred—what is the amount, do you recall?

Q. 2748.

A. The 2748 shares to Mr. Garth in the office of the Mechanics National Bank of New York some two or three months afterwards. I received from Mr. Garth his check on the Mechanics National Bank for the par value of those shares. I had not received any money from any one prior to that date for any shares of the Waters-Pierce Oil Company, and the shares had not been out of my possession. I did not receive any pay for those shares at the time of the organization of the present Waters-Pierce Oil Company, or at any subsequent time until Mr. Garth received the 2748 shares and handed me his check on the Mechanics National Bank for $274,800.00, which I sent to my bank in St. Louis, and it was deposited to my individual credit.

Q. Now, I understood you to say yesterday, or I recollect you as saying yesterday, that the fact that this transaction was to be handled in this way was made known to you by your attorney as a result of an agreement had with the General Solicitor of the Standard Oil Company. Did I understand you correctly?

Judge STEDMAN: We renew our objection to that on the ground it is hearsay.

The COURT: It is overruled.

Judge STEDMAN: Exception.

A. I think we did, General.

Q. Had you had any conversation or understanding with the Executive Committee of the Standard Oil Company that the transaction was to be handled in that way?

827 A. Your question is, had I had an understanding with the Executive Committee of the Standard Oil Company prior to any date, General?

Q. Prior to the time that the stock was transferred to Mr. Garth through you in the manner in which you have stated?

A. Had I had any understanding with the Executive Committee as to the transfer of this stock?

Q. Yes, sir.

A. And the method of transferring it to Mr. Garth?

Q. Yes, sir.

A. I think not, General. I think it all came through Mr. Johnson, my attorney.

Q. I refer more specifically to your written statement yesterday in which you said, "When the license of the first Waters-Pierce Oil Company to do business in Texas was revoked I sought to settle with the State, so that we could continue our business there. I was told very frankly by a prominent citizen of Texas that the people of that State would not tolerate the methods of the Standard Oil Company, and that no corporation controlled by that company would be permitted to carry on business in Texas. I explained this situation fully to the Executive Committee of the Standard Oil Company, and they agreed that I should organize a new company, the stock of which I should hold." Do you remember of testifying that way yesterday?

A. Perfectly.

Q. When was that understanding had with the Executive Committee of the Standard Oil Company that you should organize a new company and hold the stock?

A. Your question, General, applies to an entirely different proposition. Your previous question, if you please, related to my having an understanding with the Standard Oil Company, or its Executive Committee, with regard to my sale of a part of this stock after it was issued by me to Mr. Garth or some one else. My answer to

828 that was I did not recall, and I am quite sure that there was no understanding with the Executive Committee of the Standard Oil Company upon that subject—that the transaction was handled by Mr. J. D. Johnson, my attorney. In answer to your present inquiry, I will say that immediately after the suits were brought, or rather after the suit was determined upon, that the license be taken away from the Waters-Pierce Oil Company in Texas, I conferred repeatedly with the Executive Committee of the Standard Oil Company in regard to the methods to be employed to secure a reinstatement of the old Waters-Pierce Oil Company in the State

of Texas and the securing of a new license enabling it to do business there, and the statement that you have read is absolutely correct.

Q. When was that conference with the Executive Committee of the Standard Oil Company at which the Executive Committee agreed that a new company shoud be organized of which you should hold all the stock?

A. I am not able to state the exact time, but those conferences were very frequent during the Winter and Spring of 1900.

Q. And prior to the organization of the new company?

A. Prior to May 29th, 1900.

Q. And do you wish now to be understood as saying that all the understanding that you had at that time with the Executive Committee of the Standard Oil Company in reference to the stock of the new company was that it should be held in your name?

A. My present recollection is that that is the case; that I had no personal understanding with any of the members of the Executive Committee prior to the organization of the new Waters-Pierce Oil Company as to what disposition was to be made of the stock which was to be issued to me and for which I was personally to pay.

Q. What did you mean when you said that the reason of the organization of this new company was that the people of
829 Texas would not tolerate any corporation which was controlled by that company?

A. The language of the statement is very explicit and plain as to its contents. I refer you to it.

Q. And did that refer to the old Waters-Pierce Oil Company?

A. Did the statement quoted in there refer to the old Waters-Pierce Oil Company? Certainly, because the new company had not then been incorporated.

Q. Then the statement referring to a corporation controlled by the Standard Oil Company refers to the old Waters-Pierce Oil Company?

A. Naturally.

Q. Now, Mr. Pierce, didn't the Standard Oil Company after this transfer of stock have the same power of control at least and the same stock interest in the new company that they had in the old company?

A. Repeat it.

Q. The question was whether the Standard Oil Company had the same interest in the new company that they had in the old, did they not?

A. The Standard Oil Company at the time that the new company was incorporated and the license obtained in the State of Texas had no stock interest whatever in the Waters-Pierce Oil Company. It was entirely vested in myself and for several months afterwards the stock certificates remained in my name, and for years afterwards the stock stood in my name upon the books of the new Waters-Pierce Oil Company.

Q. Then the difference between the old company and the new company was that the Standard Oil Company stock in the new company appeared in another name?

A. I will leave you to draw your own conclusions. I am unable to.

Q. What member of the Executive Committee of the Standard Oil Company was it that you had this understanding with about the organization of the new company?

A. It included practically all the members of the Executive Committee except one or two.

830 Q. After Mr. Tinsley assumed this management and control that you have spoken of was there any change to your knowledge in the system of reports made by the Waters-Pierce Oil Company to 26 Broadway?

A. Not within my knowledge.

Thereupon the Court adjourned until 2.30 P. M.

Court opens at 2.30 P. M.

The COURT: Proceed, Gentlemen.

(*Deposition of H. C. Pierce Resumed.*)

Q. Was there any change made in the trade territory of the Waters-Pierce Oil Company?

A. I think there was none whatever.

Q. And no change to your knowledge in the trade territory of the Standard Oil Company of Indiana?

A. I am not advised as to the territory of the Standard Oil Company of Indiana.

Q. Was there any change after Mr. Tinsley assumed this management and control in the source from which the oil that was sold by the Waters-Pierce Oil Company was received?

A. I think not.

Q. Was there any change in the course that had previously been followed as to the sale of oil by the Standard Oil Company of Indiana in Waters-Pierce Oil Company's territory?

A. I do not comprehend your question.

Q. Was the oil that company sold in the Waters-Pierce Oil Company's territory still sold almost exclusively through the Waters-Pierce Oil Company under Mr. Tinsley as it had been previously?

A. I comprehend your question to mean, did the Standard
831 Oil Company continue to sell supplies to the Waters-Pierce Oil Company. Yes.

Q. And the Waters-Pierce Oil Company continued almost exclusively to sell the products of the Standard Oil Company?

A. It did.

Q. Then in so far as the reports to 26 Broadway were concerned; in so far as the territory of the Waters-Pierce Oil Company was concerned; in so far as the source from which supplies came, the Waters-Pierce Oil Company went ahead the same under Mr. Tinsley as it had under your management and control?

A. There may have been immaterial changes. Mr. Tinsley may have sent a different kind of report, more or less reports, but in the main the business, so far as the source of supplies and territory

within which the sales were made, that remained the same, as it does today, General.

Q. At the time of the reorganization of the Waters-Pierce Oil Company, and just prior to which, had there been a one hundred per cent. dividend on the stock of the Waters-Pierce Oil Company declared?

A. I can not say. Dividends were so frequent I can not specify any particular one.

Q. You mean that one hundred per cent. dividends were so frequent that they now escape your recollection?

A. I have answered it.

Q. That is your answer, is it?

A. It is not my answer to your last question, no.

Q. I will ask you if it is not a fact that when the reorganization was decided upon if there was not a dividend of one hundred per cent. declared and if there was not given to each of the six stockholders a check representing his dividend which represented the amount of the capital stock?

A. How was that?

(Question repeated by Stenographer.)

832 A. I think I comprehend the question, General.

Q. Well, please answer the question.

A. It is not a fact. No such dividend was ever made. No such dividend was ever made with the intention of disposing of the original capital stock or any part of the capital stock of the Waters-Pierce Oil Company.

Q. I didn't ask you as to the intention. I asked you if it was not a fact that on May 21st, 1900——

A. I was obliged to answer that way in order to qualify my answer.

Q. You can qualify in any way you see fit, but I want you to answer the question. I asked you if upon May 21st, 1900, there was not by the old Waters-Pierce Oil Company a dividend of one hundred per cent. declared and by a check drawn on the National City Bank of New York there was not paid to the Standard Oil Company of New Jersey $280,906.00; a check to you of $127,722.00; a check to H. M. Tilford of $102.00; a check to Mr. Finlay of $102.00; to Adams $102.00 and to Gruet $102.00?

A. I do not recall, but it is quite likely that such a dividend was made. It would not have been anything unusual for it to have been made on that date or any other day. I do not recall that it had anything to do with the reorganization of the new company. Still my memory may be defective in that regard.

Q. Do you remember any other instance when a one hundred per cent. dividend was declared?

A. I think so.

Q. When?

A. I do not recall the date. Dividends are paid as the surplus permits.

Q. You don't say that the dividends were not paid as I have indicated?

A. Any dividends would be paid in checks to the stockholders of record.

Q. Now, following the organization of the company, did
833 the new company give notes to the old company?

A. I do not recall the details of that. It was managed entirely by Mr. Johnson, the attorney of the company. I would be very glad to enlighten you if I could answer. It can be easily ascertained by refreshing my memory by examining the accounts.

Q. Let me ask you this question, that following this dividend of four hundred thousand dollars, practically, which I have referred to, that there were six notes given by the new Waters-Pierce Oil Company to the old Waters-Pierce Oil Company which were transferred by the new Waters-Pierce Oil Company to the stockholders in accordance with the percentage of the stock that they held?

A. I do not recall the details of that transaction, General. I do recall that notes were given, but the details of it I do not recall.

Q. Don't you recollect of receiving from the old Waters-Pierce Oil Company a note given by the new Waters-Pierce Oil Company amounting to $1,227,399.00?

A. I received a note. I do not recall the exact amount.

Q. And were not those notes that were given by the new company to the old company and those given by the old company to the different stockholders paid by dividends in the new company?

A. I can not say how they were paid. My note was paid, I know.

Q. Wasn't it paid by dividends in the new company?

A. I can not say, General. I don't know. I can not state as to the details of the transaction. My mind was too much employed to attend to matters of that kind.

Mr. LIGHTFOOT: Now, here is a colloquy between the attorneys, and then he says, "I refer you now to a letter." And then we skip over. "Mr. Hadley—I refer you now, Mr. Pierce, to correspondence in the month of November, 1903, which was submitted to counsel yesterday, and to which I call your attention, in which this letter was written, 'H. C. Pierce, New York. Dear Sir' "—then we
834 have to skip again. It goes over several pages. It says, "Witness examines papers."

Mr. ALLEN: Away over past the colloquy between Judge Priest and General Hadley.

Mr. LIGHTFOOT (reading): "Mr. Hadley—Do you not recall, after seeing these papers"——(Judge Stedman interrupts.)

Judge STEDMAN: May it please Your Honor, we object to the entire course of the examination in respect to the letter which was exhibited by Attorney General Hadley to Mr. Pierce, upon the ground, first, that the contents of the letter are not shown; we are in ignorance of what the contents of the letter are, and the letter itself is the best evidence both of its existence and of its contents; and, in the second place, so far as we can discover, not knowing the contents of the letter, that the same are immaterial and irrelevant.

The COURT: Let me see what it is you are offering. (Court inspects the deposition.) What is the purpose of this testimony?

Mr. ALLEN: Well, the main purpose is to show that he testifies

that he was running the concern, and we want to show that he did not know that the Standard Oil Company—we will show by other testimony, it will be an agreed fact in the case that the Standard Oil Company did audit the books of the concern, and he states there that he did not know that that was being done, and yet he states that he was running the company and dominating it; and, in addition to that, to test this witness's statement along those lines.

The COURT: Haven't you already shown that he didn't know whether the Standard Oil Company audited the books or not?

Mr. ALLEN: Well, of course, I think we have, but it is cumulative on that point.

Judge STEDMAN: May it please Your Honor, this inquiry relates to a letter which, we have presumed, is intended by the other side to show communication of information to him upon this subject. Now, we are completely in the dark as to the contents of the letter
835 which would give the information upon this subject—that *that* is the point of our objection, that it is sought by reference to this letter to visit upon him knowledge of the fact which they are seeking to elicit when the letter itself it not produced.

Mr. ALLEN: It appears from those questions that General Hadley tried to refresh his memory, and after reading whatever was handed him—I don't know what it was—he still said that he had no knowledge of those things.

Mr. LIGHTFOOT: The question on page 121 by Mr. Hadley gives the merit of whatever there is in the question.

Mr. ALLEN: We don't care anything about the letter except he said he didn't read it and didn't write it. We haven't it, and don't know what it was.

The COURT: The objection is sustained, except to——

Judge PENN: What part is sustained?

Mr. LIGHTFOOT: Except as to the part where it commences, "Mr. Hadley—Do you not recall"—and the answer, too?

The COURT: Yes, sir, all that bears on what you offer on that subject.

Mr. HADLEY:

Q. Do you not recall, after seeing these papers, the fact that in November, 1903, by reason of the fact that the Standard Oil Company had an auditor who was auditing the books of the Waters-Pierce Oil Company, that you sent some notes given by the new Waters-Pierce Oil Company to the old Waters-Pierce Oil Company and endorsed to you, back here, to the Waters-Pierce Oil Company's office here in St. Louis?

A. I have no recollection of the transaction or of writing the letter, and I think I testified yesterday that I had no recollection of the Standard Oil Company auditing the Waters-Pierce Oil Company's books subsequent to the organization of the present Waters-Pierce Oil Company until within the past year or two.

Mr. LIGHTFOOT: I think that is all we care to offer at
836 present.

Mr. ALLEN: That's all that we offer from it.

Judge STEDMAN: If the Court please, we would like to offer some of the testimony of Mr. Pierce omitted by the State at this time.

Mr. ALLEN: Well, we prefer that they put it in when they come to offer their testimony, after we have closed, and we object to the interruption. There is quite a lot of that testimony there, and we object to the interruption to put it in now.

Judge STEDMAN: May it please Your Honor, the testimony offered is a part of the testimony given by Mr. Pierce in Missouri, case up there. This testimony is introduced by agreement between counsel. Now, we think that we ought to be permitted at this stage of the proceedings to offer the remainder of his testimony, or so much as we think is admissible and desire to offer, in order that the jury may now connect all of these matters in their minds.

The COURT: Very well. I will permit you to do so.

(Portions of deposition of H. C. Pierce read by defendant.)

(Judge Stedman read the questions and Judge Penn the answers.)

Q. Are you now or have you been at any time a stockholder in the Standard Oil Company of Indiana?

Judge PENN: That's the fourth question, Mr. Allen, in the direct examination by Judge Priest.

Mr. ALLEN: I have it here.

A. I am not and never have been.

Q. Are you now, or have you at any time been, a shareholder in the Republic Oil Company?

A. I am not, and never have been.

Q. Are you now, or have you at any time been, a shareholder in the Standard Oil Company of New Jersey?

A. I am not, and never have been.

Q. Have you ever owned any certificates of interest or any
837 interest in any form in the so-called Standard Oil Trust?

A. I have not.

Q. Have you at any time ever owned or do you now own any stock in any other oil company than the Waters-Pierce Oil Company?

A. I have not, and do not now own any stock in any other oil company other than the Waters-Pierce Oil Company.

Q. You are informed as to the ownership of the shares of the stock of the Waters-Pierce Oil Company, are you?

A. I am.

Q. Now, I will ask you if the Standard Oil Company of Indiana or the Republic Oil Company own any stock of the Waters-Pierce Oil Company?

A. They do not.

Judge STEDMAN: Now, the next—"Does the Standard Oil Company of New Jersey own any stock in the Waters-Pierce Oil Company?"

Judge PENN: The answer to that was read by the State.

Judge STEDMAN: Yes, I see, that's over on the next page. Now, Judge Penn, they read this here. Here is a question and part of

the answer to which was introduced by the State, and we desire the remainder of the answer.

Q. Now, Mr. Pierce, will you please explain the relations between the Waters-Pierce Oil Company and the Standard Oil Company of New Jersey, and, in order that you may be brief, if you have prepared a memoranda shortly detailing that, I will say that you may refer to that memoranda and read it.

Judge PENN: Well, hadn't I better read all the answer, so the jury will understand?

Judge STEDMAN: I think so.

A. I have a memoranda answering that question, which I will read. During the Fall and Winter of 1877 and 1878, I organized, under the laws of the State of Missouri, the first Waters-Pierce Oil Company, which succeeded to the business of Waters, Pierce
838 & Company. The original capital was one hundred thousand dollars, of which amount Waters, Pierce & Company subscribed for forty per cent.; Horace A. Hutchins and William P. Thompson, of Cleveland, Ohio, subscribed for forty per cent., and Chess, Carley & Company, of Louisville, Ky., subscribed for twenty per cent. The first officers of the first Waters-Pierce Oil Company were William H. Waters, Director and President; H. Clay Pierce, Director and Vice President; Charles M. Adams, Secretary and Treasurer; Horace A. Hutchins, Director; William P. Thompson, Director, and Francis D. Carley, Director. Some time after the organization of the first Waters-Pierce Oil Company the forty per cent. belonging to Hutchins and Thompson and the twenty per cent. belonging to Chess, Carley & Company was transferred to the Trustees of the Standard Oil Trust, and I purchased the interest of William H. Waters in the forty per cent. belonging to Waters, Pierce & Company. So that when, on May 29th, 1900, the first Waters-Pierce Oil Company was liquidated the assets were distributed in these proportions.

Judge PENN: That's the portion of the answer read by the State. The balance is as follows:

When the Standard Oil Trust was organized I was urged to place the Waters-Pierce Oil Company in the trust, but refused to do so, and even after the forty per cent. of the capital stock of the Waters-Pierce Oil Company issued to Hutchins and Thompson and the twenty per cent. issued to Chess, Carley & Company had been placed in the trust by the Standard Oil Company of Ohio, to whom it had been transferred, I still refused to place my stock in the trust. Wher the first Waters-Pierce Oil Company was organized it was agreed by all parties interested that I should control and direct its policy.

Judge STEDMAN: Now, get down to the next "A".

A. Its policy and operations, and this I constantly continued to do from the date of its organization until February, 1900, when protracted ill health compelled me to absent myself from St.
839 Louis, and I retired as president of the company and elected my brother-in-law, Mr. Andrew M. Finlay, my successor.

Mr. ALLEN: Now, we object to the remainder of the answer, because the examination shows that it is hearsay—that he learned it from Mr. John D. Johnson, his attorney.

The COURT: Give the portion of the testimony which you say shows that it is hearsay.

Mr. ALLEN: Well, it is away over at the other side. Counsel I suppose will agree that that is a fact, that it is developed further on by interrogatories of Mr. Hadley that whatever information he had about it he got from Mr. J. D. Johnson.

Judge PENN: I don't know whether it is or not.

Mr. ALLEN: Well, I will find it if the Court will indulge me.

Judge PENN: We will not offer that sentence, Mr. Allen. We don't consider it of any importance and don't want to take up time unnecessarily.

Q. Now, Mr. Pierce, that relates to the old Waters-Pierce Oil Company. Now, state about the relations between the Standard Oil Company and the present Waters-Pierce Oil Company.

A. I have that in memoranda, Mr. Priest, and if you please, I will read from my memoranda.

"COMMISSIONER: Mr. Pierce, one question. You are giving that as your testimony?"

A. I am.

"COMMISSIONER: Proceed."

A. It simply refreshes my memory. When the license of the first Waters-Pierce Oil Company to do business in Texas was revoked, and I sought to settle with the State, so that we could continue our business there, I was told very frankly by a prominent citizen of Texas that the people of that State would not tolerate the methods of the Standard Oil Company, and that no corporation controlled
840 by that company would be permitted to carry on business in Texas. I explained this situation fully to the Executive Committee of the Standard Oil Company, and they agreed that I should organize a new company, the stock of which I should hold, and that I should manage and control the company absolutely free from any dictation or direction of the Standard Oil Company.

Judge PENN: That's the portion the State read. Now, we read the balance:

This was done, and in order that the company should conduct its business in strict accordance with the laws of every State in which it was operating, I placed the attorney of the company on the Executive Committee, with instructions to examine all reports and transactions to the end that no law should be violated. I earnestly desired the company to respect and obey the laws.

Judge STEDMAN: Now, after the discussion between the attorneys get the next answer.

Judge PENN: Now, here is the portion that the State offered, but we will have to read it to make it clear to the jury.

A. Up to the Spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters-Pierce Oil Company, but at that time they transferred

the stock which had stood in my name to Mr. M. M. Van Beuren, and began in other ways to assume a control over the affairs and operations of the company. I protested against this conduct as a violation of their agreement with me, and as contrary to the representations which I had made to the people of Texas.

Judge PENN: The State read that portion. We now read the balance:

After frequent interviews and discussions on this point, the management and control of the company were again committed to my direction, and my son, Clay Arthur Pierce, is now President
841 of the company, and conducting it as an independent business.

Judge STEDMAN: Now, Judge, turn over two or three pages.

Judge PENN: "How many gallons to the barrel?"

Judge STEDMAN: Yes, sir, that's it.

Judge PENN: Beginning with the question, "Was there during all of this time and source."

Q. Was there during all of this time any source, other than those of the Standard Oil Company of New Jersey, from which you could obtain the merchandise to supply the market demand in the Waters-Pierce Oil Company's territory?

A. You are referring to the present Waters-Pierce Oil Company, Judge?

Q. Yes, sir, the present Waters-Pierce Oil Company.

A. There was not. The volume was so great that it would have been impossible for us to obtain a sufficient quantity to meet the requirements of our territory from any other source.

Q. Could you do so now, Mr. Pierce?

A. I feel quite sure that we could not. There have been many new industries, refineries in new localities, where crude petroleum has been produced, but without very careful investigation, my opinion is that we could not from all sources combined.

Q. Does the Waters-Pierce Oil Company own, or is it interested, directly or indirectly, in any oil producing property or oil wells in the United States?

A. The Waters-Pierce Oil Company does not own, and is not interested, and never has been, in any oil wells or oil-producing property within the United States.

Judge STEDMAN: Now, over on the next page.

Q. And the present business of the present Waters-Pierce Oil Company is the result of your management all of that period?

Mr. ALLEN: Now, we object to that as calling for the opinion and conclusion of the witness merely, and it is not material or relevant.

842 Judge PENN: The answer does not state a conclusion.

The COURT: The objection is sustained to the last clause of the answer. As to the rest, it is overruled.

Mr. ALLEN: The last sentence?

The COURT: "Honestly believe."

Judge STEDMAN: To which we except.

A. I have managed the business of the various interests, commencing with W. H. Cobb & Company, H. C. Pierce & Company, Waters, Pierce & Company, the Waters-Pierce Oil Company organized in 1878, and the Waters-Pierce Oil Company organized in the year 1900, down to the present time, with the exception of a short interval.

Judge STEDMAN: Now, go over three pages, over on the fourth page.

Q. Do you know after the Spring of 1900, when the new Waters-Pierce Oil Company was organized, how its affairs and policies were managed?

A. I do.

Q. By whom?

A. By the officers and the directors and the Executive Committee, composed of the officers and directors and some of the heads of departments.

Q. Do you know who constituted the Executive Committee of the Waters-Pierce Oil Company?

A. Myself; Mr. Finlay, the Vice President; Mr. Adams, the Treasurer; Mr. Gruet, the Secretary; Mr. John D. Johnson, the General Counsel; Mr. Stephen Johnson, Manager of the Lubricating Department; Mr. Charles P. Ackert, General Manager of the Company. There may have been one or two more, but those are the names I now recall.

Q. Now, I will ask you, Mr. Pierce, whether the present Waters-Pierce Oil Company ever had any understanding or made any agreement, expressed or implied, with either the Republic Oil Company, the Standard Oil Company of Indiana, or any other company or person in the State of Missouri, or elsewhere, for the purpose
843 of fixing or intending to fix or maintain the price at which any of the products of petroleum should be sold upon the market?

A. Absolutely it did not.

Q. And has not, to your knowledge, down to the present time?

A. To my knowledge, and I know generally and particularly in regard to the affairs of the Waters-Pierce Oil Company, it has not down to the present time.

Judge STEDMAN: Now, over on the next page.

Q. I believe you stated this morning that the Standard Oil Company was the only source from which you could get, in your opinion, a supply adequate to the demands in the territory in which the Waters-Pierce Oil Company were operating?

A. I am very sure that the Waters-Pierce Oil Company could not have obtained more than a very small percentage of its total output from other sources than the Standard Oil Company of New Jersey and Indiana and their allied interests.

Q. Now, Mr. Pierce, I want you to describe in a general way the equipment employed by the Waters-Pierce Oil Company in merchandising the oil sold in Missouri and the territory in which it

operates outside of the Republic of Mexico, and by this I mean the tank stations and wagons, and so forth, the material equipment.

A. Prior to the organization of the first Waters-Pierce Oil Company, and when I was conducting the business under the firm name of H. C. Pierce & Company, and Waters, Pierce & Company, I commenced introducing and locating stations at various points upon the lines of railways, rivers and water courses within the territory where I was conducting business. So that when the first Waters-Pierce Oil Company was organized the firm of Waters, Pierce & Company had stations generally throughout the entire territory in which the present Waters-Pierce Oil Company now operates. Those stations consisted either of lands owned or leased, warehouses
844 owned, stationary storage tanks and other arrangements for the storage of oils; tank lines for the transportation of oils between St. Louis, or other initial point of shipment, to the stations; tank wagons in which to locally distribute the oil, and iron barrels and smaller metal receptacles for the transportation and delivery of oils within a radius of, say, less than one hundred miles from each distributing station. Those appliances have been increased practically upon the same lines since the organization of the first Waters-Pierce Oil Company to meet the growth of the business until, when the present Waters-Pierce Oil Company was organized and at the present time, the lands and stations, transportation facilities and delivery facilities have been for many years and now are equal to supplying the entire demands for petroleum products of all kinds within the territory in which the Waters-Pierce Oil Company transacts its business.

Q. Take, Mr. Pierce, as an illustration, do you know what the material equipment for the marketing of oil by the Waters-Pierce Oil Company in the City of St. Louis is?

A. The value, Judge Priest?

Q. No, I want you to describe it and the quantity of it, if you can.

A. As the firm of H. C. Pierce & Company I owned the block of ground between Thirteenth and Fourteenth street- and Gratiot and Austin streets, in St. Louis, and at the time of the organization of the first Waters-Pierce Oil Company the ground was covered and equipped with storage, handling, manufacturing and shipping appliances.

Q. Of what did they consist?

A. They consisted of iron storage tanks, brick buildings, machinery for the manufacture of tin cans for receiving, storing and shipping oil; the manufacture of iron barrels for similar purposes; the manufacture of wooden barrels; the manufacture of wooden cases, to receive and ship the tin cans; the manufacture of tank wagons for the local distribution of oils and machinery for
845 the manufacture of axle grease; for the manufacture and compounding of all kinds of lubricating oils, and machinery, appliances, and facilities for receiving, storing, handling and manufacturing and shipping practically all articles which the Waters-Pierce Oil Company handled to the extent that business was trans-

acted in and from St. Louis. Similar facilities, according to the requirements of the different headquarters and stations throughout the territory, also existed.

Q. In other words, wherever the trade demanded you established these facilities for the economical handling for the merchants?

A. Originally the shipment started from St. Louis or came in by the Gulf of Mexico at Galveston. Later as the business developed, stations were established at the larger cities in all of the territory until many years ago these stations and facilities were established at all points where there were railway or water facilities and where there were none the goods were delivered to the merchants in the small towns and to the people in the country through means of iron barrels, tin cans and tank wagons.

Q. Then, I understand you, whenever a railroad was newly extended into a territory you followed them up by establishing stationary tanks, and you are the first person who established a system of delivery in tank wagons and those iron barrels?

A. Commencing in 1869, I personally and most of the time accompanied shipments from St. Louis radiating within the territory within which the present Waters-Pierce Oil Company now operates, located stations, attended personally to the construction, the selection of agents and the basis of sales and the organization of the local business, and as the railroads extended throughout the territory of which I am speaking, until stations were established at all points upon all railways and all water courses within that territory, and I personally attended to the shipping of those stations, or rather I was the first person to invent and have manufactured and
846 put into use tank wagons for the distribution of oil by having the horses haul the wagons; also the first iron barrels that were ever used in this country, and the appliances that I speak of were first used by myself, representing the various firms with which I have been connected in the oil business, and within the territory now occupied by the Waters-Pierce Oil Company, long before those appliances were ever handled by any one else in this country.

Judge STEDMAN: Now, down lower.

Q. You confined yourself to establishing the facilities and preparing yourself to meet the enlarged demand within that territory?

A. Absolutely, and in keeping ahead of the demands, to the end that all requirements should be promptly met, because I knew that otherwise I would not be able to control the trade.

Q. Reverting back to the plant at St. Louis. As an adjunct to that plant and for the purpose of economizing in the cost of your oil did you establish a station in East St. Louis?

A. I did.

Q. And a pipe line under the Mississippi River at St. Louis?

A. I did, to avoid the cost of transporting the oil purchased from points East of the Mississippi River over the bridge to various points across the river, I established a large storage station in East St. Louis and located several pipe lines under the Mississippi River, so that during the past twenty or twenty-five years practically all of the oils received from points East of the Mississippi River at East

St. Louis have been received in East St. Louis by the Waters-Pierce Oil Company, turned into its stationary tanks located there and pumped through pipe lines under the Mississippi River into the tanks belonging to the Waters-Pierce Oil Company located upon its lands at Thirteenth and Austin streets.

Q. Now, Mr. Pierce, will you give me approximately the
847 value of the equipment and plants of the Waters-Pierce Oil Company?

A. I have not recently examined the books, but I should say in the neighborhood of five million of dollars.

Q. That has relation to your storage tanks and your equipment to serve the conveniences of the sale of petroleum?

A. Entirely so.

Q. Do you remember the cost to the user of illuminating oil when you first began in the oil business?

A. I have sold a great deal of illuminating oil of the ordinary quality in this city at one dollar per gallon, and a great deal more at forty cents later on.

Q. Within the past few years the price of oil has been on an average—I speak of the price to the consumer—of about how much per gallon?

A. I have sold a great deal of oil in the City of St. Louis within the past few years at four and one-half and five cents per gallon delivered into their cans or receptacles from tank wagons.

Q. The price of oil varies, speaking with respect of from week to week, to the cost of production and refining?

A. The price of refined oils, gasolines and lubricating oils of the various qualities is controlled almost entirely by the price of crude petroleum, and the latter is controlled very largely by the location of production as related to the point of manufacture; for instance, when there was a large supply of crude petroleum produced in Pennsylvania and other parts of the United States, the cost of refined products delivered in the territory within which the Waters-Pierce Oil Company operated was based not only upon the value of the crude and the cost of manufacture, but to a very large extent to the cost of transportation, which then was perhaps the larger part of the total cost, and later when a large production of crude petroleum was obtained in Ohio and Indiana and the Standard Oil Company established a manufactory at Whiting, near Chicago, the cost of
848 the refined products delivered to the Waters-Pierce Oil Company in the territory within which the Waters-Pierce Oil Company operated was very much lessened because of the less cost of transportation from the point of production of the crude and manufacture of the products to the territory within which it was sold, and so when a large production of crude petroleum was produced in Texas there were no manufactories within any reasonable distance from the point of production of the crude, and the quality of the crude being of much less value for manufacturing purposes than the production of Pennsylvania, Ohio and Indiana crude, likewise affected the cost of the refined products. The proximity of the crude product and the manufacturing plant to the territory within which the manufac-

tured products were sold was very often, as in the case of the Texas production, entirely overcome by the reduced value of the Texas production as compared with the Pennsylvania, Ohio and Indiana production, and so it has continued as to the crude petroleum in Kansas, the Indian Territory and Oklahoma. So that the price of the refined product to the consumer depends upon a great many elements, as I have illustrated.

Q. The Waters-Pierce Oil Company has never acquired nor attempted to acquire any oil fields or engage in the production or manufacture of oil, except as an incident to its business as a merchant in oils?

A. The Waters-Pierce Oil Company has never acquired, nor attempted to acquire, any fields for the production of crude petroleum, or wherein crude petroleum was produced, and has engaged in the manufacture of petroleum products from crude petroleum purchased only to the extent of the requirements of the Waters-Pierce Oil Company's business.

Judge STEDMAN: Now, turn over to the next page.
Judge PENN: I have it.

Q. Now, at present you get some oil from the Standard Oil Company's refinery at Whiting, Indiana, and at Sugar Creek, Missouri, do you not?

849 A. At the present time the Waters-Pierce Oil Company purchases of the Standard Oil Company petroleum products which are shipped to it from Whiting, Indiana, and Sugar Creek, Missouri.

Q. When was the refinery of the Standard Oil Company of Indiana erected at Sugar Creek?

A. I do not recall the exact time, but I should say about three years ago.

Q. What, if you know, is the capacity of that refinery—is it large or small?

A. Comparatively large.

Q. Now, what would be the effect of establishing that refinery at Sugar Creek upon the price of oil in the Southwest territory—would it lower or increase the price?

A. It would lower it to the extent of less freights from Sugar Creek than from Whiting. The selling price of the refined products should be lessened to the extent of the inferior quality of the crude used at Sugar Creek as compared with the better quality of the crude used at Whiting, the selling price should be correspondingly greater.

Q. In other words, when you establish a manufactory in the locality of distributing the finished product of the factory and in the neighborhood of the raw material the tendency is, as in this case, to reduce the cost of the product to the consumer?

A. It is so unless the quality of the crude is of so much less value as to offset the less cost of transportation and manufacturing.

Q. Transportation in that instance, as in all other instances, is an important factor in determining price?

A. Absolutely.

Q. Do you know whether the oils produced in Kansas are refined or are as good oils as produced elsewhere?

A. It is my understanding they are not. They are much inferior to the oils from which the Whiting products are manufactured.

850 Q. Now, Mr. Pierce, you have spoken of a great number of facilities for merchandising this oil. What advantage do you derive as a merchant from the equipment, and what is the advantage to the consumer from the establishment of such facilities?

A. The advantage to the Waters-Pierce Oil Company is the regular control of the trade adjacent to the stations. The advantage to the consumer is a saving equal to a very large percentage of the total cost in almost entire absence of leakage, insurance, storage and other similar expenses. The introduction of tank cars as a means of transporting refined products, particularly those of lighter gravity, such as gasolines, amounts in a saving in evaporation alone to as much as fifty and seventy-five per cent. of the total contents, dependent upon the distance to be transported. The introduction of iron barrels for the delivery of refined products from Waters-Pierce Oil Company's stations to territory within a distance, say, of thirty or forty miles, where formerly the wooden packages in which the transportation was effected were held in storage until the merchant sold by the gallon, or in less measure, the contents of the barrel, is equal to from ten to sixty per cent. of the contents of the package, and a greater per cent. of saving accrues to the consumer when receiving the exact number of gallons or the exact measure purchased from a tank wagon directly into the house receptacles. In the City of St. Louis there are some three or four thousand retail merchants who formerly purchased all of the oils which they sold at retail to their customers in wooden barrels from the Waters-Pierce Company, or its predecessors, or its competitors in this city, or imported it from far away points, and a fair average of the leakage during such time, say, one barrel of fifty gallons of refined oil or gasoline, remained in the retail grocer's store was very often equal to fifty per cent. of the contents or twenty-five out of the fifty gallons. Since the introduction of tank wagons de-

liveries from our storage tanks, in our works in St. Louis, not

851 one drop need be wasted. So that the advantages are very great, not only to the dealers and handlers, but to the consumers.

Q. I understand you, then, there is in the ordinary mode of shipment a very great shrinkage in the quantity placed originally in the package to be shipped?

A. When that package is not a metal one. Metal packages entirely do away with shrinkage and evaporation.

Q. Do you know of any of your competitors in the territory of Missouri—and when I say in the territory of Missouri I mean the territory in which you operate—that are equipped as the Waters-Pierce Oil Company is equipped for supplying its trade?

A. None there are or have ever been.

Q. Now, to what do you attribute this large percentage in the volume of oil sold by the Waters-Pierce Oil Company in its Missouri territory?

A. Entirely to the better facilities afforded by the Waters-Pierce Oil Company to the consumer than competitors could furnish, and to very close attention to the prompt delivery of the best qualities and full measures of oil.

Q. Has the Waters-Pierce Oil Company adopted any trade marks in oil?

A. The Waters-Pierce Oil Company received from the firm of Waters, Pierce & Company, and that firm received from the firm of H. C. Pierce & Company, and that firm from W. H. Cobb & Company, and that firm from J. R. Finlay & Company, the originators in Europe and in this country, and trade markers here, several trade mark brands which the Waters-Pierce Oil Company, first and second, have always used and still use.

Q. What is your trade mark brand of best oil?

A. Eupion.

Q. Is that manufactured for your company by the Standard Oil Company?

A. It is in this country, in the United States I mean.

Q. In Mexico it is manufactured by whom?

A. It is manufactured by the Waters-Pierce Oil Company itself.

852 Q. Can you estimate the number of gallons of Eupion oil sold by the Waters-Pierce Oil Company annually?

A. I have not the figures at hand. I know that because of maintaining a uniform excellence of oil sold under that brand that the percentage of Eupion to other brands of refined oil materially increased each year, and I assume that it is now doing so. I believe that in some instances, perhaps at many points, the sales under the Eupion brand exceed the sales under all other brands.

Q. When the present Waters-Pierce Oil Company, the defendant in this suit, was organized, I understood you to say that it succeeded by purchase to the plant of the old Waters-Pierce Oil Company?

A. It did.

Q. And it has since then confined its operations to building up its business in that territory with the plants that it acquired from the old Waters-Pierce Oil Company?

A. It has.

Q. I will ask you whether there has been any understanding expressed or whether the matter has been discussed with respect to the division of territory since that?

A. I have not discussed the question of division of territory with any one since the present Waters-Pierce Oil Company was organized, nor do I know that any other officer or representative of the Waters-Pierce Oil Company has done so with any one.

Q. Now, Mr. Pierce, I will get you to state approximately your estimate of the value of the assets and good will of the Waters-Pierce Oil Company?

A. I should say a fair value is from forty-five to fifty-five millions of dollars.

Q. What is the total amount of stock of the Waters-Pierce Oil Company?

A. Four thousand shares.

Q. What is the par value?

853 A. One hundred dollars per share. Four hundred thousand dollars.

Q. What proportion of that stock do you own?

A. Thirty-one and one-half per cent.

Q. Now, what, in your opinion, is the value of the assets, tangible assets, as distinguished from the good will of the Waters-Pierce Oil Company?

A. I have not examined the books lately or a statement. I think in the neighborhood of twelve millions of dollars.

Q. In addition to the tangible assets you estimated good will. Mr. Pierce, what are the trade marks, what articles have they in trade marks, the Waters-Pierce Oil Company in trade marks?

A. The number?

Q. Yes sir.

A. Trade marks upon all kinds of refined oils, lubricating oils, great number of those; greases and other products that the Waters-Pierce Oil Company handles.

Q. Mr. Pierce, my memory may be at fault, my associates think it is, and conceding for the present that it is, I want to ask you, if I have not already done so, whether there has ever been any combination, confederation, understanding, expressed or implied, between the Waters-Pierce Oil Company, or the Republic Oil Company, or the Standard Oil Company of Indiana, with respect to fixing or maintaining within the State of Missouri, or elsewhere, the prices of the manufactured products of petroleum, or with respect to the quantity of the products of petroleum that should be sold upon the markets in the State of Missouri?

A. There has not.

Q. Or any other Standard Oil interest, Standard Oil Company of New Jersey?

A. There has never been any understanding between the

854 Waters-Pierce Oil Company and any Standard Oil Company interest in regard to any of the questions you have propounded.

Judge STEDMAN: What is the next place you have marked?

(Judge Penn indicates the next portion.)

Mr. ALLEN: Is this cross examination?

Judge PENN: Yes, sir, by Mr. Hadley. I expect it would be about the fifteenth or twentieth page of that, the first place you stopped in the cross examination.

Q. At any other time or with any other representative of the Standard Oil interest was there an agreement with you that you, a minority stockholder, should direct and control the affairs of the Waters-Pierce Oil Company?

A. Yes, sir, subsequent to that with the same and additional individuals.

Q. Well, name some of them.

A. W. H. Tilford, Silas H. Paine and the various individuals connected with the Standard Oil Company of Ohio and New Jersey, and

the various Standard Oil interests as time went on and the extension of business required.

Q. And all these gentlemen agreed that the minority interest in the Waters-Pierce Oil Company should control its operations?

A. Always.

Q. Without any supervision or control of the Standard Oil Company?

A. Absolutely.

Judge STEDMAN: Now, skip several pages.

Q. Have you known of the Standard Oil Company selling any oil to any other wholesaler or jobber in the State of Missouri?

A. Oh, yes.

Q. In the territory of the Waters-Pierce Oil Company?

A. Yes.

Q. To whom?

855 A. The Republic Oil Company and to various dealers in the city of St. Louis.

Q. What dealers in the city of St. Louis ever bought any oil of the Standard Oil Company besides the Republic Oil Company?

A. George P. Jones & Company, and I presume a great many other dealers in St. Louis.

Q. That would simply be emergency orders?

A. I think not.

Q. Name a man in the city of St. Louis who purchased oil from the Standard Oil Company other than those you have mentioned?

A. I can not answer that.

Q. Mr. Adams became connected with the Waters-Pierce Oil Company as Secretary, did he not?

A. He became connected with the company, I think, as Secretary, although I do not remember the exact time.

Q. And from that time up to the present has the Standard Oil Company, to your knowledge, had a tank station or office in St. Louis?

A. I know that it has not.

Q. Or anywhere in the territory of the Waters-Pierce Oil Company?

A. It has during all of that time maintained a tank station at East St. Louis, which is and has been since 1878 within the territory of the Waters-Pierce Oil Company.

Q. Which company has the territory of East St. Louis?

A. Waters-Pierce Oil Company.

Q. It sells the oil to the consumers there?

A. When it can.

Q. The Standard Oil Company don't sell any, does it?

A. It does.

Q. Are you a competitor of the Standard Oil Company in East St. Louis?

A. Unfortunately, yes.

856 Q. The Standard Oil Company is competing with a company in which it owns a majority of the stock, is that your statement?

A. I don't make the statement. That may be your conclusion, General.

Q. I am asking you. You are familiar with your competitors in the city of St. Louis, are you not?

A. Not personally at the present time.

Q. You were during the time you managed the business?

A. Intimately so.

Judge STEDMAN: Now, skip over a page or two.

Q. You say you get oil of the Standard Oil Company because there is no other place you can get it. Did I understand you correctly?

A. I said that the Waters-Pierce Oil Company purchased the greater part of its supplies of refined oils and petroleum products from the Standard Oil Company because during all or a greater part of the time since the first Waters-Pierce Oil Company was organized it would have been impossible for the Waters-Pierce Oil Company, the first or second one, to have obtained sufficient supplies of proper quality to meet the trade requirements of the Waters-Pierce Oil Company within the territory in which it operated.

Q. You do not know whether you could have secured the oil, or whether the Waters-Pierce Oil Company could have secured the oil, to supply the trade in its territory from the independents or not?

A. Up to within a few years, since which time the greater portion of all other refineries have been established, I did examine the statistics very thoroughly and positively know that it would not be possible for the Waters-Pierce Oil Company to have secured sufficient supplies from that source, but it will be remembered that the multiplicity of refineries has been greater since the production of crude oil commenced in Kansas, Oklahoma and Indian Territory than during the entire previous period.

Q. Why didn't you get all you could from the independent refineries?

857 A. As a rule the oils produced by the independent refineries were of very inferior quality and they were produced in such small quantities by each independent, although the aggregate was considerable, it would have made it very much more expensive for the Waters-Pierce Oil Company to have supplied its trade from a great many sources as against the one.

Judge STEDMAN: Now, skip two or three pages.

Q. What is the nearest refinery to your territory in the South-west?

A. What part of the South-west?

Q. South-west part of this State?

A. I should think Sugar Creek.

Q. Neodesha is nearer, is it not?

A. I am not positive as to the distance. It may be.

Q. You have not been actively engaged in the business?

A. I have not been at either place recently and do not recall the exact distance. I do not think there is very much difference, General.

Q. You were speaking of the equipment of the Waters-Pierce Oil Company consisting of tank stations and tank wagons. Aren't other oil companies in the city of St. Louis selling oil that have this same equipment?

A. None.

Q. Doesn't the St. Louis Oil Company have them?

A. The St. Louis Oil Company, I believe, has a station, and has an equipment.

Q. Hasn't it tank wagons?

A. It has tank wagons, but its equipment is not at all equal to those possessed by the Waters-Pierce Oil Company.

Q. It has the same kind of equipment only in smaller size?

A. I am not sure that it is the same kind or a different kind.

Q. It consists of tank stations and tank wagons?

858 A. I believe it consists of one tank station and some tank wagons.

Q. Take in the city of Springfield and Joplin, Mr. Wilhoit has tank wagons and tank stations?

A. I do not know the gentleman, or what he has there, if anything.

Q. Do you know that there are not other companies than those I have mentioned that have tank wagons and tank stations throughout the territory of the Waters-Pierce Oil Company?

A. I know that tank stations and tank wagons do exist and are operated in competition with the Waters-Pierce Oil Company at many points in the territory of the Waters-Pierce Oil Company, in fact generally throughout the territory of the Waters-Pierce Oil Company in the United States, but not in Mexico.

Q. These conditions which you say contributed to the large percentage of the business have not existed since the new company has been in existence?

A. You mean the equipment?

Q. Yes, sir.

A. They have been largely increased and improved. The difference in percentage between former years and now is due almost entirely to the discovery of crude oil in the States of Texas, Louisiana, Kansas and in the Indian Territory and Oklahoma, which has caused a starting up of a great number of small refineries, all of which endeavor to do, and do, a considerable amount of business within the territory in the United States wherever the Waters-Pierce Oil Company operates.

Q. And in the State of Missouri that has contributed to the enlargement of competition, has it?

A. The production of crude oil?

Q. Yes, sir.

A. Very largely.

Q. And these tank wagons and tank stations have grown up in the State of Missouri within the last four or five years?

859 A. I do not know to what extent they exist, but I should say, with the exception of the St. Louis Oil Company, they have grown up within the past few years since oil was discovered

near by. It was quite a different thing for a competitor to receive his supplies from Parkersburg or Cleveland, or far Eastern points, and bring it here in wooden barrels, and sustain a leakage often as great as fifty per cent, than what it is now to get his supplies from a refinery in the immediate neighborhood; and a competitor can transact business under much more favorable conditions when the source of supply is nearer the point of sales, and with the modern equipments of iron barrels for transportation and storage, than he could in former days. The Waters-Pierce Oil Company at the time it held such a large percentage of the business was practically the only oil industry in this country equipped to store, transport and handle oil in iron packages.

Q. There is Scofield, Shurmer & Teagle?

A. Scofield, Shurmer & Teagle had two and the Waters-Pierce Oil Company had hundreds.

Q. In the State of Missouri?

A. The Waters-Pierce Oil Company had hundreds of stations in Missouri of the most perfect and largest character, fully sufficient to supply the entire demand, and Scofield, Shurmer & Teagle had a small one in St. Louis and a much smaller one in Springfield.

Q. But they had the same kind of equipment?

A. No, sir. It was very inferior in every way. They were not at all equipped.

Q. Did you ever see them?

A. I saw those in St. Louis, but not in Springfield. I had a very full description of what they had, because I negotiated for the purchase of their plant there.

Q. At Springfield?

A. At Springfield, in fact purchased the plant there. Con-
860 tinuing that answer, General, if you will allow me, if the people of the State of Missouri in the territory in which the Waters-Pierce Oil Company now operates had been obliged to depend upon Scofield, Shurmer & Teagle they would have been in darkness over ninety per cent. of the time.

Q. That is your opinion?

A. That is based upon facts.

Q. The people of Missouri have never had an opportunity to test that question yet.

A. They have had the same opportunity that I had to supply them with oil.

Q. I do not understand?

A. They were free agents. So was I. They could have bought from any one they pleased. I could have sold to any one I pleased.

Q. You could have given the people of Missouri the advantage of these refineries close to the point of distribution, but you did not regard it as expedient?

A. It would have been expensive to the people of Missouri if I had, because with my limited capital, as compared with the Standard Oil Company, I could not have afforded to do so. They have been able to sell to me so that I could re-sell to them.

Judge STEDMAN: Now, the next one we don't want. I think that is all, Judge Penn.

The COURT: Are you through with that testimony, Gentlemen?
Judge STEDMAN: Just one moment until I can see.—That's all.

861 Mr. LIGHTFOOT: We next offer the deposition of Wade Hampton. I will state to the Court that a portion of this deposition is covered by an agreement and a portion of it is not, and a portion of it, also, is, to a certain extent, in conflict with the agreement, and we offer that part of the deposition, or will offer it, for the purpose of showing that at the time this deposition was given, which was in October or November of last year, that the facts now admitted show that an effort was made at that time to conceal them, and such portions as are in conflict, we offer for the purpose of showing the effort by Wade Hampton, who is charged as one of the conspirators in the petition, that he made an effort to conceal the facts which are now admitted.

Mr. ODELL: If the Court please, we object to any part of the deposition for the purpose stated by State's counsel in this case, for the reason, in the first place, that it is not shown that Wade Hampton was ever at any time in the employ of the Waters-Pierce Oil Company, or that he was an agent of the Waters-Pierce Oil Company, the defendant in this case. In the next place, we object to it for the reason that these gentlemen themselves took the deposition of the witness; he is their witness; they are not surprised at this time by any statement that he makes in the deposition, and for that reason they can't offer any answer that the witness makes in his deposition for the purpose of either contradicting or impeaching or discrediting this witness. It is wholly immaterial and irrelevant here for the purpose of any conspiracy, or the fact that he was one of the conspirators in this case. He is not a party to this suit, and the general allegation in the petition here that he was one of the conspirators would not make the deposition of the witness material or pertinent to an inquiry of that kind. In the next place, if the witness has evaded or failed to answer any question—any interrogatory that was propounded to him in the interrogatories here, it would have been proper to have made a motion to have suppressed
862 the deposition, and certainly now, by reason of some failure of the witness to answer and by reason of his failure to answer, it is not admissible here for the purpose of showing any concealment by the witness, on the part of the defendant; and we object to it for all of the reasons stated.

Mr. LIGHTFOOT: I will state that the stipulation and agreement that we made with counsel contains the provision that either party may use the deposition of Wade Hampton heretofore taken on interrogatories propounded by the State, in the trial of this case, subject to all legal objections as to competency and relevancy. Now, we don't care to offer the deposition to disprove any fact which is admitted in this case, and for that reason I make the statement that the purposes for offering that portion of his deposition which conflicts with the facts which are now admitted, is offered for the purpose of not discrediting the witness or contradicting him in any way, except to show, so far as the facts really go to show, that at that time, in October, 1906, or November, when this deposition was

taken—I believe it was in November—that the facts which are now admitted were then denied, or an effort was made to conceal them, in line and with the view to maintain the conspiracy and monopoly that had been established, and in order that it,—the elements of it,—should not be made public and become known; and as was well known, of course, this suit was pending here at that time; this was a witness who was the General Auditor of the Waters-Pierce Oil Company, of the Standard Oil Company of New York, of the Standard Oil Company of Indiana, and of the numerous other of those corporations whose offices were at 26 Broadway, New York. His office was at 26 Broadway, New York, and the deposition will disclose that he audited the books and accounts of all these corporations, and did that up until 1900, also the books and accounts of the Waters-Pierce Oil Company up until 1900; after 1900 they sent auditors who audited, out to St. Louis to audit the books and accounts of the Waters-Pierce Oil Com-
863 pany, and with instructions to put them on their pay-roll, etc. Now, that is a fact that is now admitted—that they were sent there by the Standard Oil Company of New Jersey, for the purpost of making an audit of the books and accounts of the Waters-Pierce Oil Company for the use and benefit of the Standard Oil Company of New Jersey, the admitted majority stockholder in this corporation. Now, then, last October, when the depositions of these witnesses were being taken and the State was undertaking to establish these facts, the witness Wade Hampton evaded these questions and denied that these auditors which were sent out there were sent there at the instance of the Standard Oil Company of New Jersey, but specifically said that they were sent there at the request of the Waters-Pierce Oil Company. Now, we say that it is competent to introduce his answers to those questions for the purpose of showing that he, as one of the conspirators charged in our bill, was doing his part to conceal the relationship existing between the Standard Oil Company of New Jersey and the Waters-Pierce Oil Company organized May 31, 1900, and the relations between such corporations not having been admitted until here about thirty days ago. And we offer it, as I say, for the purpose of showing that an effort was made by this co-conspirator to conceal the true relations existing between these corporations, wherever it contemplates that.

The COURT: Let me see the evidence that you offer. (Mr. Allen hands the deposition to the Court.) Do you offer this entire deposition?

Mr. LIGHTFOOT: Yes, sir; we expect to read the entire deposition, but there are some parts of the deposition not covered by this agreement; that portion of it, we take it, there could be no objection to, as it is not covered by the agreement. There are some facts testified to that are not covered by the agreement at all.

Mr. ALLEN: A part of it, of course, shows facts that are not
864 covered by this agreement.

The COURT: I understand the objection goes to the entire deposition.

Mr. ODELL: The objection goes to that part of the deposition which they state candidly to the Court is for a certain purpose. Counsel

has made a statement to the Court that there is part of the deposition that they offer for a certain purpose. Now, we object to the deposition for any purpose that State's counsel says it is offered for.

Mr. BATTS: We have indicated the point that it is offered for that purpose.

Mr. LIGHTFOOT: I suggest, if Your Honor please, that we——

The COURT: If the Court should rule at this time, the record would not show what part is offered and what is objected to.

Mr. ODELL: We have to make our objection.

The COURT: You can renew your objection when that part is offered. As it is presented now, the Court is under the necessity of reading a great deal of matter not necessary.

(Thereupon Mr. Lightfoot read the interrogatories and Mr. Brady the answers, as follows:)

Interrogatory 1. What is your name, age and residence?

Answer. Wade Hampton; Brooklyn Borough, New York City.

Interrogatory 2. If you state that your name is Wade Hampton, then state whether you have ever signed your name Wade Hampton, Jr.; if so, when did you stop signing it that way, and the reason therefore?

Answer. I signed my name Wade Hampton, Jr., until about six months after my father's death, whose name was also Wade Hampton. This was in 1900.

Interrogatory 3. What is your business?

Answer. General auditor of accounts.

Interrogatory 4. If in answer to the foregoing interroga-
865 tory you state, or if it be a fact, that your business is General Auditor of Accounts, and in charge of the traveling auditors of the Standard Oil interests, then state by whom you are employed, and how long you have been so employed?

Answer. I have been employed as general auditor by a number of corporations for something over eleven years. Each of these corporations through their board of directors appoint me general auditor each year, each separately. I couldn't give off-hand the name of all of the companies. I can give you the Standard Oil Company of New Jersey, the Standard Oil Company of New York, Atlantic Refining Company, Standard Oil Company of Indiana and others.

(Interrogatory No. 5 and answer omitted.)

Interrogatory 6. If in answer to the foregoing interrogatory you state, or if it be a fact, that your place of business is at room 800, 26 Broadway, New York City, then state how long your place of business has been located at that place.

Answer. My office has been in 26 Broadway something over eleven years. I was formerly on the fifth floor, but I am now on the eighth. I can't tell how long it has been that room. It is 800 now.

Interrogatory 7. If you have answered, or if it be a fact, that you are employed as General Auditor of Accounts, and in charge of the traveling auditors of the Standard Oil Company of New York and the Standard Oil Company of New Jersey, or the Standard Oil Company interests, please state whether or not said concerns have offices

at 26 Broadway, New York, in the same building in which you are located, and how long they have been located at that place?

Answer. The offices of the first three companies I mentioned as being general auditor of have offices in 26 Broadway. How long they have been there I can't positively say.

Interrogatory 8. Please state whether or not any other companies or corporations have their offices at 26 Broadway, in addition
866 to those already named?

Answer. Yes.

Interrogatory 9. If you have stated, or if it be a fact, that other companies or corporations have offices at 26 Broadway, please state what connection, if any, they have with the Standard Oil Company of New Jersey and the Standard Oil Company of New York?

Answer. Not having seen the record of the ownership of the various corporations mentioned, I can't answer it.

Interrogatory 10. What business is the Standard Oil Company of New York and the Standard Oil Company of New Jersey engaged in, and how long have they been engaged in such business?

Answer. Manufacture and sale of petroleum oils. I really can't state positively how long they have been engaged in business.

Interrogatory 11. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that the Standard Oil Company of New Jersey and the Standard Oil Company of New York are engaged in refining and selling petroleum oil and its products, please state in what States and Territories each of said companies are engaged in said business?

Answer. I don't know.

Interrogatory 12. Please state whether or not the Standard Oil Company of New Jersey is engaged in the business of retailing oil; if so, in what States and Territories?

Answer. They are so engaged, but I can't tell the States and territory they are operating in.

Interrogatory 13. Please state whether or not the Standard Oil Company of New York is engaged in the business of retailing oil and the products of petroleum; if so, in what States and Territories does it do such business?

Answer. Same reply exactly.

Interrogatory 14. Please state whether or not the Standard
867 Oil Company of Indiana has an office at 26 Broadway, New York; if so, what officers of said company represent it at 26 Broadway, New York.

Answer. They have not any office there.

Interrogatory 15. Please state what business the Standard Oil Company of Indiana is engaged in?

Answer. Manufacture and sale of petroleum products.

Interrogatory 16. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that the Standard Oil Company of Indiana is engaged in the business of refining and selling petroleum oil and its products, please state in what States and Territory it transacts such business?

Answer. I don't know.

Interrogatory 17. Please state whether or not you have, as Gen-

eral Auditor of Accounts, audited or had audited the books and accounts of the Standard Oil Company of New Jersey, the Standard Oil Company of New York, and the Standard Oil Company of Indiana?

Answer. I have.

Interrogatory 18. If you have answered, or if it be a fact, that you have audited, or had audited, the books and accounts of the corporations named in the foregoing interrogatory, you will state how long you have been engaged in attending to the auditing of said books and accounts of each one of the corporations named, and if you are still engaged in the business of attending to the auditing of their books and accounts?

Answer. Something over eleven years, and still so engaged.

Interrogatory 19. Please state whether or not you audit or have audit made of the books and accounts of any other firm, company or corporation located at 26 Broadway, New York, or is in any manner connected with the Standard Oil Company of New Jersey, or any other corporation named in Interrogatory #18?

Answer. Yes. I cause to be audited the books and ac-
868 counts of other corporations at 26 Broadway. I can't tell the connection of those companies with the Standard Oil Company of New Jersey or the other companies referred to in Interrogatory Eighteenth.

Interrogatory 20. Please state by whom you are employed to have audit made of the books and accounts of the Standard Oil Company of New Jersey, the Standard Oil Company of New York, and the Standard Oil Company of Indiana?

Answer. By the board of directors as appointed by them as general auditor of each separate corporation.

Interrogatory 21. Please state to whom you made reports of the results of audits made after you have audited, or had audited, the books and accounts of the Standard Oil Company of New York, the Standard Oil Company of Indiana, and the Standard Oil Company of New Jersey?

Answer. The original reports of the auditors are sent to some officer of the separate corporations. In some cases the vice president, treasurer or secretary of each corporation.

Interrogatory 22. State whether or not you make a report to the Standard Oil Company of New Jersey, or any of its officers, showing the results of your labors in auditing, or having audited, the books and accounts of the Standard Oil Company of New York and the Standard Oil Company of Indiana, or either?

Answer. No.

Interrogatory 23. Please state whether or not you audit or have audit made of the books and accounts of either or all of the following companies: Anglo-American Oil Company, Atlantic Refining Company, Buckeye Pipe Line Company, Eureka Pipe Line Company, Forest Oil Company, Indiana Pipe Line Company, National Transit Company, New York Transit Company, Northern Pipe Line Company, Northwestern Ohio Natural Gas Company, Ohio Oil Company, Solar Refining Company, Southern Pipe Line Company, South Penn

Oil Company, Standard Oil Company of Kentucky, Standard
869 Oil Company of Indiana (Chicago), Continental Oil Company (Denver), Standard Oil Company of Ohio, Union Tank Line Company, Waters-Pierce Oil Company of Missouri, Standard Oil Company of San Francisco, Standard Oil Company of Connecticut, Standard Oil Company of Baltimore, Vacuum Oil Company (Syracuse), Thompson & Bedford (New York), Swan & Finch (New York), Cheesebrough Manufacturing Company (New York), Galena-Signal Oil Company.

Answer. I have charge of the auditing of some of those mentioned in the list, but not all.

Interrogatory 24. Please state whether or not any or all of the companies named in the foregoing interrogatory have officers, agents or representatives at 26 Broadway, New York?

Answer. Some have, and some have not.

Interrogatory 25. Please state whether or not the books and accounts of the Waters-Pierce Oil Company of Missouri have ever been audited by you or under your direction?

Answer. Not the present organization.

**Mr. Batts**: Now, Your Honor, this is the question and answer with reference to which this statement was primarily made. This we do not care to introduce, because that is a fact covered by the agreement.

The Court: The last question and answer?

Mr. Batts: The last question and answer and two or three succeeding ones. I desire to call your attention specifically to what we want to limit it the introduction to. If not proper for that purpose, then we do not care to offer it at all.

The Court: Do you wish to renew the objection?

Mr. Odell: Yes, sir. (Examines deposition.) Before Your Honor rules, we would like to state our objection a little more fully.

The Court: Yes, sir. I will hear you.

Mr. Odell: We desire the record to show that if this tes-
870 timony, commencing with Direct Interrogatory No. 25 and answer thereto, and the subsequent questions and answers of this witness are offered generally, then we have no objection to the testimony; but we do object to the testimony for the purpose that the State seeks to have it limited to in this case. In the first place, it is not shown that the witness was ever at any time an agent of the defendant. Therefore, the defendant can't be bound by the testimony of the witness. In the next place, the State in this case has made this witness its own and can not now undertake, directly or indirectly, for any purpose, to impeach or contradict the witness, and whatever the stated purpose of the State may be in this case, the only effect the testimony could have would be to prejudice the witness before the jury and thereby prejudice the rights of the defendants here by and through one of the State's own witnesses. Now, it is shown that the testimony of this witness was taken some time in October. It is shown by the testimony already offered in evidence here, the testimony of H. C. Pierce, that he had made substantially the same admission that has been made in the agreement and stipu-

lation that has heretofore been offered in evidence. Now, the test with reference to this testimony is as to what issue in this case it tends to prove; if it does not tend to throw light on some issue in the case, as a matter of course the testimony is immaterial and irrelevant, in the first place. In the second place, if it has the effect of prejudicing the witness before the jury for the stated purpose, in fact of prejudicing the defendant before the jury, then a double injury is done the defendant in this case. For the purposes of the trial of this case a written statement and agreement was offered in evidence; it has been admitted here; it is not denied. Now, as a matter of course, in so far as the stipulation and agreement throws no light on this controversy, it isn't in issue. Now, what do they seek to establish here? They seek to establish by a witness who they claim has concealed or evaded some question that this agreement that
871 they have offered in evidence here is not true. It is an indirect attack, in the first place, on the stipulation and agreement that is not controverted, and it seems to us clearly that it can not become an issue here as to whether or not one of their own witnesses has concealed or has failed to state fully the truth, on the one hand, or, on the other, has failed in his knowledge of the particular facts that have been admitted. Now, are we going to be called on to discuss an issue here before the jury as to whether or not this witness had knowledge of the facts that had been admitted and are uncontroverted here? As a matter of course, it may be material to throw light on the issue in this controversy as to whether or not auditors of the Standard Oil Company in fact audited the books of this company. If that be material here, that is already admitted. Then they propose now to go further than that with this witness, and show that this witness either did not have knowledge of that fact, on the one hand, or, on the other, that he has not stated the truth fully about it; so it is immaterial and irrelevant. It is an attack on the stipulation and agreement that is uncontroverted here; it is an indirect effort to assault and attack and impeach and cloud the testimony of their own witness, and in this indirect manner we insist that it can't be done.

The COURT: One of the issues in this case is the purpose for which the Standard Oil Company sent auditors to the Waters-Pierce Oil Company and had the books of that company audited. On that issue it is admissible and relevant, it seems to me, to show that when the head auditor of the Standard Oil Company was asked in the Fall of last year whether any auditors had been sent or not, he said they had not been sent, and under the principles announced yesterday in excluding the affidavit of Mr. Pierce, I think that the evidence is admissible. The objection is overruled.

872 Mr. ODELL: We except to the ruling of the Court.

Interrogatory 26. Please state whether or not prior to May 29th, 1900, the books and accounts of the Waters-Pierce Oil Company of Missouri were audited by you or under your direction?

Answer. Their general office accounts were.

Interrogatory 27. Do you know Mr. John B. L. Hornberger? Did

you know him in July, 1899? What was his business, and by whom was he employed?

Answer. Yes, I know him. Yes. He was a traveling auditor employed by me.

Interrogatory 28. Please state whether or not you ever requested him to visit St. Louis for the purpose of auditing the books, accounts, etc., of the general office of the Waters-Pierce Oil Company?

Answer. It is very likely I did. I can't recall the circumstances.

Interrogatory 29. Please state whether or not you wrote a letter dated July 7th, 1899, to Mr. H. C. Pierce, President of the Waters-Pierce Oil Company, introducing to him Mr. John B. L. Hornberger?

Answer. I can't remember doing so now; it is probable I did, but I can't say positively.

(Interrogatory No. 30 and answer omitted.)

Interrogatory 31. Please state whether or not prior to May 29th, 1900, the reports of the audit of the books of the Waters-Pierce Oil Company were submitted to you in person?

Answer. Yes, they were submitted to me in person.

Interrogatory 32. If you have answered, or if it be a fact, that such reports were submitted to you, please state to whom you made your reports concerning said audit, and why?

Answer. I don't recall now positively who the party was. It was probably one of the directors of the Waters-Pierce Oil Company. I supposed he would probably be interested in reading the reports.

873 Interrogatory 33. How often did you audit the books of the Waters-Pierce Oil Company prior to May 29th, 1900?

Answer. Possibly once a year. I can't remember exactly.

Interrogatory 34. Do you know Mr. R. H. McNall? Did you know him prior to May 29th, 1900?

Answer. Yes.

Interrogatory 35. Do you know by whom he was employed prior to May 29th, 1900?

Answer. I think he was employed in the Pratt Works' office.

Interrogatory 36. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that he was employed in the Standard Oil Company Pratt Works office, then state where said offices were located?

Answer. 26 Broadway, New York City.

Interrogatory 37. Please state what connection the "Standard Oil Company Pratt Works" sustained toward the Standard Oil Company of New Jersey, or any of the Standard Oil Interests represented at 26 Broadway?

Answer. I don't know that it had any relation to the Standard Oil Company of New Jersey. It was one of the works' offices of the Standard Oil Company of New York.

Interrogatory 38. Do you know Mr. H. M. Tilford, and how long have you known him?

Answer. Yes. About eleven and a half years.

Interrogatory 39. What position did he hold prior to May 29th, 1900?

Answer. I can't answer positively.

Interrogatory 40. What position did he hold subsequent to May 29th, 1900?

Answer. That is answered in the same way.

Interrogatory 41. Has his office been located at 26 Broad-
874 way during the time you have known him?

Answer. Yes.

Interrogatory 42. Please state whether or not Mr. H. M. Tilford was the representative of the Waters-Pierce Oil Company at 26 Broadway prior to May 29th, 1900?

Answer. I am not positive, but I think he was a director in the Waters-Pierce Oil Company at that time.

Interrogatory 43. Please state whether or not he represented the Continental Oil Company of Denver, Colorado, during that time, and if he does not represent them at this time?

Answer. I can't be positive. I can't answer positively. I think, however, he is now a director or officer of the Continental Oil Company.

Interrogatory 44. After May 29th, 1900, please state whether or not Mr. R. H. McNall acted as Commercial Agent of the Waters-Pierce Oil Company, and had his office at 26 Broadway?

Answer. I believe he did.

Interrogatory 45. Where is 75 New Street, New York, with reference to 26 Broadway?

Answer. It is the New Street entrance.

Interrogatory 46. Please state whether or not Mr. R. H. McNall's desk is in the same room with the desk of Mr. H. M. Tilford?

Answer. No, it is not.

Interrogatory 47. If you have stated, or if it be a fact, that it is, then state how long he has had his desk in that room?

Answer. It is not in the room.

Interrogatory 48. Please state whether or not Mr. H. M. Tilford's office at 26 Broadway is on that side of the building at 26 Broadway known as 75 New Street?

Answer. It is on the New Street side of the building.

Interrogatory 49. After May 29th, 1900, to whom were the
875 reports of the audit of the books and accounts of the Waters-Pierce Oil Company sent at 26 Broadway?

Answer. I am not positive, but I suppose through Mr. McNall. They were not made to me.

Interrogatory 50. Please state whether or not after the alleged reorganization of the Waters-Pierce Oil Company, May 29th, 1900, the books and accounts of the Waters-Pierce Oil Company were audited by you or under your direction, or by auditors in your employ?

Answer. They were not audited under my direction, but by auditors of mine employed by the Waters-Pierce Oil Company direct.

Interrogatory 51. Please state whether or not you directed any auditors in your employ to audit the books and accounts of the Waters-Pierce Oil Company subsequent to May 29th, 1900?

Answer. I have answered that above.

Interrogatory 52. Do you know a Mr. Conrey? Did you have any person by that name in your employ as auditor subsequent to May 29th, 1900?

Answer. Yes.

Interrogatory 53. Do you know Mr. J. P. Gruet? Did you know him February 8th, 1901? What position did he hold with the Waters-Pierce Oil Company of Missouri at that time?

Answer. Yes, I know Mr. Gruet. I think he was vice-president of the Waters-Pierce Oil Company in 1901.

(Interrogatory 54 and answer omitted.)

Interrogatory 55. If you have stated, or if it be a fact, that you wrote such a letter as that copy in interrogatory #54, then state why you sent Mr. Conrey to St. Louis to audit the books and accounts of the general office of the Waters-Pierce Oil Company, and at whose request?

Answer. I sent Mr. Conrey, if this letter is a correct copy, to be employed by the Waters-Pierce Oil Company to audit their
876 books and accounts. Just which officer or agent requested me to send auditors to work for them, I can not now recall.

Interrogatory 56. Please state why you thought it advisable that he should be considered an employé of the Waters-Pierce Oil Company?

Answer. Because he was out of my service entirely. He was under the employ and pay of the Waters-Pierce Oil Company.

Interrogatory 57. Please state what were the reasons which you thought Mr. Gruet would undoubtedly appreciate? What was the significance of that expression?

Answer. The answer above explains. I don't recall any other significance.

Interrogatory 58. Please state whether or not Mr. Hornberger and Mr. Conrey were auditors for the Standard Oil Company, or any Standard Oil Company interest, and in your employ or under your direction, during the periods in which they were sent to audit the books and accounts of the Waters-Pierce Oil Company?

Answer. Mr. Hornberger was in my pay and employ, my personal pay and employ, the time that he audited in the Waters-Pierce Oil Company offices in '99. Mr. Conrey was in the employ and pay of the Waters-Pierce Oil Company in 1900, when he audited the accounts in their office.

Interrogatory 59. Why was it necessary that Mr. Conrey be considered an employé of the Waters-Pierce Oil Company instead of in your employ?

Answer. He was performing work for the Waters-Pierce Oil Company and not for me, and he was being paid by Waters-Pierce Oil Company.

Interrogatory 60. After he finished his services with the Waters-Pierce Oil Company did he resume his services with the auditing department of the Standard Oil Company interests under your direction?

Answer. I re-employed him as a member of my force.

877 Interrogatory 61. Do you know Mr. C. W. Norman? If so, how long have you known him? Did you know him on

or about November 7th, 1902? What business was he engaged in at that time?

Answer. I have known Mr. Norman about ten years. He is one of my traveling auditors, and was so engaged on the date mentioned.

Interrogatory 62. Did you know Mr. W. H. Henderson and W. J. Higgs? What business were they engaged in in November, 1902?

Answer. Yes, I know them both. They were both traveling auditors on my staff in November, 1902.

Interrogatory 63. If you have stated, or if it be a fact, that Mr. Norman and Messrs. Henderson and Higgs were auditors in your employ during November, 1902, you will please state if they were sent to St. Louis for the purpose of auditing the books and accounts of the Waters-Pierce Oil Company?

Answer. They were sent there and employed by the Waters-Pierce Oil Company in the same manner and under the same conditions as Mr. Conrey had been.

Interrogatory 64. Did you write Mr. J. P. Gruet a letter on or about the 7th day of November, 1902, concerning Mr. C. W. Norman, W. H. Henderson and W. J. Higgs?

Answer. I don't remember. It is possible I did.

(Interrogatory 65 and answer omitted.)

Interrogatory 66. If you state, or if it be a fact, that Messrs. Norman, Henderson and Higgs were auditors employed by you, then at whose instance and for what purpose were they sent to St. Louis to audit the books and accounts of the Waters-Pierce Oil Company, and to whom did they make their reports after their labors were performed? If answer is made that reports of audit were made to H. C. Pierce, or any other Waters-Pierce Oil Company officer, I ask, was not a copy of such report also made to you?

878 Answer. They were sent by me to be employed by the Waters-Pierce Oil Company to perform similar work and under the same conditions as Mr. Conrey had been. I am not positive as to whom they reported to. Reports were not made to me.

Interrogatory 67. Please state if Messrs. Henderson, Higgs, Norman, Conrey and Hornberger ever audited the books and accounts of the Standard Oil Company of New Jersey, the Standard Oil Company of Indiana, or any other Standard Oil interest under your direction, and when?

Answer. It is very likely—I can't say when.

(Interrogatories 68, 69 and 70 and answers omitted.)

Interrogatory 71. Do you know Mr. R. B. Backus? How long have you known him, and state whether or not he was ever employed by you as an auditor? During what period of time was he employed by you, if he was so employed? Was he employed by you during the year 1903?

Answer. Yes, I know Mr. Backus. He was one of my auditing staff for a number of years. I can't remember how many years, but he was employed on my force in 1903.

Interrogatory 72. Please state whether or not he was sent by you

in November, 1903, to St. Louis to audit the books and accounts of the general offices of the Waters-Pierce Oil Company?

Answer. I can't recall the exact date he was sent by me to be employed by them. I think in 1903. For the same purpose and under the same conditions as Mr. Conrey had been.

(Interrogatory 73 and answer omitted.)

Interrogatory 74. Please state whether or not you directed Mr. Backus to report to Mr. Gruet, and that he would be employed to audit the books of the Waters-Pierce Oil Company?

Answer. Yes, to be employed by the Waters-Pierce Oil Company.

Interrogatory 75. Do you know Mr. H. H. Stein? How long have you known him? Was he engaged as an auditor in
879 your Department under your direction?

Answer. Yes. I can't recall the number of years exactly, possibly seven years. Yes, he was one of my traveling staff.

Interrogatory 76. Please state whether or not in June, 1900, he was engaged in auditing the books and accounts of the Waters-Pierce Oil Company under your direction?

Answer. I don't remember about his being there; he was not under my direction if he was.

Interrogatory 77. Please state if you have ever authorized or instructed him at any time to audit the books and accounts of the Waters-Pierce Oil Company.

Answer. I can't remember whether I ever did or not.

Interrogatory 78. Do you know and was there ever in your employ a man named G. M. Fleming? What position did he occupy? Did he audit the books and accounts of the various Standard Oil interests under your direction?

Answer. Yes, I knew him. He was one of my traveling auditors. Yes, he audited under my direction.

Interrogatory 79. Please state whether or not you remember writing a letter bearing date of December 28th, 1903, in reference to auditing the books of the Waters-Pierce Oil Company, in which Mr. Fleming was instructed to assist Mr. Backus in auditing said books?

Answer. I can't remember now whether I did or not. If I did, he was employed by the Waters-Pierce Oil Company to audit accounts under the same conditions as Mr. Backus.

(Interrogatory 80 and answer omitted.)

Interrogatory 81. Please state whether or not Mr. Fleming was sent to St. Louis by yourself or any person under your authority for the purpose of assisting Mr. Backus in auditing the books and accounts of the Waters-Pierce Oil Company?

Answer. He was probably sent under the conditions named.

880 Interrogatory 82. Did you ever have a person in your employ by the name of William Waller? Was he employed by you in the year 1903? Please state what business he was engaged in while employed by you?

Answer. Yes, he was a member of my staff as traveling auditor, and was so employed in the year 1903.

(Interrogatory 83 and answer omitted.)

Interrogatory 84. Please state whether or not Mr. Waller went to St. Louis in accordance with the advice in that letter?

Answer. I can't remember now whether he went or not. It is possible he did.

Interrogatory 85. Please state whether or not Mr. Waller ever audited any of the books and accounts of the Standard Oil Company of New Jersey, Standard Oil Company of Indiana, Kentucky, Ohio, New York, or any other Standard Oil interests under your direction.

Answer. He very likely did.

Interrogatory 86. Please state whether or not the Standard Oil Company of Indiana has an office at Decatur, Illinois?

Answer. I believe it has.

Interrogatory 87. Please state whether or not Mr. Waller had been there auditing the books of that concern under your direction at the time he was ordered to go to St. Louis?

Answer. I don't remember.

Interrogatory 88. Please state how long Mr. R. B. Backus was in your employ as a traveling auditor, if he was such?

Answer. I can't be positive as to the number of years.

Interrogatory 89. Please state when he severed his connection with your department?

Answer. I think it was in 1904.

Interrogatory 90. Please state, if you know, where he went and what business he became engaged in after he left your em-
881 ploy. What is your information upon the subject?

Answer. He resigned from my auditing staff, I understood at the time, to take a position with the Waters-Pierce Oil Company in St. Louis. Just what his official position was I don't know.

Interrogatory 91. Please state whether or not he went to St. Louis and accepted employment in the general offices of the Waters-Pierce Oil Company, and that he is still so employed by that company at this time? State fully all information in your possession upon that question.

Answer. I understood that he accepted a position with the Waters-Pierce Oil Company, as stated above, I believe in 1904. I am not positive whether he still retains his position with them or not.

Interrogatory 92. Please state whether or not you know Mr. C. T. Griggs? Was he ever in your employ as an auditor? Was he in your employ during the year 1904 as such?

Answer. Yes, Mr. Griggs was a member of my auditing staff in the year 1904.

Interrogatory 93. Please state whether or not in the month of October, 1904, he was sent to St. Louis to audit the books and accounts of the Waters-Pierce Oil Company?

Answer. My recollection is he was employed by the Waters-Pierce Oil Company in the year mentioned, for just what work I do not know, as no reports were made to me.

Interrogatory 94. Do you know Mr. D. B. Hunt? Was he ever in your employ, or under your direction as an auditor? Was he employed as such during the year 1904?

Answer. The answer will be the same exactly as that made in relation to Mr. Griggs.

Interrogatory 95. Please state whether or not in the month of October, 1904, he went to St. Louis to audit the books and accounts of the general offices of the Waters-Pierce Oil Company?

882 Answer. The answer will be just exactly the same as that referring to Mr. Griggs.

Interrogatory 96. If you have stated, or if it be a fact, that Messrs. C. T. Griggs and D. B. Hunt, or either of them, was in your employ as auditors during the year of 1904, and went to St. Louis to audit the books and accounts of the Waters-Pierce Oil Company, then state under whose instructions did they proceed there for that purpose?

Answer. I can't answer that positively, but I think they bore letters from Mr. McNall.

Mr. LIGHTFOOT: If Your Honor please, including interrogatory 97 and on, we offer that generally, because there is no stipulation covering that part of this deposition. This interrogatory 97 we offer generally.

Interrogatory 97. Please state whether or not a person by the name of Barker was ever employed in your department, and state what his duties were. Did he have his desk in your office?

Answer. Yes. He was employed as a clerk in my office. He performed various duties. Among others, it was part of his duty, prior to May, 1900, to keep the plant record of the Waters-Pierce Oil Company. His desk was in my office, but not in my room.

Interrogatory 98. Please state whether or not any reports of any character were made at any time, either before the reorganization of the Waters-Pierce Oil Company, or otherwise, by Waters-Pierce Oil Company to your department, or to Mr. Barker?

Answer. Prior to May, 1900, construction reports were sent to my office, and received and handled by Mr. Barker.

Interrogatory 99. Please state whether or not construction reports of the Waters-Pierce Oil Company were sent to your department, or to Mr. Barker in your department, for the information of the Standard Oil Company of New Jersey, or any other Standard Oil interest?

883 Answer. No.

Interrogatory 100. We copy in this interrogatory what purports to be a letter written by you under date of March 28th, 1899, as follows:—

"26 Broadway, Room 800.

Wade Hampton. NEW YORK, *March 28th*, '99.

Mr. J. P. Gruet, Sec'y Waters-Pierce Oil Co., St. Louis, Missouri.

DEAR SIR: Referring to construction reports for six months ending December 31st, 1898:

In your statements you show a transfer at Athens, Texas, from

tanks to buildings $140, which does not appear in construction reports, and which I do not understand.

Construction reports of December 31st/95, including a transfer from Corsicana to Athens of 8 x 27 tank, $340; and reports of June 30th/96, a reduction to Athens for difference in tank transferred, $140; reports of June 30th/96, also show addition to Athens of Tank, $225.55, which includes foundation, $205.00. What does the difference of $20.55 represent? What is the total amount of tanks that you make at Athens? Will you kindly advise and oblige,

Yours truly,

WADE HAMPTON, JR.
B."

Please examine the above copy and state whether or not such a letter was written by yourself, or under your direction?

Answer. Not seeing the original, I can't say anything positive in connection with the alleged letter.

Interrogatory 101. If you have stated, or if it be a face, that it was written by Mr. Barker, then state if he had authority to
884 sign your name to such a letter, and why such reports were made to you?

Answer. He had authority to correspond in relation to construction reports. The plant ledger being kept in my office by Mr. Barker caused the reports to be sent to me.

Interrogatory 102. Please state what disposition was made of the construction reports sent from the Waters-Pierce Oil Company to your department, or to Mr. Barker?

Answer. The changes in construction were noted by Mr. Barker in the plant ledger currently, no further disposition was made of the reports.

Interrogatory 103. Please state if Mr. Barker's desk was at any time moved out of your office. If so, to what office was he removed?

Answer. Yes, it was moved out of my office and to Mr. L. D. Clarke's office.

Interrogatory 104. If you have stated, or if it be a fact, that he was removed to Mr. Clark's office at 26 Broadway, please state what position Mr. Clark held at that time in connection with the Standard Oil Company of New Jersey, or any of its allied interests?

Answer. Mr. Clarke was, if I recollect correctly, the secretary, assistant secretary, or comptroller, of a number of corporations, the names of all of which I do not remember, but he was, among others, at that time comptroller of the Standard Oil Company of New Jersey.

Interrogatory 105. Please state when such transfer was made, if it was so made?

Answer. I don't remember the date.

Interrogatory 106. Please state when the construction reports of the Waters-Pierce Oil Company ceased to be made to your department?

Answer. I think after May, 1900.

Interrogatory 107. Please state whether or not during the time

Mr. Barker was under you, or in your office, if he attended to these construction reports for you?

885 Answer. The correspondence was handled in my name.

Interrogatory 108. We copy in this interrogatory what purports to be a letter written by you under date of September 8th, 1899, as follows:

"26 Broadway, Room 800.

Wade Hampton, Jr. NEW YORK, *Sept. 8th*, '99.

Mr. John P. Gruet, Sec'y Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Referring to construction reports for the six months ending June 30th, 1899, in regard to estimate D522, fire alarm box at Shreveport, La., $125.00, I understand this should be charged to expense acct.

Estimate 516, addition to warehouse at Merida, $1529.68.: Of this amt. $162 should be charged to repair acct. Was this done?

Estimate 561, rebuilding plant at Jonesboro, Ark., $2300: Of this amount $500.00 should be charged to expense acct. Was this done?

| | |
|---|---|
| Incomplete construction report U. S. divisions..... | $2768.96 |
| Balance sheet shows..... | 3387.77 |
| What represents the difference?..... | $618.81 |

Will you kindly advise me, and oblige,
Yours truly,

WADE HAMPTON, JR.
B."

Please read this letter and state whether or not it was written by you, or under your direction?

Answer. Not seeing the original, I couldn't be positive that such a letter was written.

Interrogatory 109. Please state whether or not this matter was transacted through your office?

886 Answer. Possibly.

Interrogatory 110. We copy in this interrogatory the following letter:

Construction Reports.

"ST. LOUIS, MO., *Sept. 11th*, 1899.

Mr. Wade Hampton, Jr., #26 Broadway, New York.

DEAR SIR: Replying to your favor of the 8th inst., in regard to construction reports June 30th, 1899:

Estimate D522, fire alarm box at Shreveport, La., we will transfer this amt. to expense acct. as you request.

Estimate No. 516, addition to warehouse and repairs on stable at Merida. As the repairs were not done on stable there was no expenditure on this part of the appropriation.

Estimate No. 561, warehouse and moving plant at Jonesboro, the cost of moving tanks, etc., was charged to expense acct. amounting to $58.30. Old tank foundations, pipe, etc., were charged off, amounting to $414.32, making $472.62 against the $500.00, the appropriation for new tank foundations, moving and placing tanks, etc.

The amount of $618.81 you refer to as being a difference between incomplete construction report and as shown on balance sheet covers material on hand for making iron barrels and rebuilding tank wagons. This was included in construction report, as it is on a separate account as shown on balance sheet.

Hoping that the above explanations are satisfactory, I beg to remain,

Yours truly, J. P. GRUET, *Sec'y.*"

Please read this letter and state whether or not you received such a letter from Mr. Gruet?

Answer. I couldn't state positively whether I received such
887 a letter, not seeing the original.

Interrogatory 111. Please state whether or not the balance sheet referred to in said letter was sent to your department?

Answer. Not that I know of.

Interrogatory 112. We copy in this interrogatory what purports to be a letter written by you under date of October 20th, 1899, as follows:

"26 Broadway, Room 800.

NEW YORK, *Oct.* 20, '99.

Mr. John P. Gruet, Sec'y Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to advise you that we have compared your statement of plant acct. of Mexico divisions with our records, and make amt. of buildings in Central Mexico division, $46,812.91; and land of Vera Cruz Refinery, $3715.67, instead of $4715.67. Is this correct?

Will you kindly furnish me under date of Dec. 31/99, in addition to the usual recapitulations of plant acct., statement showing amount of buildings, tanks, &c., and total amt. of plant acct. of each station and subdivision, similar to statements rendered for December 31st/97?

The writer spoke to you about this matter when you were here, and was to write you so as to remind you upon your return to St. Louis. I understood it would be convenient to make the statement.

Yours truly,

WADE HAMPTON, JR.
B."

Please examine this letter and state whether or not you wrote same, or whether it was done under your authority?

Answer. I can't be positive, as I do not see the original.

Interrogatory 113. Please state whether or not you have on
888 file in your office copies of the letters which have been set out in these interrogatories? If so, will you please attach copies of same, and mark them for identification?

Answer. I have not got the copies on file.

Interrogatory 114. Do you know Mr. R. P. Tinsley? What position did he occupy at 26 Broadway prior to 1904?

Answer. He was agent for several corporations.

Interrogatory 115. If you have stated, or if it be a fact, that he was an agent, please state whether or not he was the agent of the Standard Oil Company of New York, the Atlantic Refining Company, and the Standard Oil Company of New Jersey, or what Standard Oil Company, interest or interests?

Answer. He was agent of the three companies mentioned in the question.

Interrogatory 116. Please state, if you know, whether or not he was sent to St. Louis in 1904 to take a position with the Waters-Pierce Oil Company.

Answer. I don't remember what time he went to St. Louis exactly. I heard that he was an officer of the Waters-Pierce Oil Company some time after he had left New York.

Interrogatory 117. How long did he stay in St. Louis?

Answer. I don't know.

Interrogatory 118. Please state whether or not he afterwards returned to 26 Broadway, and what position he now holds?

Answer. He did not return, as far as I know. I do not know what position he holds at present.

Interrogatory 119. Please state, if you know, who succeeded Mr. R. P. Tinsley as agent of the Standard Oil Company of New York, the Atlantic Refining Company, and the Standard Oil Company of New Jersey, or other Standard Oil Company interests, when Mr. Tinsley left New York?

Answer. H. C. Arnold.

889 Interrogatory 120. If you state, or if it be a fact, that Mr. H. C. Arnold succeeded him as such agent, please state whether he still holds that position?

Answer. I believe not.

Interrogatory 121. Please state what relation exists between the Standard Oil Company of New Jersey, the Standard Oil Company of New York, and the Atlantic Refining Company?

Answer. Not ever having had access to the records showing ownership of the three companies, I can not answer.

Interrogatory 122. Please state what other auditors in your employ have, since 1900, been sent to St. Louis to audit the books and accounts of the Waters-Pierce Oil Company, in addition to those heretofore named?

Answer. I can not remember.

Interrogatory 123. Please state, in detail, the names of each corporation, or firm, whose books and accounts are audited by the force under your direction?

Answer. It would be absolutely impossible for me to answer that off-hand.

Interrogatory 124. Please state by whom are you employed to direct the auditing of the various concerns?

Answer. By the boards of directors of the various corporations.

Interrogatory 125. Please state what relation each one of said concerns bears to the Standard Oil Company of New Jersey?

Answer. Not having had access to the records showing ownership of the various companies, I can not answer.

Interrogatory 126. Please state whether or not Mr. R. H. McNall has since June 1st, 1900, seen any reports to your department purporting to be reports received from the Waters-Pierce Oil Company?

Answer. He has seen nothing from my office.

Interrogatory 127. Please state whether or not you have
890 any stationery in your department belonging to the Waters-Pierce Oil Company on which letters are written for the Waters-Pierce Oil Company?

Answer. I have not.

(Interrogatory 128 and answer omitted.)

Interrogatory 129. Please state whether or not you send auditors to any other concern outside of the Waters-Pierce Oil Company to audit their books and accounts which is not owned or controlled by the Standard Oil Company of New Jersey or its allied interests?

Answer. Frequently—yearly.

Judge STEDMAN: Now, we would like to make a motion to strike out the answer of the witness to interrogatory 25, if offered for the purpose of showing concealment on his part. I did not think it was proper until all that testimony was read. I think that the testimony here utterly fails to establish anything of that kind. The whole matter turns upon the construction of these letters. He was asked the question, "Please state whether or not the books and accounts of the Waters-Pierce Oil Company of Missouri have ever been audited by you or under your direction?" "Not the present organization," is the answer. The witness admitted time and again that he sent people to St. Louis to examine them, to audit them. The question turns upon whether they were his employés or the Waters-Pierce Oil Company's. These letters show exactly what he intended. Now, it is possible that the jury might place a different construction upon whose employés these men were, but he says that they were employés of the Waters-Pierce Oil Company. He does not conceal anything here. It is a question of the meaning of these letters of his. He says that he did not—that is, using himself as the representative of the Standard Oil Company—audit these books. He says in other answers they were audited by those persons who were sent and whose names were placed upon the pay-roll of the Waters-Pierce Oil
891 Company. So I think there has been an unjust imputation cast upon the witness by these gentlemen in regard to this matter. I think they have placed him in an improper light. He has not concealed anything at all. It is purely a question of the construction of these letters. We move that that answer, offered for the purpose of establishing concealment, be stricken out. I do not know how far the answers went. We move to strike out all that related to that. We move to strike out every one that is offered for that purpose. There is no concealment shown at all.

Mr. LIGHTFOOT: In connection with that, we want to offer this

stipulation and these letters in evidence, in connection with the deposition we have just read.

Judge STEDMAN: I want to call Your Honor's attention to the fact that there is nothing in that stipulation that contradicts what the witness says. (Reading): "The corporation organized under the laws of the State of New Jersey, and commonly referred to as the Standard Oil Company of New Jersey, which at the time said letters were written and said letters were sent, was the owner of shares of stock of the Waters-Pierce Oil Company, had requested such information as would be revealed by an examination." They were sent. It is shown by the witness himself that he sent them.

Mr. LIGHTFOOT: The witness testified in his deposition that he sent them there to be employed by the Waters-Pierce Oil Company, at the request of the Waters-Pierce Oil Company. Now, this stipulation says they were sent there at the request of the Standard Oil Company of New Jersey, to audit the books for the purpose of securing such information from such audit as would be desirable and valuable to the Standard Oil Company of New Jersey, a majority stockholder, and we say his answers, in so far as stated in those depositions, that they were sent there at the request of the Waters-Pierce Oil Company to be employed by the Waters-Pierce Oil Company, is probably in conflict with this agreement and stipulation, and we offer them for
892 the purpose of showing the purpose on the part of the witness to conceal the true purpose for which they were sent.

The COURT: Does the deposition say the auditors were sent at the request of the Waters-Pierce Oil Company?

Mr. LIGHTFOOT: That is what he has answered in his answer.

The COURT: Turn to that answer.

Mr. LIGHTFOOT: "They were sent there and employed by the Waters-Pierce Oil Company in the same manner and under the same conditions as Mr. Conrey." "I sent Mr. Conrey, if this letter is a correct copy, to be employed by the Waters-Pierce Oil Company to audit their books and accounts. Just which officer or agent requested me to send such auditors to work for them I can not now recall." Then he says, "Because he was out of my service entirely. He was under the employ and pay of the Waters-Pierce Oil Company at that time," and the stipulation says they were sent there by him at the instance of the Standard Oil Company of New Jersey, and we desire to offer this now.

Mr. ODELL: I want to make this suggestion to Your Honor: For the purpose of this trial counsel are not attaching any importance to whether these auditors were sent by the Standard Oil Company or employed by the Waters-Pierce Oil Company. Now, to avoid taking a deposition they sit down and for the purpose of a trial make a stipulation and admission of that kind. That stipulation and admission do not tend to prove that the witness has concealed anything.

The COURT: I think it is the province of the jury to say whether there is any conflict between the evidence and the stipulation, and the objection is overruled.

Judge STEDMAN: We except.

Mr. LIGHTFOOT: We offer in evidence next the stipulation and letters attached thereto.

893 (Thereupon the stipulation, signed by counsel, was introduced in evidence, as follows):

"It is hereby stipulated and agreed for the purposes of this case only, that the letters attached hereto and marked with the initials 'J. P. L.' and 'J. D. J.', being the initials of Mr. Lightfoot, counsel for the State, and Mr. Johnson, counsel for the defendant, bear the genuine signature of Wade Hampton, said letters being generally designated as follows:

"Letter dated New York, July 7th, '99, addressed to Mr. H. C. Pierce, Pres't Waters-Pierce Oil Co., St. Louis, Missouri, and signed 'Wade Hampton, Jr.', and marked Exhibit 'A'.

"Letter dated New York, February 8, 1901, addressed to Mr. J. P. Gruet, Vice Pres. Waters-Pierce Oil Co., St. Louis, Missouri, and signed 'Wade Hampton' and marked Exhibit 'B'.

"Letter dated New York, November 7th, 1902, addressed to Mr. J. P. Gruet, Waters-Pierce Oil Co., St. Louis, Missouri, signed 'Wade Hampton' and marked Exhibit 'C'.

"Letter dated New York, November 12th, 1902, addressed to Mr. J. P. Gruet, Waters-Pierce Oil Co., St. Louis, Missouri, signed 'Wade Hampton' and marked Exhibit 'D'.

"Letter dated New York, November 24th, 1902, addressed to Mr. J. P. Gruet, V. P. Waters-Pierce Oil Co., St. Louis, Missouri, signed 'Wade Hampton' and marked Exhibit 'E'.

"Letter dated New York, November 10th, 1903, addressed to 'My dear Mr. Gruet' and signed 'Wade Hampton' and marked Exhibit 'F'.

"It is further stipulated and agreed that said letters were written and the respective persons therein mentioned were sent at the instance of the Standard Oil Company, a corporation organized under the laws of the State of New Jersey, and commonly referred to as the Standard Oil Company of New Jersey, which at the time said letters were written and said parties were sent, was the owner

894 of shares of stock of the Waters-Pierce Oil Company, and for the purpose of getting such information as would be revealed by an audit of the books and accounts of the Waters-Pierce Oil Company by the respective parties designated in the respective letters.

"It is further stipulated that the letters made an exhibit to this stipulation may be offered in evidence subject to such legal objections as may be made to them as evidence.

"It is further stipulated that either party may use the deposition of Wade Hampton heretofore taken on interrogatories propounded by the State in the trial of this cause, subject to all legal objections as to competency and relevancy, &c."

Mr. ODELL: We object to the letter of date July 7, 1899, for the reason that it antedates the incorporation of the defendant in this case and the granting of the permit to this company to do business in the State of Texas. For that reason it is immaterial and irrelevant, and does not throw any light upon any legitimate issue in this case against the defendant.

The COURT: The objection is overruled.
Mr. ODELL: We except.
(Thereupon the letters attached to said stipulation were introduced in evidence, as follows):

26 Broadway, Room 800.

Wade Hampton, Jr.

Received
July 12, 1899.
Ans. ——
By A. M. F.

Received
July 12, 1899.
Answered "
J. P. Gruet.

NEW YORK, *July 7th*, '99.

Mr. H. C. Pierce, Pres't Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: This letter will introduce to you our Mr. John
895 B. L. Hornberger, who visits St. Louis at my request for the purpose of auditing the books, accts. &c. of your General Office.

I will, in a short time, send him one or two auditors to assist him in the work.

Any favors extended to Mr. Hornberger will be much appreciated by

Yours truly, WADE HAMPTON, JR.

Exhibit "A".
J. P. L.
J. D. J.

26 Broadway, Room 800.

No copy taken.
Wade Hampton.

Received
Feb. 11, 1901.
Answered "
J. P. Gruet.

Transmitted
Feb. 11, 1901.
A. M. F., V. P.
To H. C. P., Pt.

NEW YORK, *Feb. 8th*, 1901.

Mr. J. P. Gruet, Vice-Pres. Waters-Pierce Oil Company, St. Louis, Mo.

DEAR SIR: Our Mr. Conrey will probably arrive at your office on Monday next, the 11th inst., to take up the audit of the books and accounts of your general office.

For reasons which you undoubtedly will appreciate, it is best that Mr. Conrey be considered an employé of your company during his

examination. Therefore kindly enter his name on your pay-roll from the date of his arrival at $191.67 per month, also kindly pay what expenses he is under from the time he left New York.

Yours truly, WADE HAMPTON.

Exhibit "B".
J. P. L.
J. D. J.

896 26 Broadway, Room 800.

No copy taken.
Wade Hampton.
*Personal.*

Received
Nov. 10, 1902.
Answered 10.
J. P. Gruet.

Transmitted
Nov. 10, 1902.
To A. M. F.,
V. P. & G. M.

NEW YORK, *Nov. 7th*, 1902.

Mr. J. P. Gruet, Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Our Mr. C. W. Norman bears with him a letter of introduction to you from Mr. McNall. Mr. Norman will be assisted in the work of auditing the books and accounts of the General Office of your company by our Messrs. W. H. Henderson and W. J. Higgs. I will give them letters of introduction to Mr. Norman, who in turn will introduce them to you.

Please place Mr. Norman's name on your pay-roll at the rate of $2500.00 per annum, beginning with the time he leaves his home for St. Louis, and also pay his expense bills monthly as he renders them to you.

Yours very truly, WADE HAMPTON.

Exhibit "C".
J. P. L.
J. D. J.

Transmitted Nov. 10, 1902, to C. W. A. & J. D. J.

26 Broadway, Room 800.

Wade Hampton.
*Personal.*

Received
Nov. 14, 1902.
Answered 26.
J. P. Gruet.

NEW YORK, *Nov. 12th*, 1902.

Mr. J. P. Gruet, Waters-Pierce Oil Co., St. Louis, Mo.

897 DEAR SIR: I beg to acknowledge receipt of your favor of 10th inst. Answering your inquiry: Please place Mr. Henderson's name on your pay-roll when he arrives in St. Louis, also

that of Mr. Higgs, treating them the same as Mr. Norman, so far as salary and expenses are concerned, during their stay in St. Louis. The full names are—

| | Salary per annum. |
|---|---|
| W. H. Henderson | $1800.00 |
| W. J. Higgs | $1800.00. |

Mr. Henderson should arrive in St. Louis in a few days, but Mr. Higgs will probably not reach there for 10 days or so.

I have instructed the gentlemen named above to date their commencement with your company from the time they buy their tickets, and to include the railroad fare &c. to St. Louis in their expenses to your company.

Trusting you are in good health, and with kind regards, I remain

Yours truly, WADE HAMPTON.

Exhibit "D".
J. P. L.
J. D. J.

26 Broadway, Room 800.

Wade Hampton.

Received
Nov. 26, 1902.
Answered 26.
J. P. Gruet.

NEW YORK, *Nov. 24th*, 1902.

Mr. J. P. Gruet, V. P. Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: This letter will serve to introduce to you our Mr. W. J. Higgs, who visits St. Louis for the purpose of assisting Mr. 898 Norman in the auditing work. I wrote you some days ago concerning him. Please place his name on your pay-roll at the rate mentioned in my former letter.

Any courtesies extended to Mr. Higgs will be much appreciated by

Yours truly, WADE HAMPTON.

Exhibit "E".
J. P. L.
J. D. J.

26 Broadway, Room 800.

Wade Hampton.

Copy sent H. C. P.
11/14/03.
M. J. B.
Ans. Nov. 20/03.

Read at Executive Committee Meeting Nov. 13, 1903. C. A. P., Secretary.

NEW YORK, *Nov. 10th*, 1903.

MY DEAR MR. GRUET: I am sending our Mr. R. B. Backus to St. Louis to take up the audit of the books and accounts of the General

Office of W. P. O. Co. Please place his name on your pay-roll at $3,000.00 per annum, to begin with date he leaves Pittsburg for St. Louis. I have said to him also to commence his expense acct. for your company with the purchase of his railroad tickets for St. Louis, from Pittsburg.

I will send two other men to assist Mr. Backus as soon as they are relieved at other points. Mr. Backus is a very intelligent and agreeable man, and has had a great deal of experience in his line of work. I have no doubt you will be pleased with him.

Yours very truly, WADE HAMPTON.

Mr. Backus will probably be in St. Louis about the 20th inst.

W. H.

899 Notified W. H. that R. B. B. had arrived—Nov. 20/03.

Exhibit "F".
J. P. L.
J. D. J.

Court adjourned until 9.30 A. M., May 24, 1907.

FRIDAY, *May* 24, 1907.

Court opens at 9.30 A. M.

Mr. ALLEN: The plaintiff offers in evidence the deposition of MAYWOOD MAXON.

Interrogatory 1. What is your name and age? Where do you reside?

Answer. Maywood Maxon. Age 50 years. Decatur, Illinois.

Interrogatory 2. In what business have you been engaged most of your life?

Answer. Oil business.

Interrogatory 3. With whom was your first employment?

Answer. Cochran & Fearing, reorganized as Cochran, Lyman & Co.

Interrogatory 4. Was the company mentioned by you an oil company? What oil did the company sell?

Answer. Yes. Mostly Standard Oil Company oils, bought of Alex. McDonald & Co., Standard Oil Company selling agents at Cincinnati, Ohio.

Interrogatory 5. Did you know Alexander McDonald? If so, state who he was and his business connections?

Answer. Yes. First as the senior member of the firm of Alex. McDonald & Co., selling agents of the Standard Oil Company, then as president of the Consolidated Tank Line Company, then
900 as president of the Standard Oil Company of Kentucky.

Interrogatory 6. If you have said that he was a member of the executive committee of the Standard Oil Company of New Jersey, state where the office of that company was located.

Judge STEDMAN. We object to this answer to the sixth interroga-

tory, because it is hearsay. The witness shows it is based upon information derived from other people. The last part, as to where the offices are located, may or may not be hearsay. It is the first part we object to.

The COURT. The objection is sustained.

Mr. ALLEN. You do not object to the last part?

Judge STEDMAN. No, sir.

Answer. The executive office of the Standard Oil Company of New Jersey was at 26 Broadway, New York.

Interrogatory 7. If you have said that Mr. McDonald was President of the Standard Oil Company of Kentucky, state whether or not that company had a New York office, and where?

Answer. Yes, at 26 Broadway, New York.

Interrogatory 8. If you say it had no New York office, state if it had a representative in New York, and if so, state where he was located.

Answer. See seven.

Interrogatory 9. After you left Cochran-Lyman Company, where did you go, and in what business did you engage?

Answer. To Peoria, Illinois, as salesman for the Peoria Oil Tank Line Company.

Interrogatory 10. If you say you were transferred to Peoria Tank Line Company at Peoria, Illinois, state what connection Mr. McDonald had with that company?

Judge STEDMAN. We object to that answer, to the tenth, because of its immateriality and irrelevancy, showing Mr. McDonald's connection with certain concerns out of the State of Texas, and no connection shown between them and this defendant.

901

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. The Peoria Oil Tank Line Company was owned jointly by Alex. McDonald & Co. of Cincinnati, Ohio, and Colburn, Birks & Co. of Peoria, Illinois. Later Alex. McDonald & Co. secured the entire business.

Interrogatory 11. What oil did that company handle?

Answer. Standard Oil Company's oils.

Interrogatory 12. How long did you stay with that company, and what was your next employment?

Answer. About two years. Next employment was manager of the Iowa Tank Line Company at Davenport, Iowa.

Interrogatory 13. If you say that you were manager of the Iowa Tank Line Company, state what oil you sold as representative of that company?

Judge PENN. Now, we object to the answer of this witness to this question as being irrelevant and immaterial and relating to business wholly outside of the State of Texas.

The COURT. The objection is overruled.

Judge PENN. The defendant excepts.

Answer. Standard Oil Company's oils, except turpentine, which was supplied by the Waters-Pierce Oil Company of St. Louis, Missouri.

Interrogatory 14. State whether or not Mr. McDonald had any connection with this company?

Answer. Yes. Alex. McDonald & Co. owned the Iowa Tank Line Company. All reports and moneys being sent to them at Cincinnati, Ohio, except Union Tank Line car reports.

Interrogatory 15. What company's oil did you sell as manager of that company?

902 Answer. Standard Oil Company's, except turpentine.

Interrogatory 16. State whether or not you made any reports of the operations of that company to the Standard Oil Company at 26 Broadway, New York?

Answer. Only reports of the movement of the Union Tank Line cars to H. R. Payne, Sec., 26 Broadway.

Interrogatory 17. Did the Iowa Tank Line Company operate in the State of Missouri?

Answer. Yes, my territory included the city of Trenton, Missouri.

Interrogatory 18. Did you come in contact in that State with the Consolidated Tank Line Company?

Answer. No, they were not allowed to sell at Trenton.

Interrogatory 19. State when you first became acquainted with, or to know, the Consolidated Tank Line Company?

Answer. I first knew the Consolidated Tank Line Company at Hannibal, Missouri, in 1881, and became acquainted with it when it became the owner or successor of the Iowa Tank Line Company about 1885. Do not remember the exact date.

Interrogatory 20. If you have said that you first knew of the Consolidated Tank Line Company when it absorbed the Iowa Tank Line Company, state what connection, if any, you thereafter had with the Consolidated Tank Line Company?

Answer. I was its manager at Davenport, Iowa, until about November 25, 1887, and at Decatur, Illinois, from December 1, 1887, to January 1, 1892.

Interrogatory 21. State whether or not Mr. McDonald had any connection with the Consolidated Tank Line Company?

Answer. He was its president.

(Interrogatories 22 and 23 and answers omitted.)

Interrogatory 24. If you have said that any part of the business of the Consolidated Tank Line Company was taken over by
903 the Standard Oil Company of Kentucky, state who was president of that company?

Answer. Alexander McDonald.

Interrogatory 25. When the Consolidated Tank Line Company went into the Standard Oil Company of Kentucky and Indiana, state whether or not you continued with either branch of the business? If so, state which.

Answer. Yes, with the Standard Oil Company of Kentucky as manager and special agent at Decatur, Illinois, until December 31st,

1902, and on special duty and leave of absence until March 31st, 1904.

Interrogatory 26. If you have said that you went with the Kentucky branch of it, and was stationed in Illinois, state where your territory extended, and state whether or not it brought you in contact with the Waters-Pierce Oil Company's territory?

Answer. My territory after 1895 extended from Clinton, Illinois, on the North, to Cairo, Illinois, on the South, and came in contact with the territory of the Waters-Pierce Oil Company.

Interrogatory 27. State whether or not there was a dividing line between the territory of the Standard Oil Company of Kentucky and the Waters-Pierce Oil Company in the State of Illinois. If so, state where the line was and how you knew.

Judge PENN. We object to the introduction in evidence of this answer, on the ground that the same is irrelevant and immaterial to any issue in this case, and relates wholly to business and matters outside of the State of Texas, and prior to the organization of this company.

The COURT. The objection is overruled.

Judge PENN: The defendant excepts.

Answer. There was from Louisiana, Missouri, to Cairo, Illinois, the Waters-Pierce Oil Company having Missouri West of the Mississippi River, and the Standard Oil Company of Kentucky, Illinois East of the River, except parts of Madison and St.
904 Clair Counties, Illinois. I knew the dividing line from the official map furnished me from the general office of the Standard Oil Company of Kentucky, and was not permitted to sell oils West of the river in Missouri or in Granite City, Madison, Venice, Brooklyn, Belleville and East St. Louis, Illinois, or intermediate points between places named, they being in the Waters-Pierce Oil Company's territory in Illinois; the Standard Oil Company of Kentucky having a storage and shipping depot in East St. Louis under my jurisdiction, but no sales were permitted, all orders or inquiries being referred to the Waters-Pierce Oil Company.

Mr. LIGHTFOOT: We offer next the deposition of G. J. STEIGERWALD.

Interrogatory 1. What is your name, where do you reside and in what business are you engaged?

Answer. My name is G. J. Steigerwald; Cleveland, Ohio; I am engaged in the oil business, with The Fred G. Clark Company.

Interrogatory 2. If you say you are in the oil business, state how long you have been in that business, and state in what territory you operated.

Answer. I am not in the oil business for myself.

Interrogatory 3. What was your first connection with the oil business?

Answer. Clerk for Scofield, Shurmer & Tagle.

Interrogatory 4. If you say it was with Scofield, Shurmer & Teagle, state in what place, and for how long it continued?

Answer. At Cleveland, Ohio, from March 4th, 1891, to January, 1901.

Interrogatory 5. With what concern were you next connected?

Answer. Secretary and treasurer of the Scio Refining Company.

Interrogatory 6. If you say you were with the Scio Refining Company, state whether or not this company was connected with
905 Scofield, Shurmer & Teagle, and state how long you remained with the Scio Refining Company.

Judge STEDMAN. We object to this inquiry and to the answer for the reason that it relates to corporations not parties to this suit, and relates to transactions not occurring in the State of Texas and transactions transpiring before the alleged violation of the law in this case.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. No. I remained with the Scio Refining Company from January until June 1st, 1901.

Interrogatory 7. With whom were you next connected?

Answer. With the Republic Oil Company.

Interrogatory 8. If you say you took a position with the Republic Oil Company, state where that company was located, and state what position you had with it, and what your duties were.

Answer. Cleveland, Ohio, with distributing branches through the Middle West and lake States. I was purchasing agent and traffic manager, with duties as general assistant to the vice president.

Interrogatory 9. Who was the general manager of that company?

Answer. Walter C. Teagle.

Interrogatory 10. If you say that it was W. C. Teagle, state whether or not he had been connected with the firm of Scofield, Shurmer & Teagle, and if so, in what capacity.

Answer. No, he was not one of the firm, but employed by them in a general capacity, chiefly supervising the agencies and salesmen.

Interrogatory 11. What position did he occupy with the Republic Oil Company?

Answer. He was vice president and general manager.

Interrogatory 12. When was the Republic Oil Company incorporated?

Answer. June, 1901.

906 Interrogatory 13. State what became of the property of the Scio Refining Company.

Judge STEDMAN. We object to that question, because it is immaterial and irrelevant.

The COURT. What is the materiality of this evidence?

Mr. LIGHTFOOT. The Plaintiff has alleged that a great many of these companies were consolidated with other companies, and that the——

Mr. BRADY. The next answer shows the relevancy. I did not know it was here, and it will save time. (Answer shown to the Court.)

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. It was sold to George B. Wilson, of New York.

Interrogatory 14. State whether or not you were familiar with the oil business throughout the Central West prior to the time of the Scio Refining Company going out of business. If so, state whether or not that company and Scofield, Shurmer & Teagle were competitors of the Standard Oil Company.

Answer. I was familiar in a general way. Yes, they were.

Interrogatory 15. What became of the refinery of the Scio Oil Company after its acquisition by the Republic Refining Company?

Judge STEDMAN. We object to that. We object to both the question and the answer, because what became of the refinery of the oil company referred to is immaterial and irrelevant in this case, and relates to a transaction between parties between whom and this defendant no connection is shown.

The COURT. The objection is overruled.

Judge STEDMAN. The defendant excepts.

Answer. George B. Wilson bought it for The Republic Oil Company, and it was dismantled in the Fall of 1901.

Interrogatory 16. What became of the unfinished products of the Cleveland Refining Company and Scofield, Shurmer &
907 Teagle works at Cleveland, and if you say that arrangements were made with Mr. Cole for the transfer of these products to the Standard Oil Company's works at Cleveland, state what position Mr. Cole at that time occupied.

Judge STEDMAN. We object to both the question and the answer because the matter inquired about and the answer are both immaterial and irrelevant; and further, because the question relates to transactions and persons between whom and this defendant no connection is established.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. They were carded to H. E. Cole, Standard Oil Company's switch. I don't know that he had the title of assistant to the vice president of the Standard Oil Company of Ohio, but his duties were such.

Interrogatory 17. Do you know what Mr. Cole is doing now and where he is? If so, state.

Answer. No, I do not know what he is doing or where he is located at present. Since testifying at St. Louis in February, 1906, I have learned that Mr. Cole resigned and severed his connection with the Waters-Pierce Oil Company as assistant manager in charge of sales for said company in Mexico.

Interrogatory 18. How long did you continue with the Republic Oil Company?

Answer. From June, 1901, until April 15th, 1904.

Interrogatory 19. How long did Walter Teagle continue with the Republic Oil Company at Cleveland, and what position did he occupy during that time?

Answer. From June, 1901, until the first of October, 1903; he may have surrendered the title about September 1st of that year, this title being vice president and general manager.

908 Interrogatory 20. If you have said that he left Cleveland, or if it be the case, state where he went, and in what business he became engaged upon leaving Cleveland?

Answer. He left Cleveland in October, 1903, and was subsequently connected with the Standard Oil Company of New York, being a member of their export trade committee.

Interrogatory 21. If you have stated that he went to New York and became connected with the Standard Oil Company at 26 Broadway, or if it be a fact, state what *was* his position there was and is.

Answer. I have answered part of this in the previous interrogatory. His offices were located at 26 Broadway. His position was a member of the foreign and export trade committee, and, as far as I know, he has continually filled this position, and is still so employed.

Interrogatory 22. If you have said that he became a member of the Export Trade Committee of the Standard Oil Company of New Jersey, or the Standard Oil Company's interests located at 26 Broadway, state who and what was the Export Trade Committee.

Answer. The Export Trade Committee consisted of a number of men in charge of the foreign trade of the Standard Oil Company, including practically the entire globe outside of North America.

Interrogatory 23. While the Cleveland Refining Company, the Scio Refining Company and Scofield, Shurmer & Teagle were in existence and in business, state what territory they sold oil in and state whether or not they sold oil in the State of Texas.

Answer. The territory comprised practically the entire United States and parts of Canada, including the State of Texas.

Interrogatory 24. State whether or not within the territory mentioned the firm of Scofield, Shurmer & Teagle were comparatively large dealers and sellers of oil, and state whether or not they were in competition with the Standard Oil Company and the

909 Waters-Pierce Oil Company, and state the character of the competition between them.

Answer. In proportion of total sales I should say not very large dealers in the State of Texas, but in the States of Ohio, Michigan, Indiana, Missouri, Nebraska and Iowa and adjacent territory they were the Standard's largest and most aggressive competitors, and of the Waters-Pierce Oil Company in the territory allotted to them, competing in the distribution of oil by establishing branch houses and shipping therefrom in barrels and distributing by tank wagons, the methods generally employed in handling and delivering refined and lubricating oil.

Interrogatory 25. After the Republic Oil Company took over the properties of Scofield, Shurmer & Teagle, state whether or not there was any change in the matter of competition against the Standard Oil Company and the Waters-Pierce Oil Company.

Answer. For a while three was no decided change in method, because the Republic Oil Company represented themselves as success-

ors to the firms of Scofield, Shurmer & Teagle, the Cleveland Refining Company and Scio Refining Company, and solicited the same trade supplied by these companies.

Interrogatory 26. If in answer to the preceding question you state that after the Republic Oil Company took over the business of Scofield, Shurmer & Teagle the policy of competition against the Standard Oil Company and the Waters-Pierce Oil Company was changed after about a year, or if this be the case, then state minutely and in detail just what the change was, and how you knew or became acquainted with the facts.

Judge STEDMAN. We object to this answer as irrelevant and immaterial, and further, upon the ground that the answer is not confined to a statement of facts, but is an argument of the witness, and as such is objectionable. We will also object upon the ground that this answer is based upon hearsay in part, and for that reason
910 should be excluded, and is also based in part upon correspondence which is not produced and which contains the best evidence of its contents.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. After a lapse of a year or thereabouts there came an apparent change in the methods of conducting the business and more restrictions placed around the sales made by the Republic Oil Company, particularly where said sales would affect the business of the Standard Oil Company or the Waters-Pierce Oil Company. In some parts of the territory covered, the Republic Oil Company's salesmen and field managers were not allowed to sell what is known as ordinary and low grade burning oils in towns where the Standard Oil Company enjoyed exclusive tank wagon distribution facilities. In such towns and points they were told to solicit high grade burning oil trade and such lubricating trade as could be secured. These instructions and this policy were directly opposite to those pursued by the old companies, and for a while by their successor, the Republic Oil Company, who solicited all the trade in the territory regardless as to what they were buying or from whom. The Republic Oil Company aimed to supply the trade known as dissatisfied trade formerly supplied by Scofield, Shurmer & Teagle, and finally confined their greatest efforts to supplying the trade demanding goods made by independent companies, having no affiliation with the Standard Oil Company, commonly known as the Trust. This trade were prejudiced against trust methods and would buy only independent oils and demand high grade. It was understood that the field managers and salesmen for the Republic Oil Company should not make any decided and aggressive effort to secure trade away from the Standard Oil Company or its known subsidiary companies. I obtained this knowledge through oral instructions, also by correspondence that was handled and seen by me in connection with other matters directly under my supervision.

911 Interrogatory 27. If you have said in answer to the preceding questions, or if it be a fact, that the Republic Oil

Company was so managed as to secure the trade that was dissatisfied and did not want to do business with the Standard Oil Company and the Waters-Pierce Oil Company and also to supply the demands for high grade oil and that this policy was effected by instructions to agents of the company, state by whom these instructions were given, and state the circumstances under which they were given.

Judge STEDMAN. We object to the answer to that interrogatory on the ground of its immateriality and irrelevancy; and, further, we object to the answer upon the ground that the witness shows that his answer is based in part upon written instructions and in part upon what happened at the meetings which he says he attended. He does not separate the knowledge that was derived from written instructions from the information obtained at the meetings, and inasmuch as it is shown that part of the information came from written instructions, the whole is objectionable. We further object that in so far as the information is predicated upon written instructions the instructions are the best evidence of what they contain, and there is no evidence here of the source from which those instructions emanated that would connect this defendant with them.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. The instructions were given to the field managers and agents by the vice president and general manager of the company, chiefly in person, to some extent by written instructions, and the general policies were discussed and outlined at periodical meetings held in the Republic Oil Company's offices at Cleveland, at which the president of the company, the vice president and general manager and all the field managers were present; practically during the entire session, and during part of the session, the secre-
912 tary and treasurer would be present, and I attended the most important parts of these sessions, so that I would understand the nature of the instructions and intent thereof to enable me to advise and act when these matters arose during the general manager's absence.

Interrogatory 28. To whom and where did the Republic Oil Company make reports as to its business, if at all?

Answer. To C. L. Nichols, at 75 New Street, New York, president of the company.

Interrogatory 29. If you have said in answer to the preceding question that the Republic Oil Company made reports to C. L. Nichols at 75 New Street, New York, state who C. L. Nichols was, and state what relation, if any, 75 New Street, New York, has to 26 Broadway, New York, and state what building had these numbers, and by whom the building was occupied.

Answer. C. L. Nichols was president of the Republic Oil Company, and 75 New Street is known as the back or New Street entrance to the Standard Oil Building at 26 Broadway, which is occupied chiefly by the Standard Oil Company and affiliated companies, including their executive managing committees and their subordinates.

Interrogatory 30. State whether or not you were ever at 26 Broadway and 75 New Street, New York, and if so, state whether or not you there met W. E. Bemis.

Answer. I have been at 26 Broadway and met W. E. Bemis on two different occasions. This also answers the question regarding 75 New Street.

Interrogatory 31. If you state you met W. E. Bemis at 26 Broadway, state who he was and what his business was.

Answer. W. E. Bemis was a member of the export or foreign trade committee of the Standard Oil Company of New York, in charge of their interests in India, China, Japan and Korea.

Interrogatory 32. What was the name of the first president of the Republic Oil Company?

913 Answer. The first president of the Republic Oil Company was George B. Wilson.

Interrogatory 33. If you have stated that the name of the first president of the Republic Oil Company was George B. Wilson, state whether or not you met a genleman by that name at 26 Broadway, and if so, state what position he had there.

Answer. I do not remember of meeting Mr. Wilson at 26 Broadway, and if I did it was at 26 Broadway.

Interrogatory 34. While you were at 26 Broadway, did you see Mr. C. L. Nichols? If so, state where he was located and in whose office.

Answer. I saw Mr. C. L. Nichols at 26 Broadway. He was located in offices occupied by L. J. Drake, Sr., at 26 Broadway.

Interrogatory 35. If in answer to the preceding question you have stated that Mr. C. L. Nichols was in the office of L. J. Drake, state who Mr. Drake was.

Answer. Mr. Drake at that time, which was in the Spring of 1904, was a member of the domestic trade committee of the Standard Oil Company.

Interrogatory 36. If in answer to the preceding question you state that Mr. Drake was a member of the domestic trade committee of the Standard Oil interests located at 26 Broadway, state what this domestic trade committee was, and of whom it was composed.

Answer. The domestic trade committee is directly in charge of the entire sales and trade department and interests of the Standard Oil Company and affiliations. Of the members constituting this committee I only recall the names of Messrs. L. J. Drake, Sr., H. G. Westcott, S. R. King, and I believe a Mr. Tilford.

Interrogatory 37. State whether or not you know of any other connection Mr. L. J. Drake had had with the Standard Oil Company or any company allied to the Standard Oil Company.

914 Answer. Prior to his connection at 26 Broadway Mr. Drake was sales manager of the Standard Oil Company of Indiana, with headquarters at Chicago.

Interrogatory 38. If in answer to the preceding questions, or if it be a fact, that Mr. Drake was general sales manager of the Standard Oil Company in Indiana, state what connection, if any, Mr. Nichols had with him when he was acting in that capacity.

Answer. I do not know that there was any connection between Messrs. Drake and Nichols while Mr. Drake was general sales manager of the Standard Oil Company of Indiana.

Interrogatory 39. What was the occasion for the visit you have referred to to New York, and if you say that it was with reference to securing another place with the Standard interests, state what, if anything, was said concerning your assignment to Cincinnati, and state what Standard concern at that place it was that it was suggested that you might be tendered a position with?

Answer. I was summoned to New York relative to a position that would be an improvement over the one I was holding at that time with the Republic Oil Company, and was tendered a position with the Standard Oil Company of New York at Bombay, India, or at Hong Kong. After considering and rejecting these, they suggested and offered to place me as an assistant to the general manager of the Standard Oil Company of Kentucky, with offices at Cincinnati, Ohio.

Interrogatory 40. When you were with the Republic Oil Company, state whether or not you got oil from Cleveland, Ohio, and if so, state to whom the orders were sent.

Answer. While with the Republic Oil Company we secured a large proportion of oils required from the Standard Oil Company of Ohio, but orders and shipping instructions were always sent to Howard E. Cole, at the Standard Oil Company's offices, 53 Euclid Avenue, Cleveland, Ohio.

915 Interrogatory 41. If you have stated that the orders were sent to H. C. Cole, state what position he occupied at that time.

Answer. Mr. Cole's duties were general assistant to the vice president of the Standard Oil Company of Ohio.

Interrogatory 42. State whether or not the Standard Oil Company owned a refinery at Cleveland at that time.

Answer. The Standard Oil Company at that time owned a refinery at Cleveland.

Interrogatory 43. From whom after the organization of the Republic Oil Company did it get its oil?

Answer. The Republic Oil Company bought some of its supplies from the independent refineries located in Pennsylvania, but chiefly from the various refineries and subsidiary companies of the Standard Oil Company, as follows: Refined oils and lubricating products from the Standard Oil Company of Ohio and works located at Cleveland; from the Solar Refining Company, of Lima, Ohio; from the Atlantic Refining Company, Eclipse Lubricating Oil Works Department of Franklin, Pennsylvania; also from the Standard Oil Company of Indiana, whose refinery is located at Whiting, Indiana.

Interrogatory 44. State whether or not there was any change in the refineries from which the Republic secured oil, and if so, state when the change took place, and state what it was.

Answer. The only change that this question would probably refer to is the one of instructions regarding the placing of orders. For a period of about two years the Republic Oil Company were privi-

leged to buy such oils as they desired in the open market, and at the most advantageous terms. These privileges were gradually withdrawn, and finally I had instructions to place all orders for all grades of refined oils, gasoline and lubricating products that were being turned out with the companies mentioned in the preceding answer.

916 Interrogatory 45. State whether or not the Republic Oil Company maintained the stations which had been established by Scofield, Shurmer & Teagle in Waters-Pierce territory.

Answer. For a while all stations formerly owned by the Cleveland Refining Company and Scofield, Shurmer & Teagle were maintained by the Republic Oil Company. When conditions were such that the Standard Oil Company could handle the entire or at least the bulk of the trade in a certain community, several of their smaller stations were closed and moved away. These stations were chiefly located in the territory of the Standard Oil Company of Indiana, and one of these at Springfield, Mo., was in the territory of the Waters-Pierce Oil Company. This particular station was closed by the instruction of the president of the Republic Oil Company, and the equipment moved to Kansas City, Missouri.

Interrogatory 46. Are you acquainted with Mr. Hardcastle? If so, state whether or not he worked for the Republic Oil Company.

Answer. I know Mr. Hardcastle, who was employed by the Republic Oil Company for some months in the capacity of stock clerk.

Interrogatory 47. State from what employment he came, and if he left the Republic, state where he then went.

Answer. Mr. Hardcastle came to the Republic Oil Company from the Standard Oil Company at Albany, New York, and after leaving the Republic Oil Company went back into the employ of the Standard Oil Company.

Interrogatory 48. Were you acquainted with Mr. Hart? If so, state his connection with the Republic Oil Company. State what connection, if any, he had thereafter with the Standard Oil Company of Indiana.

Answer. Yes, I know Mr. J. H. Hart, who came to the Republic Oil Company from the Standard Oil Company of Indiana. For several years he was chief clerk in the accounting department of the Republic Oil Company, at Cleveland, Ohio, and subsequently
917 was promoted to the position of traveling auditor for the same company. I do not know of any connection of Mr. Hart with the Standard Oil Company of Indiana after his engagement with the Republic Oil Company.

Interrogatory 49. State whether or not Mr. Hart is still connected with the Standard Oil Company, and if so, state to what work he was transferred from the Republic.

Answer. I have not seen Mr. Hart since the Republic Oil Company has dicontinued business in Ohio and other States, but understand he is now connected with the Standard Oil Company, I do not know whether it is the Standard Oil Company of Kentucky, Indiana, or New York.

Mr. LIGHTFOOT. We next offer in evidence the deposition of A. H. GARDNER, filed the 24th day of November.

Judge STEDMAN. In order to economize time and not to be making repeated objections, we make a general objection to each and all of the answers of this witness. We make the general objection that each and all of his answers relate to matters outside of the State of Texas, between companies other than the defendant in this case, and in relation to transactions with which this defendant is not shown to have any connection.

The COURT. Are they the companies alleged to be conspirators?

Mr. LIGHTFOOT. Yes, sir.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Interrogatory 1. What is your name and where do you reside? In what business are you engaged?

Answer. A. H. Gardner, Kansas City, Missouri. Oil business.

Interrogatory 2. If you reside in Kansas City, state how long you have lived there, and state where you lived prior to that time.

Answer. I lived here over fourteen years. Prior to that time Denver, Colorado.

918 Interrogatory 3. If you have said that you resided at Denver, Colorado, or if that be a fact, state what company you were connected with there, if any.

Answer. Continental Oil Company.

Interrogatory 4. If you have stated that you worked with the Continental Oil Company, state whether or not you were familiar with its business, and state where it sold oil.

Answer. Yes, I was familiar with its business. It sold oil in Colorado, New Mexico, Utah, Montana, Wyoming.

Interrogatory 5. State whether or not the Continental Oil Company was in competition with the Standard Oil Company, or did business in any territory in which the Standard Oil Company was selling oil, and state whether or not it was in competition with the Waters-Pierce Oil Company, or sold in any territory in which the Waters-Pierce Oil Company sold oil.

Answer. I don't think the Standard Oil Company came in there at all. They were represented by the Continental Oil Company. The Continental Oil Company did not come into competition with the Waters-Pierce Oil Company and did not sell in any territory in which the Waters-Pierce Oil Company sold oil.

Interrogatory 6. State whether or not the Continental Oil Company made any reports to anybody outside of Denver, and if so, state to whom?

Answer. The Continental Oil Company made reports to H. F. Tilford (I think that was his initials), 26 Broadway, New York.

Interrogatory 7. While you were with the Continental Oil Company, state whether or not the company, or you for the company, received instructions from any one outside of the State of Colorado with reference to the business of the Continental.

Answer. Yes, Mr. Tilford gave me instructions in the
919 office, and also W. T. Jordan, Vice President and Manager of — Continental Oil Company.

Interrogatory 8. If in answer to the two preceding questions you have stated that reports were made to Mr. Tilford in New York and that instructions were received from W. T. Jordan and from Mr. Tilford, both in New York, or if this be a fact, state who Mr. Tilford was and what relation he had with the business, and where his place of business was in New York, and state who Mr. Jordan was, and what relation he had with the business, and where his place of business was.

Answer. Tilford's headquarters were 26 Broadway, New York, and we considered him the representative of the Standard Oil Company. W. T. Jordan was Vice President and Manager of the Continental Oil Company. His residence was Denver, Colorado, and that was also his place of business.

Interrogatory 9. When you came to Kansas City with what oil company were you connected, if with any?

Answer. The National Oil Company.

Interrogatory 10. If you have answered that you went with the National Oil Company, state whether or not that company was in any way connected with the Standard Oil interests.

Answer. No, sir, it is not.

Interrogatory 11. When you came to Kansas City, what oil companies were doing business or selling oil in that State?

Answer. Consolidated Tank Line Company and Scofield, Shurmer & Teagle.

Interrogatory 12. State whether or not your company sold oil in competition with the Consolidated Tank Line Company.

Answer. Yes, sir.

Interrogatory 13. If you have stated that Scofield, Shurmer & Teagle were in business in Kansas City at that time, state how long they continued in business, and state what became of their business.

920 Answer. They continued in business, I should say, until about five years ago. Their business was thereafter handled by the Standard Oil Company under the name of the Republic Oil Company.

Interrogatory 14. State, if you know, who were in charge as managers of the Consolidated Tank Line Company after you came to Kansas City.

Answer. E. P. Pratt, G. W. Mayer, Ed Conklin, W. C. Crenshaw, then G. W. Mayer, back from Detroit.

Interrogatory 15. If you have stated that Mr. Crenshaw and Mr. Pratt were managers of that company during that period, state what position, if you know, Mr. Crenshaw afterwards occupied.

Answer. General Manager of the Standard Oil Company located at Chicago.

Interrogatory 16. State the method of business with reference to competition with the trade on the part of the National Oil Company, Scofield, Shurmer & Teagle and the Standard Oil Company prior to

the time that Scofield, Shurmer & Teagle was succeeded by the Republic.

Answer. We were independent companies, each one fighting for the business.

Interrogatory 17. State whether or not any change took place with reference to the matter of competition between the National and the business which had been owned by Schofield, Shurmer & Teagle and to which the Republic had succeeded and the Standard Oil Company after the Republic went into business.

Answer. The Republic was put out by the Standard as a forerunner, to secure our business, by selling at cut prices, when necessary.

Interrogatory 18. State whether or not after the Republic went into business the company represented by you and the Republic engaged in active competition, and if so, state what was done by each company, and state how the conflict was settled and who par-
921 ticipated in the negotiations, and what was said by the parties.

Judge STEDMAN. We object to that answer. We have already made a general objection covering all of these answers, but to this one we object specially because it relates exclusively to transactions in other States, and because, further, it relates to transactions between companies other than this defendant; and because, further, these companies are not parties to the suit; and because, further, this defendant is not shown to have had any connection with or knowledge of any of these transactions; and, furthermore, these transactions appear to have occurred prior to the organization of the defendant; and we object generally upon the ground of immateriality and irrelevancy.

The COURT. The objection is overruled.

Judge STEDMAN. We except.

Answer. After the Republic went into business our company was in competition with them and with the Standard. The Republic put out the city tank wagon trade to procure our business by giving of rebates, they to do the dirty work and the Standard to maintain prices, they not soliciting the Standard's trade, but wherever the Standard lost a customer they were notified (that is the Republic), and appeared the next morning on the ground. They could not hold the Standard's customer without they did it with a rebate, until we were forced to sell at a reduced price and a straight price, making it so interesting that the Standard met the prices. Then we went out to the Standard's outside stations, where they were getting about six cents more a gallon for goods, and made them a similar price, making up carloads among the grocerymen. At this stage in the game Mr. Crenshaw appeared on the scene, and promised to adjust matters. He invited me to go with him and see Teagle, the manager of the Republic, which I refused to do. I told him I knew no competitors but the Standard, and they could settle their own difficulties. He made an appointment with me at noon, and
922 stated that he had arranged matters with Teagle, and that there would be no more cutting, that the Republic would

maintain prices, that of course they had a lot of contracts out that would not expire for about a couple of months, and they would have to fulfill them. We took lunch at the Baltimore, then he wanted that I should go up to the Coates House and meet Mr. Mayer and Mr. Teagle, but Teagle thought he was not consulted, and had no voice in the matter, and if I would sit down and chat with him and smoke a cigar, possibly he would be pacified. But a week thereafter prices were restored, which was necessary, or do business at a loss.

Interrogatory 19. While you were in business at Kansas City and before the Republic acquired the business of Scofield, Shurmer & Teagle, state whether or not the last named concern had a tank station at Springfield, and state whether or not you did business at that city.

Answer. Scofield, Shurmer & Teagle had a station at Springfield. We sold goods there from here.

Interrogatory 20. State whether or not the Waters-Pierce Oil Company was selling oil there, and state whether or not the Consolidated Tank Line Company had a station at that place.

Answer. Waters-Pierce had a station there, but the Consolidated Tank Line Company did not.

Interrogatory 21. What, if anything, was done with the station established by Scofield, Shurmer & Teagle at Springfield after the acquisition of its business by the Standard Oil Company.

Answer. They withdrew; I understand they shipped their belongings to Kansas City.

Interrogatory 22. State whether or not at any point in Missouri, or elsewhere, you have at any time in the conduct of your oil business come in competition with the Waters-Pierce Oil Company and the Standard Oil Company at the same place.

Answer. We never have.

923 Mr. LIGHTFOOT: We offer now the deposition of Edward P. Pratt.

Judge STEDMAN: We should like to interpose an objection to the deposition of this witness as a whole, because each and all of his answers relate to events transpiring in other States, and because the occurrences detailed by the witness are between persons other than this defendant, and because this defendant is not shown to have had any connection or knowledge of the occurrences related by the witness, and those persons between whom the transactions are stated to have occurred are not parties to this suit; and upon the general ground of immateriality and irrelevancy.

The COURT: Does the deposition relate to transactions between co-conspirators?

Mr. BRADY: Yes, sir.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Interrogatory 1. What is your name and where do you reside? How long have you lived at your present place of residence? Where did you live prior to coming to Kansas City, and for how long?

Answer. Edward P. Pratt, Kansas City, Missouri. Since 1892. Des Moines, Iowa. I came to Des Moines in 1882.

Interrogatory 2. If you have stated that you have lived at Des Moines, Iowa, before coming to Kansas City, state what business you were engaged in in that city, and if you say you were in the oil business, then state under what name, or for what company.

Answer. I was an officer in the Des Moines Oil Tank Line Company.

Interrogatory 3. If in answer to the preceding question you have said that you were in the oil business under the name of Des Moines Oil Tank Line, state whether or not this was an independent company.

Answer. It was.

Interrogatory 4. State what disposition was made of the Des Moines Oil Tank Line Company.

924 Answer. It was sold to the Consolidated Tank Line Company.

Interrogatory 5. If in answer to the preceding question you have stated that you sold out to the Consolidated Tank Line Company, state what connection that company had with the Standard Oil Company, and state what business you were in after the sale.

Answer. The Consolidated Tank Line Company was a part of the Standard Oil Company. I was manager of the Consolidated Tank Line Company at Des Moines, Iowa, until about March, 1892.

Interrogatory 6. State whether or not the Des Moines Oil Tank Line continued in business after you became connected with the Consolidated Tank Line Company.

Answer. I think it did for about a year.

Interrogatory 7. When you came to Kansas City, what business did you engage in?

Answer. I was manager of the Consolidated Tank Line Company.

Interrogatory 8. If in answer to the preceding question you state you were manager of the Consolidated Tank Line Company, state what territory this company did business in contiguous to Kansas City, and state how far the line of your business extended into the Southern part of Missouri.

Answer. My territory consisted of a part of the State of Kansas and a part of the State of Missouri. The division line crossing the Southern part of the State of Missouri would include the towns of Lamar, Clinton, Sedalia, Moberly, Hannibal.

(Interrogatory 9 and answer omitted.)

Interrogatory 10. If you have indicated there was a dividing line between the Waters-Pierce Oil Company and the Consolidated Tank Line Company, state whether or not the Waters-Pierce Oil Company did business in the territory of the Consolidated Tank Line Company and whether the Consolidated Tank Line Company did business in the territory of the Waters-Pierce Oil Company, and if you

925 state that neither did business in the territory of the other, state why.

Answer. No. It was according to our instructions to confine our business to what was known as our territory.

(Interrogatories 11 and 12 and answers omitted.)

Interrogatory 13. State whether or not your company at Kansas City sent any traveling men down into the territory claimed by the Waters-Pierce Oil Company, and state whether or not you knew of any competition from the Waters-Pierce Oil Company in the territory claimed by you.

Judge STEDMAN: We object to it, may it please Your Honor, because that is predicated upon the idea of the existence of a territory dividing line, and the testimony on that subject——

Mr. BRADY: We call the attention of Your Honor to the fact that it calls for the territory claimed by the Waters-Pierce Oil Company, not territory shown by a dividing line.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Answer. No. Our company did not send any traveling men down into the territory claimed by the Waters-Pierce Oil Company, and I knew of no competition in our territory from the Waters-Pierce Oil Company.

Interrogatory 14. How long did your connection with the Consolidated Tank Line Company in Kansas City continue?

Answer. Until November, 1896.

Interrogatory 15. If you have stated that you continued with that company until November, 1896, state the circumstances under which you ceased working for that company.

Answer. I resigned my position.

Interrogatory 16. If you have stated to the last preceding question that the business of the Consolidated Tank Line Company was acquired by the Standard Oil Company, state what Standard Oil Company succeeded to it, and state whether or not you had
926 any connection with the Standard Oil Company thereafter.

Answer. The Consolidated Tank Line Company was succeeded by the Standard Oil Company of Kentucky, and afterwards by the Standard Oil Company of Indiana. I was manager respectively of each one of the companies in Kansas City, as the changes were made.

Interrogatory 17. State whether or not after the sale of your independent business to the Consolidated Tank Line Company or the Standard Oil Company you had any connection with any Standard Oil Company other than the Standard Oil Company of Kentucky, and if in answer to this you state that the Standard Oil Company of Indiana succeeded to the business of the Standard Oil Company of Kentucky and thereupon you became an employé of the Standard Oil Company of Indiana, state whether or not the territory claimed and operated in by the Standard Oil Company of Indiana was greater or less than that claimed by the Consolidated Tank Line Company, and if it was in any sense different, state what the difference was.

Answer. My territory as an employe of the Standard Oil Company of Indiana was just the same as it was of the Standard Oil Company of Kentucky and the Consolidated Tank Line Company while I was manager at Kansas City, Missouri.

Interrogatory 18. State whether or not the territory claimed and

operated in by the Standard Oil Company of Kentucky was in any sense different from that claimed and operated in by the Consolidated Tank Line Company.

Answer. No, not as far as my territory was concerned.

Interrogatory 19. State whether or not the territory primarily claimed by the Consolidated Tank Line Company and subsequently by the Standard Oil Company of Kentucky and finally by the Standard Oil Company of Indiana, or any part of it, was at any time operated in by the Waters-Pierce Oil Company, and if you say it was not, state why not.

Answer. It was not, as far as my territory was concerned,
927 on account of instructions received from my superior officers, L. J. Drake, General Manager, J. A. Moffett and Alex. McDonald.

Interrogatory 20. After the Consolidated Tank Line Company was succeeded by the Standard Oil Company of Kansas City, state what changes, if any, were made in the business, in the officers and employes and in the manner of conducting business, and state what changes were made in the business, in the officers and employes and in the general course and conduct of the business after the Standard Oil Company of Indiana succeeded to the Standard Oil Company of Kentucky.

Answer. There were no changes after the Consolidated Tank Line Company was succeeded by the Standard Oil Company of Kentucky. After the Standard Oil Company of Indiana succeeded to the Standard Oil Company of Kentucky we made our reports to the Chicago office instead of Cincinnati. There was no change as regards the officers and employes as far as my territory was concerned.

Interrogatory 21. During your connection with the business, who was the general manager of the Standard Oil Company of Indiana, the Standard Oil Company of Kentucky and the Consolidated Tank Line Company, and to whom and to what place did you make your reports?

Answer. During my connection with the business the General Manager of the Standard Oil Company of Indiana was L. J. Drake, as far as my territory was concerned. The General Manager of the Standard Oil Company of Kentucky and of the Consolidated Tank Line Company was the same. As manager of the Consolidated Tank Line Company and of the Standard Oil Company of Kentucky I reported to Cincinnati, to the officers of the Standard Oil Company of Kentucky at Cincinnati. My reports of the Standard Oil Company of Indiana were directed to the officers at Chicago.

Interrogatory 22. During the time you were manager of the Consolidated Tank Line Company what was the course of busi-
928 ness in case an order was received for a shipment of oil, or inquiry was made for the price of oil, from a dealer in Waters-Pierce territory? What was the course of business when you were manager for the Standard Oil Company of Kentucky?—while you were manager of the Standard Oil Company of Indiana?

Answer. Either the order was sent to the Waters-Pierce Oil Company at St. Louis or we made the shipment and reported the sale to

the head office at Cincinnati. It was the same while I was manager of both the Standard Oil Company of Kentucky and the Standard Oil Company of Indiana, the order going to the headquarters of the company either at Chicago or at Cincinnati.

(Interrogatory 23 and answer omitted.)

Interrogatory 24. While you were manager at Kansas City for either of the three companies, in what cars did you get your shipments?

Answer. Union Tank Line.

Interrogatory 25. State whether or not you made tank car reports, and if so, state to whom they were made and at what place.

Answer. We did. My recollection is that they were made to the general offices at Cincinnati or Chicago, and also to 26 Broadway, New York.

Interrogatory 26. State from what refineries you got your oil during your management, and state to whom the refineries belonged.

Answer. We received shipments from different refineries at Cleveland, Ohio, and Whiting, Indiana, our understanding being that they belonged to the Standard Oil Company.

Interrogatory 27. While you were connected with the business at Kansas City, state whether or not any system was in operation in reference to securing information as to shipments by competitive companies, and if so, state in detail the plan or system of operation, and state the purpose for which the information was received,
929 and what use was made of it?

Judge STEDMAN: We object, Your Honor, to the answer to that question,—first, because it is immaterial and irrelevant; and second, because the occurrences there related by the witness appear to have transpired in other States; and third, because it is not shown that this defendant had any connection with or knowledge of the matters related by the witness.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. We had a system of obtaining information in reference to the receipts by competitors of shipments, and this information was transmitted to our general offices. We obtained this information in different ways by our own employes, by our employes' going to the railroad yards and taking the numbers of the cars, and also through the assistance of the employes of the railroad companies. The purpose of obtaining this information was to keep our general offices informed as to the business of the competitors.

Interrogatory 28. While you were manager of the business at Kansas City, state whether or not you ever did any business in Texas, and if you say you did not, state why not.

Answer. No, because it was not in my territory.

Interrogatory 29. State whether or not during all of your connection with the oil business you have known of Union Tank Line cars being used except by the Standard Oil interests.

Answer. No.

930 Mr. LIGHTFOOT: We will next introduce the deposition of Anthony V. Jockel.

Judge STEDMAN: May it please Your Honor, we desire to interpose an objection to the deposition of this witness as a whole, upon the ground that the transactions concerning which he testifies occurred wholly without the limits of the State of Texas, and have no reference to any business or transactions of this defendant within the State of Texas.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Interrogatory 1. What is your name, where do you reside, and in what business are you engaged?

Answer. Anthony V. Jockel, Brooklyn, New York; bookkeeper and salesman.

Interrogatory 2. State whether or not you have been at any time connected with the Standard Oil Company of New Jersey, and if so, state when and in what capacity.

Answer. From June, 1904, until December 1, 1904; capacity as bookkeeper.

Interrogatory 3. State whether or not you have ever been engaged by the Waters-Pierce Oil Company. If so, state the circumstances of your transfer or employment, and state when and where you worked for the Waters-Pierce Oil Company.

Judge STEDMAN: We object, Your Honor, to the answer of the witness beginning with the words "In November," on the ground that it is hearsay,—States what he has been informed.

The COURT: What portion is it you object to?

Judge STEDMAN: I object first to that part of his answer beginning with the words "In November." I object to that sentence first, because it appears—that sentence and the next sentence, because

931 they both appear to be hearsay. Then after that he refers to a letter, which is the best evidence of its contents, and the nonproduction of which is not accounted for.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. Yes. From December, 1904, to February, 1905, at Oklahoma City, O. T. In November, 1904, I was informed by the manager of the Newark branch of the Standard Oil Company of New Jersey that my transfer had been requested to some Western agency. About a week after this conversation, or this notification, rather, I was told by Mr. Young, the manager of the Newark branch of the Standard Oil Company of New Jersey, that Mr. King desired my presence at 26 Broadway the following day. He gave me a letter of introduction to Mr. King, which I presented, and Mr. King in turn introduced me to Mr. R. H. McNall, at 26 Broadway, with whom I made all arrangements regarding my transfer to the Waters-Pierce Oil Company. About a week later I left New York for St. Louis, and saw Mr. R. P. Tinsley, whom Mr. McNall had directed me to see before going to Oklahoma City. I remained with Mr. Tinsley about two or three hours making final arrangements, and then left for Oklahoma City.

Interrogatory 4. State whether or not you have ever been in St. Louis, Missouri, in the office of the Waters-Pierce Oil Company, and if so, state when it was, and how you came there, and the persons whom you saw and conversed with there.

Answer. Yes. In December, 1904, through my instructions to see Mr. Tinsley before proceeding to go to Oklahoma City. While there I saw Mr. Tinsley, Mr. Backus, Mr. Gruet, Mr. C. P. Ackert and Mr. King.

(Interrogatory 5 and answer omitted.)

Interrogatory 6. State the character of the duties of Mr. King, and if you say that it was auditing for the Waters-Pierce Oil
932 Company, state what part of the audit was performed by him.

Answer. Merely the auditing of all monthly reports which were submitted directly to the St. Louis office.

Interrogatory 7. If you say that Mr. King's duties were with reference to the stock reports of the Waters-Pierce Oil Company, state whether or not you have seen in the auditing department of the Standard Oil Company such reports or like reports.

Answer. Mr. King had nothing whatever to do with the auditing of the stock reports of the Standard Oil Company, and I did not see any report whatever in the St. Louis office which had been submitted by a Standard Oil branch. All reports that I saw in the St. Louis office were rendered by the Waters-Pierce Oil Company branches on forms which were being used by the Standard Oil Company in the East.

Interrogatory 8. If you say that you saw Mr. Tinsley or Mr. Backus in St. Louis, state whether or not these parties had been connected with the business of the Standard Oil Company at 26 Broadway before that time, and if you say they had, state what was the character of their work for the Standard Oil Company of New Jersey, and state in what particular office at 26 Broadway they were engaged.

Answer. Mr. Tinsley and Mr. Backus were both at 26 Broadway, New York, before going with the Waters-Pierce Oil Company at St. Louis. Mr. Tinsley was the agent in New York who received all reports of the Standard Oil Company of New Jersey, also all transfers for material delivered by other Standard Oil Companies and to other Standard Oil Companies by the Newark branch of the Standard Oil Company. Mr. Backus was with Mr. Tinsley in New York at 26 Broadway. The number of the room I don't remember.

Interrogatory 9. If you say that Mr. Tinsley had before going to the Waters-Pierce Oil Company been at 26 Broadway and had received reports, state from what companies Mr. Tinsley received re-
ports and the character of these reports.

933 Answer. The only company that I know of his receiving reports from was the Standard Oil Company of New Jersey, the character of these reports being regular monthly stock reports, and other reports which I can't remember just now.

Interrogatory 10. After visiting St. Louis where did you then go, and in what work were you engaged, and under whom did you work?

Answer. After leaving St. Louis I went to Oklahoma City and proceeded to install the Standard Oil reports, or report forms, in the

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Oklahoma office, Mr. Ebie being at that time in charge of the Oklahoma division.

Interrogatory 11. If you have stated that you went to Oklahoma City and were thereafter on the pay-roll of the Waters-Pierce Oil Company, state whether or not you made any reports as to the amount of business done by the Waters-Pierce Oil Company and that done by competing companies in your territory.

Answer. Yes. We rendered monthly reports of the amount in gallons of oil sold—or barrels, rather, I should say instead of gallons—by the Waters-Pierce Oil Company in the Oklahoma division, and the competing companies in the same division; these same reports showing the average increase or decrease in business done throughout the Territory by the Waters-Pierce Oil Company and the competing companies. And on second thought, I believe we also rendered the total amount of gallons, as near as could be ascertained.

Interrogatory 12. State whether or not before your transfer from 26 Broadway to Oklahoma City you had any conversation with any officers of the Standard Oil Company or the Waters-Pierce Oil Company at 26 Broadway concerning the concealment of your connection with the Standard Oil Company, and if so, state who these persons were, and what their positions were, and state what the conversation was.

Judge STEDMAN: Your Honor, we object now to the answer of the witness because it is hearsay,—relates what was stated to him
934 by Mr. Young. While Mr. Young is shown to have connection with one of the Standard Oil Companies, it does not appear that he had any connection with this defendant, nor does it appear in the communication that he made to the witness he was acting within the scope of his employment or in the discharge of his duties or functions as the manager of that branch of the Newark branch of the Standard Oil Company.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. Mr. Young, the manager of the Newark branch of the Standard Oil Company, told me that after I had left New York I was to forget that I had been with the Standard Oil Company. Mr. McNall, the commercial agent of the Waters-Pierce Oil Company at 26 Broadway, also instructed me not to mention that I had been with the Standard Oil Company.

Interrogatory 13. State what instructions you had, if any, before going to Oklahoma City with reference to declaring that the Waters-Pierce Oil Company was in competition with the Standard Oil Company, and if you had such instructions, state by whom they were given.

Answer. The instructions that I received regarding the Waters-Pierce Oil Company being independent of the Standard Oil Company and competitors to them were received by me from Mr. Ebie in Oklahoma City.

Interrogatory 14. From whom or from what companies was the oil and other products sold at Oklahoma City by the Waters-Pierce Oil Company obtained?

Answer. From the Standard Oil Company of Indiana, from the Galena Oil Company—that is all that I can remember now.

Interrogatory 15. State whether or not it all came from the Standard Oil interests and connections.

Answer. As far as I can remember, yes. Some of the oil that came to Oklahoma City was in Waters-Pierce Oil Company
935 tank cars and barrels, and therefore there was no telling where the oil contained in the cars and barrels came from originally.

Interrogatory 16. State what steps, if any, were taken in the conduct of the business at Oklahoma City to conceal the fact that the Waters-Pierce Oil Company was handling the products of the Standard Oil Company.

Answer. None other than the removing of the name of the Standard Oil Company from all barrels of lubricating oil and in some few cases gasoline and coal oil before shipment.

Mr. LIGHTFOOT: We next offer the deposition of HARRY EGBERT PLATT, of the City of New York.

Interrogatory 1. What is your name, age, residence and occupation?

Answer. Harry E. Platt; age 24; residence New York City; clerk.

Interrogatory 2. Please state whether or not you were ever employed at 26 Broadway, New York?

Answer. I was.

Interrogatory 3. When did you begin employment at that place?

Answer. In February, I don't know whether it was 1902 or 1903.

Interrogatory 4. What was your first position there? If you state, or if it be a fact, that you was employed as a clerk by the Union Tank Line, then state who was the President and managing officer of that company.

Answer. I was employed by the Union Tank Line as clerk under the jurisdiction of Mr. Cook. My first position was clerk. Mr. W. H. Tilford, president.

Interrogatory 5. Please state whether the officers of that company were located at 26 Broadway?

Answer. They were.

936 Interrogatory 6. Under whose jurisdiction were you when you were in the employ of the Union Tank Line Company?

Answer. Mr. Cook.

Interrogatory 7. Were you afterwards transferred to any other office?

Answer. I was.

Interrogatory 8. If so, state to whose office you were transferred?

Answer. To the office of Mr. W. H. Tilford.

Interrogatory 9. How long did you work for the Union Tank Line Company?

Answer. About four months.

Interrogatory 10. If you have stated, or if it be a fact, that you were transferred to some other position, then state how you happened to be so transferred?

Answer. I was notified to report there the following Monday.

Interrogatory 11. If you have stated, or if it be a fact, that you were transferred to Mr. Tilford's office, then state by what company you were paid after that time?

Answer. Standard Oil Company of New Jersey.

Interrogatory 12. What was the business of the Union Tank Line Company?

Answer. To transport oil in tank cars.

Interrogatory 13. If you have stated, or if it be a fact, that their business was to operate tank cars throughout the United States, please state for what companies they were operated, and whether or not said companies had offices at 26 Broadway and were connected with the business there?

Answer. There were cars assigned to different companies, but whether they had offices there I do not recall, nor what connection there was between the companies.

937 Interrogatory 14. Please state whether or not the Union Tank Line Company furnished or assigned any cars to the Waters-Pierce Oil Company of St. Louis for their use in transporting oil in bulk?

Answer. There were cars assigned to the Waters-Pierce Oil Company.

(Interrogatory 15 and answer omitted.)

Interrogatory 16. What reports, if any, did you get from the Waters-Pierce Oil Company in reference to those cars?

Answer. Reports showing arrival, whether loaded or empty, and when shipped, by what railroads.

(Interrogatory 17 and answer omitted.)

Interrogatory 18. State fully the nature and character of the reports, and by what companies they were made?

Answer. Reports showing arrival and shipment of tank cars by Waters-Pierce Oil Company.

Interrogatory 19. After you was transferred to Mr. Tilford's office, if you were so transferred, were you on the salary list of the Standard Oil Company of New Jersey?

Answer. I was.

Interrogatory 20. Whose office were you in, Mr. W. H. Tilford's or Mr. H. M. Tilford's?

Answer. In what was known as the outside office, serving them both.

Interrogatory 21. Describe how the offices of W. H. Tilford and H. M. Tilford were situated with reference to each other?

Answer. A small room between them, connecting door.

Interrogatory 22. Did you know a man by the name of R. H. McNall?

Answer. I did.

Interrogatory 23. Where were Mr. McNall's offices?

Answer. Room 1209.

938 Interrogatory 24. If you have stated, or if it be a fact, that his office was in the same room as Mr. H. M. Tilford's, please state if their desks were in the same room?

Answer. They were in the same room.

Interrogatory 25. When you were in Mr. Tilford's office what were your duties?

Answer. Clerk.

Interrogatory 26. Did you have any occasion during the time you were in Mr. Tilford's office to see any reports from the Waters-Pierce Oil Company relating to the business of the Waters-Pierce Oil Company?

Answer. I did.

Interrogatory 27. If so, please state what kind of reports you saw, and in whose possession were they?

Also, state fully, and in detail, what opportunities you had for observing reports that were received by Mr. R. H. McNall from the Waters-Pierce Oil Company, if any were received by him?

Answer. Marine oil reports in my possession to distribute to the proper officers. In the capacity of seeing that they were delivered to the proper parties.

Interrogatory 28. If you have stated, or if it be a fact, that you saw cash reports from the Waters-Pierce Oil Company, please state how often such reports were received there?

Answr. I have seen cash reports, but do not recall how often they were received.

Interrogatory 29. Who received the reports from the Waters-Pierce Oil Company in that office?

Answer. They were addressed to Mr. McNall.

(Interrogatory 30 and answer omitted.)

Interrogatory 31. Do you know Mr. L. D. Clark and Mr. A. H. Brainerd?

939 Answer. I do.

Interrogatory 32. Did you know them at the time you were working at 26 Broadway?

Answer. I did.

Interrogatory 33. Did they have an office at 26 Broadway?

Answer. They did.

Interrogatory 34. What position did they hold?

Answer. They were in the comptroller's office.

Interrogatory 35. If you have stated, or if it be a fact, that Mr. Clark was the Comptroller for the Standard Oil Company, and that Mr. Brainerd was Assistant Comptroller, please state whether the cash reports and other reports received by Mr. McNall were sent to their office, or sent to the office of Wade Hampton?

Answer. I do not recall which office they were sent to.

Interrogatory 36. Please state who would take the reports from Mr. McNall to Messrs. Clarke and Brainerd's or other office?

Answer. Either the office boy or myself.

Interrogatory 37. Please state whether or not any of them were ever sent such office by you?

Answer. They have been.

Interrogatory 38. Please state how long you were in Mr. Tilford's office?

Answer. About two years.

Interrogatory 39. If you have stated, or if it be a fact, that you were there over two years, then state whether or not this course of handling these daily cash statements continued during the entire time that you were there?

Answer. I do not recall any change.

(Interrogatory 40 and answer omitted.)

Interrogatory 41. If you have stated, or if it be a fact,
940 that a report they called the Marine Oil Report was so received, please state what disposition was made of same after it had been received?

Answer. It was sent down to the Marine Oil Department.

Interrogatory 42. If you have stated, or if it be a fact, that it was sent to the Marine Oil Department, then state whether or not there was a marine oil department at 26 Broadway, and who was in charge of same?

Answer. The Marine Oil Department at 26 Broadway was in charge of Mr. Bedford.

Interrogatory 43. What position did Mr. R. H. McNall occupy at 26 Broadway during the time that you were there?

Answer. Commercial Agent of the Waters-Pierce Oil Company.

Interrogatory 44. Did you ever see how the letters received by him were addressed? If so, please state how they were addressed?

Answer. Mr. R. H. McNall, Commercial Agent, 75 New Street, New York City.

Interrogatory 45. If you have stated, or if it be a fact, that they were addressed "Mr. R. H. McNall, Commercial Agent, 75 New Street," then state where 75 New Street was with reference to 26 Broadway?

Answer. It was the rear entrance to the building.

(Interrogatory 46 and answer omitted.)

Interrogatory 47. Do you know whether or not there was a committee called the Domestic Trades Committee at 26 Broadway?

Answer. I have heard of such a committee.

Interrogatory 48. Please state whether or not Mr. H. M. Tilford was a member of that committee.

Answer. He was a member of a committee—whether it was the Domestic Trades, I can not say.

Interrogatory 49. Did you know Mr. W. E. Bemis while
941 you were employed at 26 Broadway? What department was he in?

Answer. I did; he was in the statistical department.

Interrogatory 50. Please state whether or not Mr. McNall received a report styled "Sales and Deliveries of Refined Oil" from the Waters-Pierce Oil Company?

Answer. I have seen such a report.

Interrogatory 51. Did you ever see any such reports received by him?

Answer. I did.

(Interrogatories 52 and 53 and answers omitted.)

Interrogatory 54. Please state whether or not, to your knowledge, the reports stating the conduct of the business of other companies were sent to Mr. Bemis?

Answer. They were.

Interrogatory 55. What room was known as the Marine Oil Department?

Answer. Room 600.

Interrogatory 56. Please state, if you know, to what company, located at 26 Broadway, the Marine Oil Department belongs?

Answer. Standard Oil Company.

Interrogatory 57. Who had charge of the Marine Department?

Answer. Mr. Bedford.

Interrogatory 58. Please state whether or not letters written in the Marine Oil Department were sent to Mr. McNall to be signed by him and forwarded to the Waters-Pierce Oil Company?

Answer. I have seen such letters.

Interrogatory 59. Please state what other communications, if any, relating to the business of the Waters-Pierce Oil Company, were received by Mr. McNall at his office?

Answer. I do not recall.

Interrogatory 60. If you have stated, or if it be a fact, that
942 the reports of appropriations for buildings, etc., of the Waters-Pierce Oil Company were received by him, please state what disposition was made of them by Mr. McNall?

Answer. Reports of appropriations of the Waters-Pierce Oil Company were made to him. I do not recall what disposition was made of them.

(Interrogatories 61, 62, 63 and 64 and answers omitted.)

Interrogatory 65. Did you know Mr. Walter Jennings while you were employed at 26 Broadway?

Answer. I did.

(Interrogatory 66 and answer omitted.)

Interrogatory 67. What position did Mr. Jennings occupy at 26 Broadway?

Answer. He was a member of the executive committee.

Interrogatory 68. Please state what other directions, if any, or communications relating to the conduct of the Waters-Pierce Oil Company came through that office while you were employed there?

Answer. Salary matters.

Interrogatory 69. If you have stated, or if it be a fact, that you have seen requisitions for advance in salaries come through in that way, please state by whom they were passed upon?

Answer. Mr. McNall advised them when the said increase was all right.

Interrogatory 70. Please state, if you know, what room the Domestic Trades Committee occupied at 26 Broadway?

Answer. Room 1003 was generally known as the Domestic Trades Committee room.

Interrogatory 71. Please state whether or not Mr. McNall received from the Waters-Pierce Oil Company letters in which there were blank carbon copies without address or signature?

Answer. There were such copies received by him.

943 (Interrogatories 72, 73 and 74 and answers omitted.)

Interrogatory 75. Please state whether or not you have seen letters sent to Mr. McNall from various departments at 26 Broadway unsigned?

Answer. I have.

Interrogatory 76. If you so state, then state whether or not it was the custom of Mr. McNall to sign the letters so received and forward them to the Waters-Pierce Oil Company?

Answer. It was.

(Interrogatory 77 and answer omitted.)

Interrogatory 78. What sort of stationery would such letters be written upon in the other departments?

Answer. Waters-Pierce Oil Company.

Interrogatory 79. State whether or not you know who was at the head of the Lubricating Department at 26 Broadway?

Answer. Mr. S. H. Paine.

Interrogatory 80. Please state whether or not you have seen letters written on the stationery of the Waters-Pierce Oil Company come from that department to be signed by Mr. R. H. McNall?

Answer. I have.

Interrogatory 81. Please state whether or not Mr. McNall received communications from the Waters-Pierce Oil Company during the entire period in which you were employed at 26 Broadway, and whether such communications would be referred to other departments at 26 Broadway.

State fully your information concerning the business methods employed between the Waters-Pierce Oil Company and the Standard Oil Company of New Jersey, and other like interests located at 26 Broadway, in communicating and transacting business with each other.

Answer. He did receive such communications, and same were referred to other departments. I do not know the business
944 methods employed in communicating.

Mr. LIGHTFOOT: We next offer in evidence the deposition of ALBERT A. SMITH, of New York.

Interrogatory 1. What is your name, age and place of residence?

Answer. Albert A. Smith; my age is 26; my residence is 131 Hooper Street, Brooklyn, New York.

Interrogatory 2. What is your occupation and where are you employed?

Answer. I am now superintendent at the new Hall of Records Building—superintendent of construction.

Interrogatory 3. Did you formerly work at 26 Broadway, New York? If so, in what capacity?

Answer. As stenographer.

Interrogatory 4. If in answer to the foregoing interrogatory you state, or if it be a fact, that you were employed as a stenographer, then state in whose office you were employed, and how long you were so employed?

Answer. I was employed—I started with O. C. Burt and Mr. E. C. Goodeno, then I was transferred to the office of Mr. W. E. Bemis, Room 1210 in that building, 26 Broadway, on the twelfth floor.

Interrogatory 5. If in answer to the foregoing interrogatory you state, or if it be a fact, that you were employed in the office of O. C. Burt and E. C. Goodnow, state how long you were employed in their offices, and if you were afterwards transferred to any other department or office.

Answer. As far as I can recollect, I started to work with Messrs. Burt and Goodeno's office in May, 1903. At that time that was known as the shipping department. Afterwards, about May of the following year, I was transferred upstairs to Mr. Bemis'
945 office.

Interrogatory 6. Do you know W. E. Bemis? Please state whether or not he had an office at 26 Broadway?

Answer. He did.

Interrogatory 7. If you have stated, or if it be a fact, that he had an office at 26 Broadway, and if you were employed in his department, then state what the number of his room was and the character of your employment in his department, and how long you were employed there?

Answer. His room was a suite of rooms. He had a private office in that suite, which was called Room 1210. My position was that of stenographer. I must have been there about a year and a half.

Interrogatory 8. If you state, or if it be a fact, that you were employed in Mr. Bemis' department about two years, then state when you began and when you quit?

Answer. Well, as near as I can recollect it was in May of 1904 that I began, and I quit in June, 1905.

Interrogatory 9. Please state if you know whether Mr. Bemis was on any committees at 26 Broadway, and what committees, if any, he was a member of?

Answer. He was on a committee that met down in room 106 on the first floor. At the present time I can not tell you the name of the committee, because I don't remember it. He was at one time, I know positively, a member of the Domestic Trades Committee, which at the time I left the company met in room 1003 on the tenth floor.

Interrogatory 10. Please state if you know what department Mr. Bemis was in charge of at 26 Broadway?

Answer. The statistical department.

Interrogatory 11. Please state if you know whether reports of any character were made to the department of which Mr. Bemis was the head?

946 Answer. Reports from all over the world came to Mr. Bemis, that is so far as their work was concerned, wherever

they sold oil. That is, they did not come directly to him, they came to his employés in that office.

Interrogatory 12. Please state from what companies or corporations reports were received by Mr. Bemis?

Answer. Well, I have seen reports from the Republic Oil Company, from the Waters-Pierce Oil Company, and from other companies connected with them throughout the country; in fact, all reports pertaining to their business were sent to Bemis.

Interrogatory 13. Did you know of such a company as the Waters-Pierce Oil Company of Missouri?

Answer. I did.

Interrogatory 14. Please state whether or not reports of any character were received at Mr. Bemis' office during the period of time you were employed there, from the Waters-Pierce Oil Company?

Answer. They were.

Interrogatory 15. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that reports were received from the Waters-Pierce Oil Company, please state the nature and character of such reports?

Answer. Reports that I noticed were reports, as near as I can recollect, as to their monthly deliveries of oil and different products connected with the business, as well as reports of competitive shipments.

Interrogatory 16. Please state whether or not you received dictation of letters from Mr. Bemis or any other person in authority in his department for the Waters-Pierce Oil Company. If so, state the names of the persons who dictated said letters and the positions they held in that department?

Answer. I have received letters from Mr. E. T. Wilson and
947 from a Mr. O'Connor, Mr. Pelouze, regarding the general conduct of the business. Addressed to the heads of the different departments.

Interrogatory 17. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that letters to the Waters-Pierce Oil Company were dictated to you, then state about what matters the letters were dictated, and how often such letters were dictated to you?

Answer. Well, it is pretty hard to state how many; sometimes I would have about twenty a week, other times I had about two. They were all sent in to Mr. R. H. McNall to be signed.

Interrogatory 18. If you have stated, or if it be a fact, that the letters dictated to you, if any were so dictated, were in reference to the conducting of the business of the Waters-Pierce Oil Company, then state whether or not such letters were dictated to you during the entire period of time that you were employed in Mr. Bemis' department.

Answer. They were.

Interrogatory 19. Please explain in detail from what different parties you received such letters; what copies, if any, were made. Who signed them?

Answer. I received letters from Mr. E. T. Wilson, Mr. O'Connor, Mr. Pelouze, and others. They were all signed by Mr. R. H. McNall, who occupied quarters in Mr. H. M. Tilford's department. We al-

ways made a carbon copy, but about a month before I left the company they obliterated the name on said carbon copy by placing a piece of paper over the carbon copy.

Interrogatory 20. Please state whether or not the letters you wrote in reference to the conducting of the business of the Waters-Pierce Oil Company were dictated by one or more persons in your office, and signed by some one else?

Answer. They were.

948 Interrogatory 21. Please state what method was pursued in making copies of such letters as you wrote?

Answer. The letters I wrote were sent in to Mr. McNall, who signed them, copied them in his book, and returned them to us to be mailed.

Interrogatory 22. If in answer to the foregoing interrogatory you have stated, or if it be a fact, that one carbon copy of each letter was retained in Mr. Bemis' office and the original was sent elsewhere to be signed, please state to whom the original was sent to be signed?

Answer. R. H. McNall.

Interrogatory 23. Please state whether or not the name of the company to whom the letter was written appeared on the carbon copy retained? If not, by whose direction was the name omitted from the letter?

Answer. A month before I left the company we used to address the different parties to whom we were writing; afterwards in writing the letter we placed a piece of paper over the name, so that it would not show on the carbon, but the name would show on the original letters.

Interrogatory 24. Please state the name or names of the parties in Mr. Bemis' office who dictated letters to the Waters-Pierce Oil Company.

Answer. Mr. O'Connor, Mr. Wilson, Mr. Pelouze, and others.

Interrogatory 25. Did you know Mr. R. H. McNall? Where was his office located?

Answer. His office was in a suite of rooms known as 1209 and 1210; his room was really 1209, it was really one big suite.

Interrogatory 26. If you have stated, or if it be a fact, that letters written by you to the Waters-Pierce Oil Company were sent to Mr. R. H. McNall to be signed, please state by whose direction they were so sent?

949 Answer. By the direction of the man that wrote them.

Interrogatory 27. Please describe the stationery upon which you wrote letters addressed to the Waters-Pierce Oil Company.

Answer. Stationery was received from Mr. R. H. McNall's office, and the heading on same read Waters-Pierce Oil Company.

Interrogatory 28. Please state whether or not you had any letter heads with the name of the Waters-Pierce Oil Company upon them in your office or desk?

Answer. I had them in my desk, all sizes.

Interrogatory 29. If you have stated, or if it be a fact, that the original letters written by you to the Waters-Pierce Oil Company were written on the Waters-Pierce Oil Company's letter heads, then state where you obtained such stationery and under whose direction the letters were written on Waters-Pierce Oil Company stationery?

Answer. I obtained the letter heads from Mr. R. H. McNall's office, and I received orders at the time I entered Mr. Bemis' office to address all letters to them dictated by other parties in the office on Waters-Pierce Oil Company stationery. The orders came from everybody connected with that letter-writing, particularly from Mr. Wilson.

Interrogatory 30. If you have not already done so, please state in detail the substance of the letters written by you to the Waters-Pierce Oil Company.

Answer. Why, it was the general conduct of their business, principally competitive shipments, which letters I received from Mr. O'Connor. That means the letters regarding competitive shipments came from Mr. O'Connor.

Interrogatory 31. Please state in detail the character of letters and substance of letters and reports received in your department from the Waters-Pierce Oil Company, and by whom they were sent to your department.

Answer. I know reports came there, but I can't remember
950 whom they came from, nor the substance of them. I can't remember the names of the parties who sent the letters. J. P. Ackert is one of the parties who sent the letters. I am not sure about the initials, I know it is Ackert—A-c-k-e-r-t, as nearly as I can remember.

Interrogatory 32. Please state whether or not letters were dictated to you in that department addressed to the Standard Oil Company of Indiana, the Republic Oil Company, the Atlantic Refining Company, the Standard Oil Company of Indiana, the Continental Oil Company of Denver, the Standard Oil Company of New Jersey, the Standard Oil Company of New York and the Standard Oil Company of Chicago?

Answer. I have written to Cleveland, yes. Yes as to the Republic Oil Company; yes as to the Atlantic Refining Company; as to Standard Oil Company of Indiana, I can't remember. Yes as to the Continental Oil Company of Denver. As to the Standard Oil Company of New Jersey, I used to address them in the building. As to the Standard Oil Company of New York, of course. As to the Standard Oil Company of Chicago, I don't know them, they were not in my time.

Interrogatory 33. Please state whether or not letters and reports were received in your department from the different companies mentioned in the foregoing interrogatory.

Answer. They were, that is with the exception of that Chicago, I don't know anything about that.

At 12.35 P. M. Court adjourned until 2.30 P. M.

951 Court opened at 2.30 P. M.

Mr. LIGHTFOOT: We now offer the deposition of Francis D. Carley, of White Plains, New York. We offer a portion of the deposition; there are some portions of it we do not offer.

Interrogatory 1. What is your name, where do you live, and what is your business?

Answer. Francis D. Carley. White Plains, N. Y. Dealer in securities.

Interrogatory 2. State whether or not you have ever been in the oil business, and if so, state where and when, and state what firms or companies you were connected with.

Answer. Was in the oil business, as near as I can remember, from 1865 to about 1884. Was connected first with the firm of Chess, Carley & Co. Afterward with the corporation of Chess, Carley & Co., both of Louisville, Kentucky; and was also interested for a few years in the Waters-Pierce Oil Company, of St. Louis, Mo.

Interrogatory 3. State whether or not you were engaged in the business of refining and selling the products of petroleum, and if so, in what States.

Answer. Was engaged in the business of refining and selling petroleum in Kentucky, but as far as I remember the Waters-Pierce Oil Company of St. Louis did not engage in refining. Its business was that of a dealer..

Interrogatory 4. State whether or not you have ever sold oil in the States of Missouri and Texas, and state whether or not you discontinued the business of selling oil in those States.

Judge STEDMAN: May it please Your Honor, we wish to interpose the objection that the testimony of this witness relates to occurrences antedating many years the formation of the defendant in this
952 case, the Waters-Pierce Oil Company, and that these matters to which he testifies have no direct or immediate connection with the subject-matter of this litigation.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. I was engaged in selling oil in Texas, but except as one interested in the Waters-Pierce Oil Company, I do not remember to have sold oil in Missouri. And I did discontinue the business of selling oil in Texas, except as interested in the Waters-Pierce Oil Company.

Interrogatory 5. If you have said that you were engaged in the sale of oil in Missouri and Texas, state how you conducted that business, and if you say you owned or operated a tank line, state by what name the tank line was known, and if you say that you have discontinued the business, state the circumstances under which it was discontinued.

Answer. When I say that I was engaged in selling oil in Texas, I mean that the corporation of Chess, Carley & Company was selling oil in Texas. The business was conducted at first by direct shipments of oil from Louisville, Kentucky, generally by way of Galveston, afterwards in tank cars from Cleveland, Ohio, over the Missouri, Kansas & Texas Railroad. When I bought the tank cars for this purpose they were called the M. K. & T. Tank Line, and as I remember it the tanks were mounted on the cars of the M. K. & T. road, or at least part of them. I discontinued the business by the tank cars aforesaid and joined with Waters, Pierce & Company in the formation of the Waters-Pierce Oil Company, as it seemed more

advantageous to distribute oil in Texas from St. Louis as a distributing center.

Interrogatory 6. If you have said that you sold the M. K. & T. Tank Line, state to whom you sold, and state whether or not you took stock in any company in payment for the tank line, and if so, in what company?

953 Judge STEDMAN: We object to that for the reason that the transaction occurred long before the formation of this defendant corporation, and also for the reason that the transaction occurred long before the enactment of the anti-trust laws under which this prosecution is conducted.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. I suppose it should be called a sale or an exchange, which I made in parting with the M. K. & T. Tank Line and taking stock therefor in the Waters-Pierce Oil Company.

Interrogatory 7. If you have answered that you sold the tank line to the Waters-Pierce Oil Company, state whether or not thereafter the tank line ceased to do business in Texas.

Judge STEDMAN: We object to that, Your Honor, for the same reason.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Answer. The corporation of Chess, Carley & Company ceased to ship oil by means of those tank cars.

Interrogatory 8. Were you a member of or did you hold stock in the Chess-Carley Company, and if so, state whether you had any official position in that company, or had anything to do with its management?

Answer. I did own stock and was its President and had much to do with its management.

Interrogatory 9. State whether or not the Chess-Carley Company took stock in the Waters-Pierce Oil Company, and if so, state why, and the circumstances under which it participated in the organization of the Waters-Pierce Oil Company.

Answer. I can not state positively whether I held the stock of the Waters-Pierce Oil Company in my name or not, but I think
954 I did, because I am quite confident that I bought the M. K. & T. tank cars personally, although I have not looked this matter over for probably twenty years, and have only thought of it when once before I was asked a similar question in New York. Through my transfer of the M. K. & T. tank line I received stock in the Waters-Pierce Oil Company and became a director of that corporation. Since answering the above, I feel more positive that I owned the stock individually.

Interrogatory 10. State whether or not you ever owned individually any stock in the Waters-Pierce Oil Company, and if so, state to whom you sold this stock, if you sold it, and state with whom you negotiated for the sale of the stock, if you negotiated with any one.

State where the parties were with whom you negotiated for the sale of the Waters-Pierce Oil Company stock.

Answer. I do not remember who bought the Waters-Pierce Oil Company stock, but I do remember meeting some one in the building owned by the Standard Oil Company, and my recollection is that W. P. Thompson, who was another director of the Waters-Pierce Oil Company, introduced me to the buyer or brought about the interview.

Interrogatory 11. What corporation, if any, succeeded to the Chess-Carley Company, or to the business of the Chess-Carley Company?

Answer. I think the corporation was called the Standard Oil Company of Kentucky.

Interrogatory 12. State whether or not during the time the Chess-Carley Company was owner of the stock of the Waters-Pierce Oil Company, W. D. Thompson, Horace A. Hutchins and the trustees of the Standard Oil Trust also owned stock in that company, and state whether any one of them was an officer in that company.

Answer. I do not know to what extent W. P. Thompson and Horace Hutchins owned stock, but I remember them as directors in attendance at the meetings. I do not know whether the Standard Oil Trustees owned stock or not, or at least do not remember.

955 Interrogatory 13. What was the business of H. A. Hutchins at that time, and where was he located?

Answer. He was located in Cleveland, and had charge of the selling department of the Standard Oil Company.

Mr. LIGHTFOOT: Now, we don't offer 14, 15 and 16.

Judge PENN: If the Court please, we desire at this time to offer the remainder of the testimony of this witness.

Mr. LIGHTFOOT: We do not object to his offering it, Your Honor, but we don't like to have our proceedings interrupted here.

Judge PENN: It is very short, Your Honor, and we think the jury will understand the testimony of this witness better if we put in the balance at this time.

Mr. ALLEN: We object to one part of the testimony they desire to offer, as being in direct violation of the agreement we have made. We wish to make the further objection, if the Court please, to the introduction of this, because it was not crossed by the defendant.

Judge PENN: I would like to know just what part of it, is it, you object to.

Mr. ALLEN: Well, we object to the introduction of any of it.

Mr. BRADY: 15 and 16 are the answers we object to.

Judge PENN: With reference to the last objection made, Your Honor, we think the rule, whether this was crossed or not, is that wherever one party offers one part of a document or statement the balance of it is admissible at the instance of the other party, especially whenever it is necessary to shed light on what has been introduced.

The COURT: If it relates to the same subject as that which is in evidence, it is.

Judge PENN: Well, Judge Stedman, if you will read the questions we will offer them in regular order.

Interrogatory 14. State whether or not after the sale of the
956 M. K. & T. Tank Line the Chess-Carley Company did any business in Texas, and if not, state why not.

The COURT: The objection is overruled.

Answer. It did not do much business in Texas, in fact almost no business, because the business could not be handled advantageously by way of Louisville, Kentucky, and I thought my interests in the Waters-Pierce Oil Company would compensate me for giving up the strained effort to do business in that State.

(Nos. 15 and 16 excluded on objection by plaintiff.)

Mr. LIGHTFOOT: We next offer in evidence the deposition of W. N. Davis, who resides in Kansas City.

Interrogatory 1. What is your name, and where do you live, and in what business are you and have you been?

Answer. William N. Davis. Kansas City, Missouri. Manufacture and sale of lubricating oils and other products of petroleum, crude oils.

Interrogatory 2. With what oil company are you now connected, if any, and how long have you been connected with that company?

Answer. The Keystone Oil Company of Kansas City and Interocean Oil Company of Chicago. About nine years.

Judge STEDMAN: Your Honor, we wish to interpose the objection to the deposition of this witness in its entirety, for the reason that it relates to transactions between companies other than this defendant, to which this defendant was in no wise a party; and further, that the transactions detailed by the witness transpired in other States; and further, upon the general ground of immateriality.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

Interrogatory 3. Before making your present connection,
957 with what company were you connected?

Answer. The Interstate Oil Company, Kansas City, Missouri.

Interrogatory 4. If in answer to the last question you have said that you were connected with the Interstate Oil Company, state how long you were connected with it, and state what territory the company operated in.

Answer. From the inception of the company until I disposed of my stock in about 1897. There was no prescribed territory for the Interstate Oil Company to operate in. We got business all over the world.

Interrogatory 5. State what companies you came in competition with in Missouri.

Answer. Standard Oil Company, Republic Oil Company, Waters-Pierce Oil Company, National Oil Company, and all smaller companies.

Interrogatory 6. If you say that you met the Waters-Pierce Oil Company and the Standard Oil Company in Missouri, state whether or not you ever met both companies in the same place or territory.

Answer. Never.

Interrogatory 7. State whether or not you have ever met in any other State than Missouri both the Waters-Pierce Oil Company and the Standard Oil Company in competition with you at the same place.

Answer. No, sir, never.

Interrogatory 8. Prior to the time you became connected with the Interstate Oil Company, state whether or not you had any connection with the Standard Oil Company. If so, state what the connection was, and how long it continued, and state what name it was operated under at that place and time.

Answer. I was connected with the Consolidated Tank Line Company as manager of Kansas City and contributory territory. To the best of my knowledge this Tank Line Company was the
958 Standard Oil Company. To the best of my recollection, I was connected with the company for seven years.

Interrogatory 9. State to whom you made your reports while connected with the Standard Oil Company or the Consolidated Tank Line Company, and at what place.

Answer. To the Consolidated Tank Line Company, Cincinnati, Ohio, which was the general headquarters of that company. I also made reports to Silas H. Payne, 26 Broadway, New York, with regard to lubricating oils, when requested to do so.

Interrogatory 10. If you have stated that you made reports to Silas H. Payne at 26 Broadway, New York, or if that be the case, state who S. H. Payne was and his connection with the Standard Oil Company?

Answer. To the best of my recollection, he was an officer of the Standard Oil Company, and looked after the lubricating oil department.

Interrogatory 11. State whether or not you knew Alex. McDonald; if so, state what connection, if any, he had with the Consolidated Tank Line Company, and state where he is, and what his business is at this time, if you know.

Answer. I knew Mr. McDonald, who was president of the Consolidated Tank Line Company at the time of my connection with that company. The last I knew he was a resident of New York City and an officer of the Standard Oil Company.

Interrogatory 12. Did you know Frank Rockefeller? If so, state what connection he had with the Consolidated Tank Line Company.

Answer. I knew Mr. Rockefeller while he was connected in some capacity with the Consolidated Tank Line Company. I do not recollect the nature of his connection.

Interrogatory 13. During your connection with the Consolidated Tank Line Company, state from whom that company received its oil, and state the location and ownership of the refineries from which oil was received.

959 Answer. My orders for oil were sent to Cincinnati, and were filled from there.

Interrogatory 14. State whether or not the Consolidated Tank Line Company was permitted to sell oil all over the State of Missouri; if

not, state what portion of the State it sold oil in, and state whether or not it sold oil in the balance of the State.

Answer. There was a line drawn; my recollection is that all territory West of the M. K. & T. railway was reserved for the Consolidated Tank Line Company, and territory East belonged to Waters-Pierce Oil Company.

Interrogatory 15. What instructions, if any, did you give traveling men with reference to the division of territory in Missouri, and state why these instructions were given.

Answer. I never permitted traveling men to seek patronage in territory reserved for the Waters-Pierce Oil Company, in order to save any conflict between the two companies.

Interrogatory 16. State whether or not there was ever at any time any controversy about the territory within which the Consolidated Tank Line Company could operate and the Waters-Pierce Oil Company could operate, and if so, state the part taken by you in the controversy, and state the result thereof, and how it was determined.

Answer. I never recollect any, with the exception of some controversy at Joplin, Missouri, where I had established a station, and which afterwards was turned over to the Waters-Pierce Oil Company.

Interrogatory 17. While you were with the Consolidated Tank Line Company, state what plan was used by that concern to ascertain shipments of oil by competitors, and state what use was made of the knowledge thus acquired.

Judge STEDMAN: We object to that answer, because it is immaterial and irrelevant; and further, because what he or his company did can not be visited upon this defendant, this defendant not being shown to have had any connection with what they did in conducting their business, especially as the witness has just testified that his company and this defendant did not operate in the same territory.

960

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

Answer. We employed or used one of our employés to visit the freight platform of the various roads in Kansas City and take the names from barrels emanating from competitors, showing the consignee. Our traveling men in the territory where barrels were destined were notified and instructed to visit such consignees and endeavor, even if a cut in price was necessary, in order to secure their future business, to make such a cut.

Mr. LIGHTFOOT: We next offer in evidence the deposition of WILLIAM A. MORGAN, who resides in the city of Sedalia, Missouri.

Interrogatory 1. What is your name and where do you reside? How long have you resided there? Where did you live prior to that time?

Judge STEDMAN: Before any of the answers are read, we desire to make the objection that the matters concerning which this witness testifies occurred wholly in the State of Missouri, and therefore the laws of Texas not operating extra-territorially, can not affect these

transactions. It is suggested to me by associate counsel that these transactions occurred prior to the organization of this defendant, and prior to the enactment of the laws under which this prosecution is conducted.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Answer. My name is William A. Morgan. I reside in Se-
961 dalia, Pettis County, Missouri, and have resided in Sedalia, Pettis County, Missouri, for the last three years. Prior to that time I lived in Kansas City, Missouri, and Kansas City, Kansas.

Interrogatory 2. State whether or not you have ever been connected with the Standard Oil Company; state when the connection began, and how long it continued, and the character of your employment.

Answer. I have been connected with the Standard Oil Company. My connection with the Standard Oil Company began on or about December 1st, 1898, and continued until October 18th, 1900. The character of my employment was traveling salesman and local station agent at Sedalia, Missouri.

Interrogatory 3. If you answer that you were traveling salesman for the Standard Oil Company, state the territory within which you traveled, and if you say that you afterwards became manager of the station at Sedalia, state what territory you had in that capacity.

Answer. While acting as traveling salesman for the Standard Oil Company, the territory within which I traveled was Sheridan, Carroll, Randolph, Howard, Pettis, Cooper and Benton Counties, all said counties being in the State of Missouri. While I was local Station Agent at Sedalia, my territory was the city of Sedalia, and local points close to Sedalia, being all the towns in Pettis, Benton and Cooper Counties.

Interrogatory 4. Under whom did you act under the Kansas City jurisdiction? And if you say that it was G. W. Mayer, state what his position was at that time.

Answer. Under the Kansas City jurisdiction, I acted under G. W. Mayer, whose position at that time was that of Manager at Kansas City, and had jurisdiction over all traveling salesmen and Station Agents for the Standard Oil Company in the Kansas City jurisdiction.

Interrogatory 5. When you were traveling salesman for the Stand-
ard Oil Company, did you ever come in competition with the
962 Waters-Pierce Oil Company? After you were stationed at Sedalia were you in competition there with the Waters-Pierce Oil Company?

Answer. When I was traveling salesman for the Standard Oil Company, I never came in competition with the Waters-Pierce Oil Company. After I was stationed at Sedalia, I was never in competition with the Waters-Pierce Oil Company.

Interrogatory 6. What was your territorial limit in operating from Sedalia, and what were your instructions as to going beyond that point, and by whom were the instructions given, and state whether or

not you ever on any occasion sold oil outside of this territory, and if so, state why you so sold, and what was the result of your sale?

Judge STEDMAN: May it please Your Honor, we interpose an objection to that part of the answer of this witness in which he testifies to instructions given *gim* by G. W. Mayer, for the reason that no instructions that Mayer gave could affect this defendant, with which he had no connection.

Mr. BRADY: He was a traveling salesman of the Standard Oil Company, and Mayer was the general manager.

The COURT: What is the number of the question?

Mr. BRADY: It is No. 6.

Mr. LIGHTFOOT: No. 4 shows who Mayer was.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Answer. In operating from Sedalia my territorial limit was Pettis, Benton and Cooper Counties and as far South into Hickory County as Cross Timbers, also Howard, Randolph and Sheridan Counties. I was instructed not to go outside of this territory. The instructions were given by G. W. Mayer, Manager at Kansas City. On one or two occasions I went outside of this territory and sold oil, and I was reprimanded by the management at Kansas City for going
963 into Waters-Pierce Oil Company's territory.

Interrogatory 7. What action, if any, was taken by Mr. Mayer with reference to sales made by you outside of the territory assigned to you, and what statements did he make, if any, with reference to the character of the territory beyond your line within which you had by mistake made sales?

Judge STEDMAN: May it please Your Honor, we interpose the same objection to this answer that we did to the last preceding answer.

The COURT: Because of the statement of Mayer?

Judge STEDMAN: Yes, sir.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. Mr. Mayer stated to me that I would get no credit for sales made outside of the territory assigned to me, as the said territory belonged to the Waters-Pierce Oil Company.

Interrogatory 8. If you have stated that Mr. Mayer told you that the part of the territory in which you had made sales was the Waters-Pierce Oil Company's territory, state if you know the line recognized as the boundary line between the territory of the Waters-Pierce Oil Company and the Standard Oil Company's territory, and state how you acquired information concerning this line.

Judge STEDMAN: We object to the answer to the eighth interrogatory, because it appears that the facts concerning which the witness testifies are not within his knowledge, but were derived from other sources, and the testimony is therefore hearsay.

Mr. LIGHTFOOT: We will state, if Your Honor please, that we have not made any objections heretofore—I mean we have not urged

this point, but I now call attention to it, that we have given defendant notice to produce all maps, writings and documents of every kind showing any division line between the Standard Oil Company
964 and its allied interests, and the defendant has failed to offer such maps, documents, etc., and we offer that as secondary evidence.

Judge STEDMAN: I have never heard or understood that secondary evidence will take the place of hearsay.

The COURT: The objection is that it is hearsay?

Judge STEDMAN: That it is derived from other sources than his own knowledge, and is hearsay.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. I learned through my instructions from the management at Kansas City that the Waters-Pierce Oil Company's territory was the territory lying East of the East line of Cooper County and the East line of Howard County and the East line of Benton County and the South-east line of St. Clair County and all South of St. Clair County and all South of Benton County and all South of Cooper County with the exception of Cross Timbers, Northern part of Hickory County. The Waters-Pierce territory takes in practically everything in South-east and South-west Missouri and Central Missouri, up as far as the lines I have mentioned. The rest of the territory in Missouri belonged to the Standard Oil Company.

Interrogatory 9. While you were traveling salesman for the Standard Oil Company or in charge of the station at Sedalia, do you know of any orders being received for oil from points in what was recognized as the Waters-Pierce Oil Company's territory, and if so, state what disposition was made of these orders.

Answer. I know of no orders being received for oil from points in what was recognized as the Waters-Pierce Oil Company's territory at the time that I was traveling salesman of the Standard Oil Company or in charge of the station at Sedalia.

Interrogatory 10. State whether or not you received orders
965 from the Waters-Pierce Oil Company that had been sent in by merchants located inside of the Standard Oil Company's territory.

Answer. Not that I have any recollection of.

Interrogatory 11. When you were salesman for the Standard Oil Company, did you within your territory at any time come in contact with competition from the Waters-Pierce Oil Company?

Answer. I did not.

Interrogatory 12. Are you still working for the Standard Oil Company? If not, when did your employment by them cease, and in what business have you since been engaged?

Answer. I am not still working for the Standard Oil Company. My employment by them ceased October 18, 1900. Practically speaking, I have been selling oil since my connection with the Standard Oil Company ceased, for about five years. Practically speaking, I have been in the oil business ever since.

Interrogatory 13. If you say that you have been selling oil since

you left the Standard Oil Company, state whether or not you have met any competition from the Waters-Pierce Oil Company in the territory designated as the Standard Oil Company's territory while you were with that concern, or any competition from the Standard Oil Company in the territory that was designated as the Waters-Pierce Oil Company's during the time you were in the employ of the Standard Oil Company.

Answer. While selling oil for other companies since I left the Standard Oil Company, I have never met any competition from the Waters-Pierce Oil Company in the territory designated as the Standard Oil Company's territory while I was with that concern. Nor have I met with any competition from the Standard Oil Company in what was designated as the Waters-Pierce Oil Company's territory during the time I was in the employment of the Standard Oil Company.

966 Mr. LIGHTFOOT: We next offer in evidence the deposition of H. R. KNOLLENBERG, of the city of St. Louis, Missouri.

Interrogatory 1. What is your name and residence, and in what business are you engaged?

Answer. Herman R. Knollenberg. I am residing at 844 N. Kings-highway, just at present; will be there until the first of December, after that I will be living in Illinois. I am in the oil business. I think I will be there.

Interrogatory 2. State whether or not you ever had any connection with the Waters-Pierce Oil Company, and if so, what period such connection covered, and the character of your business?

Answer. I did. Well, I can't tell you just the year, but I think it was from 1893 to the latter part of 1898 or 1899; I don't remember just what time it was—either '98 or '99. Traveling salesman.

Interrogatory 3. If you have stated that you were traveling salesman for the Waters-Pierce Oil Company, state what territory you worked.

Judge STEDMAN: May it please Your Honor, I would like to interpose an objection to all of the testimony of this witness from this time on, for the reason that it appears that the matters concerning which he testifies all happened before the formation of the present Waters-Pierce Oil Company, and before the enactment of the laws under which this suit is being prosecuted, and further, because the transactions to which he testified occurred without the limits of the State of Texas, and are not cognizable by the courts of Texas.

The COURT: The objection is overruled.

Judge STEDMAN: Defendant excepts.

Answer. Well, the way I worked, part of the time I worked in Illinois and part of the time I worked in Missouri. When
967 I was in Illinois I covered territory that I had formerly covered when I was with the Vacuum Oil Company of Rochester.

Interrogatory 4. Within the territory in which you traveled, did you ever meet any competition from the Standard Oil Company?

Answer. No, sir.

Interrogatory 5. State if you ever found or saw in your territory any representative of the Standard Oil Company.

Answer. Not in Missouri—in Illinois I frequently would meet Standard Oil men.

Interrogatory 6. Did you have any knowledge of the division of the territory between the Standard Oil Company and the Waters-Pierce Oil Company, and if so, state what your information was, and from whom you acquired it?

Judge PENN: If the Court please, we object to all of the answer of the witness to No. 6, for the reason that said interrogatory is leading and suggests to the witness the answer desired, and for the reason, further, that said interrogatory assumes that there was a division of the territory between the Standard Oil Company and the Waters-Pierce Oil Company—a fact to which witness has not testified.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Answer. The only information—the information that I had came to me from the fact that I was told not to go beyond certain limits in Missouri in soliciting business, and my restrictions were made by Mr. A. A. Lazar, who at that time was the Manager of the Missouri division of the Waters-Pierce Oil Company. Letters were given to me by Mr. Lazar from customers in the Missouri division who had written to the Standard Oil Company for prices. When those inquiries were made by customers of the Waters-Pierce Oil
968 Company, the letters were generally sent to the Waters-Pierce Oil Company divisions and the salesman's attention was called to it and he was supposed to go there and see what trouble there was and adjust it and return them as customers so it would not get to any outside concern—so they would not give their patronage to any outside concern. I received not what you might call absolute knowledge of the fact, only as it was given to me by the Manager of the division, he telling me what parts of Missouri the Waters-Pierce company did business and the portions in which they did not do business; and at one time he showed me by a map of Missouri, which was hanging on the wall, about the limits of the territory of each company. That's about all, I guess.

(Interrogatories 7, 8 and 9 and answers omitted.)

Interrogatory 10. Under what character of contract were you working for the Vacuum Oil Company, and if you say you were working under a yearly contract, state whether or not you worked out the year, and if you did not, state for whom you began to work before the end of the year, and state the circumstances — you left the Vacuum Oil Company?

Judge STEDMAN: We object to that upon the ground of immateriality and irrelevancy, and further, because the matter testified

about occurred long before the creation of the present Waters-Pierce Oil Company and long before the enactment of the statutes under which this suit is being prosecuted.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. I remember one morning, Mr. E. J. Sugru, who at that time was the manager of this district for the Vacuum Oil Company, of Rochester, N. Y.—one morning, while we were all sitting in the office, a gentleman came in, presented *their* credentials and proceeded immediately to check up the Vacuum Oil Company. That evening or the next morning, was told by Mr. Sugru that the
969 business would be transferred to the Standard Oil Company.

I had a yearly contract with the Vacuum Oil Company of Rochester, N. Y., which had eight or ten months of unexpired time. There was nothing said to me about working out my unexpired contract, but my services were simply transferred to Waters-Pierce Oil Company—they afterwards dividing my time as they saw fit, soliciting trade in Illinois and Missouri.

Interrogatory 11. If in answer to the preceding question you state that you had a yearly contract with the Vacuum Oil Company, but that the Standard Oil Company and the Waters-Pierce Oil Company began marketing Vacuum oils and that you were transferred to the Waters-Pierce Oil Company, state when this transfer took place, and state what your instructions were as to the balance of your contract period.

Answer. Well, as near as I can remember, the transfer took place in April, 1893, to the best of my knowledge and belief, and the books, papers and everything that was in the office of the Vacuum Oil Company was transferred to the Waters-Pierce Oil Company, who had at that time offices in the Odd Fellows Building. Nothing was said to me at that time about the balance on my contract, but I continued to work and did as I was told covering territory to which I was assigned from time to time. My salary checks always came from the Waters-Pierce Oil Company.

Interrogatory 12. After the Vacuum Oil Company quit business, state where you worked, and state by whom your salary was paid, and state whether or not it was according to the contract made with the Vacuum Oil Company.

Answer. Well, after the Vacuum Oil Company was absorbed by the Standard Oil Company I continued working for the Waters-Pierce Oil Company, they from time to time assigning me to territory in Illinois covered by the Standard Oil Company, and in which I solicited business while I was employed by the Vacuum
970 Oil Company. My salary came to me regularly in checks from the Missouri division of the Waters-Pierce Oil Company, having at no time received any compensation directly from the Standard Oil Company.

Interrogatory 13. If in answer to the preceding question you have said that you worked in both Missouri and Illinois, or if that be the case, state to whom you made reports of business done in Illinois, and

state to whom reports were made as to the remainder of the business done by you.

Answer. When I made trips in Illinois soliciting business my daily reports were sent to the Standard Oil Company's office at East St. Louis, Illinois. When I solicited business in Missouri, the reports were sent to the Waters-Pierce Oil Company.

Interrogatory 14. How did you acquire information of the transfer of the Vacuum Oil Company to the Standard Oil Company and Waters-Pierce Oil Company?

Judge STEDMAN: We object to that, because it appears that the witness was informed by somebody else of this transfer, and is merely relating or detailing hearsay.

The COURT: The objection to the answer to the fourteenth interrogatory is sustained to all of the answer except the first two sentences.

Judge STEDMAN: We except.

Answer. The first information that I had of that, as I said before, was given to me by Mr. E. J. Sugru, who at that time was the district manager of the Vacuum Oil Company, and after going with the Waters-Pierce Oil Company I was told to continue soliciting the class of trade that I had solicited when I worked for the Vacuum Oil Company.

(Interrogatory 15 and answer omitted.)

Interrogatory 16. State whether or not any of the other employés of the Vacuum Oil Company became connected with the
971 Standard Oil Company or the Waters-Pierce Oil Company, and if so, state who they were.

Answer. I can't say that I know from my own personal knowledge, I did not meet any of the men who had formerly traveled for the Vacuum Oil Company until several years after the transfer had been made and do not remember of having ever asked the gentlemen whether or not they had been retained by the Standard interests. The men who worked for the Vacuum Oil Company that traveled in the territory adjoining mine I very seldom met, only when they would come to the city and I would meet them in the office of the Vacuum Oil Company. To the best of my knowledge and belief, I was the only one who was retained by the Waters-Pierce Oil Company to work in the territory which I had formerly covered while employed by the Vacuum Oil Company.

Mr. ALLEN: We next offer the evidence of T. R. HOPKINS.

Judge STEDMAN: We object to this testimony as a whole on the ground that the witness' testimony refers to matters occurring without the limits of the State of Texas, in other States, and having no connection with the matters involved in this suit.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Interrogatory 1. What is your name, where do you live, and in what business are you engaged? Have you ever been connected with

the Waters-Pierce Oil Company? If so, at what place, during what period and in what capacity?

Answer. My name is T. R. Hopkins. I live in Lawrence County, Missouri. I am engaged in farming. I was connected with the Waters-Pierce Oil Company, in the capacity of Agent, at Seneca, Missouri, Joplin, Missouri, Webb City, Missouri, and Pierce City, Missouri, from 1887 to 1903.

972 Interrogatory 2. If you say that you were an employé of the Waters-Pierce Oil Company, state under whom you worked?

Answer. I worked under A. M. Finlay, A. H. Lasar, and C. L. Ackert.

Interrogatory 3. If in answer to the last question you say that you worked under A. M. Finlay, state what his position was, and if you say that you subsequently worked under A. A. Lasar and C. L. ——, state the positions respectively held by them.

Answer. They were Managers of the Missouri division of the Waters-Pierce Oil Company.

Interrogatory 4. State whether or not you recall the circumstance of the company getting into some character of controversy with the State of Texas about 1900, state what, if anything, occurred about that time with reference to the discharge and reinstallment of employés, and what action concerning this matter was then taken.

Answer. I remember the controversy with the State of Texas. I received a letter discharging me, and in same mail I received a letter hiring me over again.

Interrogatory 5. If in answer to the last interrogatory you state that you were discharged and were re-employed, state how long between your discharge and your re-employment, and state whether or not you were checked up when you were discharged, and state what change took place in your business, and in the duties performed by you, as the result of the discharge and re-employment.

Answer. In same mail. Was not checked up. No change took place in my business, nor in my duties, as a result of the discharge and re-employment.

Interrogatory 6. State what change in your office was made, and what change, if any, in the stationery used by you, in the form or manner of carrying on business. State if you used the same

973 tanks after as before your discharge and re-employment, and had the same customers, and if you made any change in your books. Did you open a new set of books with your local customers, or did the accounts continue without any interruption?

Answer. None at the time. But in a short time I received a rubber stamp and pad, and I stamped on letter heads, "Incorporated under the laws of the State of Missouri in 1900."

Interrogatory 7. State specifically what changes were made as the result of this discharge and re-employment.

Answer. None at all.

Interrogatory 8. If you have stated that you were located at Webb City, Missouri, at any time during your employment by the Waters-Pierce Oil Company, state whether or not you met any competition there from the Standard Oil Company?

Answer. None.

Interrogatory 9. How close was Webb City from the Kansas line? State whether or not you sold any oil over the line in Kansas, and if you say you did not sell any oil over there, state by whom sales of oil were made in Kansas, and state why you did not make sales there.

Answer. Webb City is about sixteen miles from the Kansas line. I did not sell any oil over the line in Kansas, because I was instructed to not invade the Standard's territory. The Standard Oil Company sold oil over there.

Interrogatory 10. State whether or not at any time during your connection with the Waters-Pierce Oil Company you met the Standard Oil Company in competition in the sale of oil.

Answer. No, I did not.

Interrogatory 11. During the period that you worked for the Waters-Pierce Oil Company, state whether or not you had any occasion to, and did, ask for any instructions or directions as to whether you should sell oil outside of the Waters-Pierce Oil
974 Company's territory, and if so, state of whom you sought the instructions and directions you received.

Answer. I had occasion in two instances to ask for instructions as to selling oil outside of the Waters-Pierce Oil Company's territory, but I did not ask for them. I sold once outside of the territory, but was told by Mr. Lasar, Manager, to not do so any more.

Interrogatory 12. If in answer to the foregoing question you have answered that while you were at Seneca application was made to you for the purchase of a barrel of oil by some one outside of your territory and you asked Mr. Lasar about it, state what instructions he gave you concerning the matter, and state if he gave the reasons for his instructions and what those reasons as given were?

Answer. I do not remember about receiving an application for a barrel of oil while in Seneca, by some one outside of my territory, but I do remember while in Seneca that Mr. Lasar told me very emphatically to not sell any oil in the Standard's territory, for if the Standard Company found it out, we would have to make up the difference between what we were selling at and what the Standard was selling at.

Interrogatory 13. State whether or not you knew the territory claimed respectively by the Standard Oil Company and the Waters-Pierce Oil Company, and if you do know, state how you got the information, and state where the line between the two territories run.

Answer. I knew at the time I was in the employ of the Waters-Pierce Oil Company, but I do not now remember just where the lines run. I got the information from a map of the Missouri division of the Waters-Pierce Oil Company that Mr. Lasar showed me. I had no occasion to use it, except the South-west part of Missouri, where I was located, and a portion of the Indian Territory. The only line I know positively about now is the State line between Missouri and Kansas.

975 Interrogatory 14. State whether or not during the time you were connected with the Waters-Pierce Oil Company you

had to meet competition from the Standard Oil Company within your territory.

Answer. No.

Interrogatory 15. Were you familiar with the price of oil in Carthage, Joplin, Webb City and Springfield as compared with the prices within your territory? If so, state what the prices were as compared with each other.

Judge STEDMAN: We interpose an objection to this answer upon the ground that it is immaterial and irrelevant.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. While in Pierce City, our prices were always from one and a half to three cents higher than prices in Carthage, Joplin, Webb City and Springfield.

Interrogatory 16. If in answer to the preceding question you have stated that the price in the contiguous territory was less than in your territory, state the reason for this difference, and state how you know the reason therefor.

Judge STEDMAN: We object to that because it is immaterial and irrelevant.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. They had competition. I know this, because I visited the dealers in those places, and also, Mr. Ackert told me the same thing.

Interrogatory 17. If in answer to the preceding question you have said that you talked with one of the officers of the Waters-Pierce Oil Company with reference to the matter of prices, state who said officer was, and what was said by him with reference to the matter.

976 Judge STEDMAN: We object to this answer for the same reason, that it is immaterial and irrelevant and does not tend to establish any issue in this case, in that the fact that the Waters-Pierce Oil Company met competition at certain places and did not have to meet competition at other places does not tend to establish either the alleged fact of its admission under improper circumstances into Texas, or the alleged fact of its being a party to a pool, trust, or combination.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Answer. Manager Ackert. He said the reason my prices were higher was because I had no competition in my territory.

Interrogatory 18. State whether or not you ever received any orders for oil while you were agent for the Waters-Pierce Oil Company from merchants in the territory recognized as the Standard Oil Company's territory.

Answer. Yes.

Interrogatory 19. If in answer to the preceding question you say that you did receive such orders, state whether or not you filled them, and if not, state what was done with them, and why, and if you say

that you were acting under instructions in what you did, state from whom the instructions emanated.

Answer. I did receive such orders, but I did not fill them, except in one instance. I forwarded the orders to the office of the Waters-Pierce Oil Company at St. Louis, who sent them to the Standard Oil Company. I did this because I was instructed to do so, by Managers Ackert and Lasar. They told me to not fill any orders from the Standard's territory.

Interrogatory 20. State whether or not while working for the Waters-Pierce Oil Company you received any orders that had been sent from your territory to the Standard Oil Company, and if
977 so, state through what agency you received these orders. If you recall any special instance of such an order, state who made it and by whom it was forwarded to you, and what you did with reference to it.

Answer. Yes. J. R. Williams of Monett, Missouri, sent an order to the Standard Oil Company at Kansas City, Missouri. It was forwarded to the Waters-Pierce Oil Company at St. Louis, who sent it to me, and I filled the order.

Mr. ALLEN: We next offer in evidence the questions to and answers of Robert H. McNall.

(Thereupon the deposition of Robert H. McNall, taken in New York City, was read.)

ROBERT H. MCNALL, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. LIGHTFOOT:

Q. What is your name?
A. Robert H. McNall.
Q. Where do you live, Mr. McNall?
A. Greenwich, Connecticut.
Q. Are you in business in New York?
A. I am.
Q. How long have you been in business here?
A. Something over twenty years—about twenty-two years, I think.
Q. What kind of business are you in?
A. Oil business.
Q. Where is your office?
A. 26 Broadway.
Q. New York?
A. New York City.

Q. Has your office been located at that point during the
978 twenty years you have been in business here?

A. Well, I have been in that building for that time—part of the time I was in the rear of it.

Q. Who did you begin with?
A. The Pratt Manufacturing Company.
Q. How long did you work with them?
A. About ten years.

Q. Then what company did you go with?

A. Well, I might explain: A part of that time the name of the company was changed; it was the Pratt Manufacturing Company, and afterwards the Standard Oil Company, Pratt Works.

Q. Afterwards changed its name to the Standard Oil Company, Pratt Works?

A. Yes, sir.

Q. When was that—about when?

A. I couldn't tell you that.

Q. Well, approximate it?

A. About six years after——

Q. (Interrupting.) About what year was that, Mr. McNall?

A. Well, about 1891, that is as near as I can tell.

Q. About 1891 the name of the concern was changed to the Standard Oil Company, Pratt Works?

A. Yes, sir.

Q. Well, how long did you remain in their employ?

A. If that date is correct, about four years.

Q. Until about 1895?

A. About 1895.

Q. What employment did you have after that time?

A. I went with Mr. H. M. Tilford.

Q. Did he have an office in the same building?

A. Yes.

979 Q. Well, in what capacity did you go with him?

A. Well, assistant, I should say.

Q. As assistant to Mr. H. M. Tilford?

A. Assistant to Mr. H. M. Tilford.

(Portion heretofore introduced omitted.)

Q. Now how long did you remain there with Mr. Tilford as his assistant?

A. About five years.

Q. Until what time—about what time?

A. Some time the year 1900.

Q. Do you remember what time of the year 1900?

A. No, I think it was the late Spring or nearly Summer.

Q. Of 1900?

A. Yes, sir.

Q. And then where did you go, or what connection did you form?

A. I was employed at that time by the Waters-Pierce Oil Company.

Q. In what capacity, Mr. McNall?

A. To look after such business as they might give me in New York City.

Q. Did you have any title?

A. I had a title then or later on as Commercial Agent.

Q. Where did you have your office during the time you were employed as Commercial Agent of the Waters-Pierce Oil Company?

A. I occupied a desk in Mr. Tilford's office.

Q. Which Tilford?

A. Mr. H. M. Tilford.

Q. Now, there are two of the Mr. Tilfords, are there not?
A. Yes.
Q. What is the other Tilford's name?
A. W. H. Tilford.
Q. And where is their offices with respect to each other?
980 A. Adjoining.
Q. Mr. W. H. Tilford's office adjoins Mr. H. M. Tilford's office?
A. Well, there is a room between, but near each other.
Q. Well, when you were employed by the Waters-Pierce Oil Company did you keep your office in Mr. Tilford's office?
A. Yes, sir.
Q. How long did you keep your office there?
A. Until the Spring of 1906.
Q. The Spring of 1906. Had the Waters-Pierce Oil Company prior to the time of your employment as Commercial Agent in the Spring of 1900 had or maintained any office at 26 Broadway?
A. Not that I know of.
Q. How did you get your mail, Mr. McNall?—that is, to what company in New York was it addressed?
A. 75 New Street.
Q. Well, now, where is 75 New Street, with reference to 26 Broadway?
A. It is the rear.
Q. The rear entrance to 26 Broadway?
A. Yes, sir, 75 New Street is the rear of 26 Broadway, or 26 Broadway is the rear of 75 New.
Q. Now, prior to your appointment as Commercial Agent of the Waters-Pierce Oil Company what were your duties at 26 Broadway, in a general way?
A. Well, I think that shortly before—I don't think I got my title at the same time I entered the employ of the Waters-Pierce Oil Company.
Q. I am speaking now immediately before you entered the employ of the Waters-Pierce Oil Company; in a general way, what were your duties?
A. Assisting Mr. Tilford with such matters as he had to look after and gave me to do for him.
Q. Well, what did these matters cover in a general way, Mr. McNall?
981 A. Correspondence, generally.
Q. With the various companies that he was connected with?
A. Yes, sir.
Q. Well, at that time didn't he hold some position with the Waters-Pierce Oil Company?
A. I don't know.
Q. Didn't you have any correspondence with the Waters-Pierce Oil Company for him before you entered the employ of the Waters-Pierce Oil Company?
A. Well, I don't remember, sir.
Q. You don't recall that you had any correspondence with the

Waters-Pierce Oil Company for him before you entered the employ of the Waters-Pierce Oil Company?

A. No, I do not.

Q. Well, I will ask you now if he wasn't a director in the Waters-Pierce Oil Company, the old Waters-Pierce Oil Company that was dissolved in May, 1900?

A. I don't know.

Q. You have no information on that subject?

A. None at all.

Q. Who employed you, Mr. McNall, as Commercial—well, who employed you to go with the Waters-Pierce Oil Company?

A. Mr. H. C. Pierce.

Q. Did he made the arrangements for your office there at 26 Broadway?

A. Well, he instructed me that would be where I would be located.

Q. He instructed you that you should be located at 26 Broadway?

A. Yes, sir.

Q. In Mr. Tilford's room?

A. Yes, sir.

Q. Mr. Tilford made no objection to the arrangement, did he?

982 A. None that I know of.

Q. Did you consult with Mr. Tilford about keeping your desk in his room and sharing his office with him as an employé of the Waters-Pierce Oil Company?

A. No, sir.

Q. Well he did make that arrangement?

A. I don't know.

Q. He never said anything to you about it, then?

A. No, sir.

Q. Did you have a sign out there at all?

A. My name was on the door.

Q. What was your title on the door?

A. No title.

Q. You didn't have the title of Commercial Agent placed on the door?

A. No.

Q. Just R. H. McNall?

A. Just R. H. McNall.

Q. Was that on his office door?

A. Yes, it was on the general—not on his particular office door, it was on the door that you would enter the office from.

Q. He never made any objection to you staying there and sharing his office with him?

A. None to me.

Q. Who paid the rent?

A. I don't know.

Q. Do you know whether any rent was ever paid or not?

A. I do not.

Q. Was any bill ever rendered to you for any rent for that office?

A. No.

Q. Now, what were your duties, Mr. McNall, as an employé
983 of the Waters-Pierce Oil Company at 26 Broadway?

A. Transact such matters as the home office might send on to me.

Q. Well, what did those matters cover?

A. Buying supplies and looking after shipments; the general office work of a business of that kind; custom-house work.

Q. D u you buy the supplies for the Waters-Pierce Oil Company?

A. I bought some of them.

Q. What kind of supplies did you buy?

A. I bought oil, pipe and general refinery supplies. You don't care to be more specific, do you?

Q. Yes, I would like you to be specific.

A. Well, valves, files, a thousand and one things that go to make up a manufacturing business.

Q. Well, now, you bought all of the petroleum supplies for the Waters-Pierce Oil Company?

A. I bought such as they directed me to buy.

Q. Well, what did that cover?

A. Lubricating oils, refined oils in cases, cans, napthas in packages.

Q. Who did you buy those supplies from, Mr. McNall?

A. Which?

Q. The supplies of oils?

A. The supplies of some oil I purchased from the Standard Oil Company, some from the Atlantic Refining Company, some from Swan & Finch Company. There are other oils that I can't remember whom I did buy from, now.

Q. Well, has the Swan & Finch Company a representative at 26 Broadway?

A. No, sir; that is, I don't know that they have.

Q. Where are they located?

A. On Maiden Lane, New York City.

Q. What character of oils did you buy from them?

984 A. Lubricating oils.

Q. Are they connected with the Standard Oil Company?

A. I don't know.

Q. The Atlantic Refining Company, does it have a representative at 26 Broadway?

A. Yes, sir.

Q. Who was its representative?

A. I don't remember who the representative was there.

Q. Well, do you know who is the representative now?

A. No, I don't know whether they have one there or not.

Q. Well, they did have a representative there during the time that you were employed with the Waters-Pierce Oil Company?

A. Yes.

Q. And the Atlantic Refining Company, do you know what relation it bears to the Standard Oil Company?

A. No, I don't.

Q. Well, it is connected in some way, is it not?

A. I don't know.

Q. Have you any information on that point at all?
A. None at all.
Q. You have never been advised or had any information as to its connections with 26 Broadway and the management there?
A. No, sir.
Q. Now, what character of oils did you get from the Atlantic Refining Company?
A. Crude petroleum.
Q. What did you do with that oil?
A. Shipped it to Mexico.
Q. Now, in addition to your duties in purchasing supplies, Mr. McNall, had you no other duties?
985 A. Yes, I took care of other matters that they might send forward to me.
Q. Well, what matters, now?—what other matters did you take care of?
A. Well, shipping these goods that I bought; custom-house work; and very likely other matters that I can't recall at the present time.
Q. There are several departments there at 26 Broadway, is there not, with the Standard Oil Company?
A. They have different offices there; I don't know whether they distinguish them as departments or not.
Q. I ask you whether or not there is a Marine Oil Department of the Standard Oil Company?
A. I believe there is.
Q. Who is at the head of the Marine Oil Department?
A. I don't know.
Q. Do you know whether Mr. Bedford is or not?
A. Mr. Bedford is connected with it; C. E. Bedford, I think, are the initials.
Q. Is there a Lubricating Department there?
A. I don't know whether it is called department or not. There is a Lubricating Oil Sales office, any way.
Q. Go ahead and state, Mr. McNall, how that business is organized over there of the Standard Oil Company, the different departments in which they have their business organized there?
A. I don't know, sir; I can not tell.
Q. Now, Mr. McNall, you did business there with the various concerns located at 26 Broadway, did you not, during the time that you were in the employ of the Waters-Pierce Oil Company?
A. I have been in some of the offices at 26 Broadway.
Q. That is what I mean. Now, what offices have you had business with during the time that you were Commercial Agent or in
986 the employ of the Waters-Pierce Oil Company?
A. With the Lubricating oils——
Q. Who did you have that business with?
A. Usually with the clerks in the office.
Q. Who is the head of the office?
A. I can not specifically answer; I don't know who is the head.
Q. Who was during that time?
A. Or was, either, for that matter; I know that Mr. Silas H. Paine was in the office, and other gentlemen.

Q. What other business have you had there, with whatever concerns?

A. With the Export Sales Office.

Q. Who was in charge of that, or was supposed to be in authority?

A. Well, I don't know who is in charge of it.

Q. Who did you transact your business with?

A. With one of the clerks; I don't recall which one now; there was very little business to attend to there.

Q. You don't remember his name?

A. No, I don't remember who it was; I know most of the young men, but I don't remember which I transacted it with.

Q. The office was located at 26 Broadway, was it not?

A. Yes, sir.

Q. Whose name was on the door, then, of the Export Sales Department office?

A. I could not answer that; I don't know.

Q. Well, what other department have you had business with or concern located at 26 Broadway?

A. With the Marine Oil.

Q. Who is in charge of the Marine Oil Department?

A. I don't know who is in charge of it.

Q. Well, who was in charge of it?

987 A. I don't know who was in charge of it.

Q. Who did you transact your business with, then?

A. I don't know the name of the party that I did transact some business with.

Q. You can not recall the names of any parties in the Marine Oil Department of the Standard Oil Company at 26 Broadway that you transacted business with during the time that you were so in the employ of the Waters-Pierce Oil Company?

A. No, sir.

Q. Now, what other concerns located at 26 Broadway did you have business dealings with?

A. There was a Purchasing Office of the Standard Oil Company.

Q. Who was in charge of that?

A. I don't know who was in charge of it. I don't really know who was responsible for it.

Q. Who did you have your business dealings with in that office?

A. With a clerk by the name of Porter, I think.

Q. Did you never learn who was in charge of that office there or at the head of it?

A. No.

Q. Well, name some other concern located there that you had business transactions with for the Waters-Pierce Oil Company?

A. I don't remember any others at the present moment.

Q. Is there a Statistical Department there?

A. I don't know.

Q. Do you know Mr. W. E. Bemis?

A. I know him, yes.

Q. What is his business?

A. He is in the export business, I believe.

Q. In the export business?
988 A. Yes, sir.
Q. At 26 Broadway?
A. Yes, sir.
Q. Is he not also connected, or was connected, with the Statistical Department?
A. I don't know.
Q. How far is his office from yours now or at that time?
A. You are speaking of the entire period?
Q. Yes.
A. On the same floor.
Q. Does it not adjoin yours?
A. Is this W. E. Bemis's office?
Q. Yes, W. E. Bemis?
A. Yes, his office is on the same floor and next to the suite of offices which——
Q. (Interrupting.) Which you occupy?
A. One of which I occupy.
Q. You pass right by his door going into your office, do you not?
A. Yes.
Q. And did so during all that time?
A. Yes, sir.
Q. Did you not pass through the department in which his clerks are at work in reaching your office?
A. No.
Q. Did you ever have any business transactions with Mr. Bemis while you were there?
A. No.
Q. None whatever?
A. No.
Q. Did you ever have any transactions with his department?
A. No.
989 Q. Or his office?
A. No.
Q. Or the business over which he presides?
A. I don't remember, no.
Q. Are there any committees or were there any committees in charge of any business there at 26 Broadway during the time that you have been there, Mr. McNall?
A. I don't know.
Q. You were never present at any committee meetings?
A. No, sir.
Q. Now, can you recall any other concerns that you had any business transaction with for the Waters-Pierce Oil Company at 26 Broadway?
A. I don't recall any others, no.
Q. Then, am I to understand from your testimony that you were employed as the representative and commercial agent of the Waters-Pierce Oil Company from May, 1900, or the early Spring of 1900, up until the Spring of 1906, and that you purchased supplies from parties located at 26 Broadway, and had general business transac-

tions there, and never knew or learned the names of the parties with whom you had dealings?—is that your testimony?

A. Well, I knew some of the names.

Q. Who are they?

A. In the Marine Oil Department, I can not recall any of the names except Mr. Bedford, who was in the offices.

Q. Did you receive any character of reports from the Waters-Pierce Oil Company during the period that you were employed by them?

A. Yes.

Q. What kind of reports, now, did you receive from them?

A. Sales reports, various sales reports.

Q. Now, what did these sales reports cover?

990 A. Sales of petroleum products in——

Q. (Interrupting.) Where?

A. In St. Louis and other points where the Waters-Pierce Oil Company did business.

Q. At what points did they do business?

A. Missouri, Arkansas, Louisiana, Texas, in the Indian and Oklahoma Territories.

Q. In the Republic of Mexico?

A. And old Mexico.

Q. Now, then, did these reports of sales, is that refined oil or all characters of oil?

A. I think it covers refined oil and lubricating oil and naphthas.

Q. They reported to you, then, their gross sales of those oils in that territory that you have mentioned?

A. Yes, sir.

Q. Well, now, what other reports did they make to you?

A. Cash reports.

Q. Now, the reports of the sales of oils, how often did you receive those reports, Mr. McNall?

A. At different periods; once a month; once in six months; once a year.

Q. Then you received a monthly report and then at the end of the six months' period you received a semi-annual report, did you?

A. Yes, sir.

Q. And then, at the end of the year, you received an annual report?

A. Yes, sir.

Q. Covering the entire sales for the year of oils by the Waters-Pierce Oil Company in that territory?

A. That is correct.

Q. Well, did these reports show competitive sales also?

991 A. No, those reports didn't show competitive sales.

Q. Did you receive any such reports?

A. I did a report showing—(pausing) I can not say that I received any reports showing competitive sales.

Q. You are not positive about that?

A. No.

Q. You don't say that you didn't receive such a report, do you, now?

A. No, I don't say that I didn't receive such a report.

Q. Now, what did the cash report show, Mr. McNall?

A. The cash report showed receipts of cash.

Q. Where?

A. At, I think, the main station points, as they are known, and bank balances.

Q. Covering the business of the Waters-Pierce Oil Company?

A. Yes, the business of the Waters-Pierce Oil Company.

Q. How often did you receive such reports?

A. I could not say; it was irregular.

Q. Well, to refresh your memory, I will ask you if you did receive a daily cash report?

A. I don't think that I received a daily cash report; I think there was a daily cash report, but I don't think that I received it regularly.

Q. What is your recollection about that?

A. I received cash reports, but I don't think that I received them regularly.

Q. Well, now, what other reports did you receive?

A. I don't recall any other than sales reports; there may have been others.

Q. Did you receive a construction report?

A. I don't remember receiving any construction reports;

992 I don't know what you mean by "construction reports."

Q. Well, a report showing the construction of buildings and the erection of tank stations and the equipment of plants and so on, made or in course of construction by the Waters-Pierce Oil Company. Did you receive any such reports as that?

A. I believe I did.

Q. Well, can you recall any other reports that you received?

A. No, I don't now recall any other reports.

Q. Did you receive any other reports of oils delivered to steamboats and vessels at the ports, marine oil reports?

A. I don't remember receiving such reports.

Q. Do you say that you did not receive such reports?

A. No, I don't remember any such reports.

Q. How about the salary lists, the lists of salaries paid by the Waters-Pierce Oil Company to its officers?—did you receive any such lists as that?

A. What?

Q. Salary reports? (Last question repeated.)

A. Yes, I think I did receive salary reports.

Q. What did the salary reports show?

A. Salaries effective on January 1st.

Q. Of each year?

A. Of each year; I can not say that I received them yearly, but I think I remember of receiving such a report.

Q. Well, I will ask you to refresh your memory, Mr. McNall, whether or not you received a report showing deliveries of lubrica-

ing oils and refined oils and petroleums, merchandised to the marine trade by the Waters-Pierce Oil Company?

A. I don't remember such a report.

Q. Do you say that there was no such report sent to you?

993 A. No, I do not.

Q. Was there a report as to the sales and deliveries of naphthas and lubricating oils?

A. Yes, sir.

Q. Was there a report sent to you showing milk can deliveries and the sales of turpentine and fuel oil in the territory of the Waters-Pierce Oil Company?

A. I can not say whether that was a separate report or not; I think it was included in one.

Q. Did you have a monthly report of the delivery of wax candles and grease and so on?

A. Yes, sir.

Q. To refresh your memory, was there a report of comparative sales of barrels of fifty gallons each for a certain period as compared with the same period the year before, comparative statements?

A. Of what?

Q. Of oils?

A. Yes.

Q. Was there a statement showing the cost of barreling and marketing of oils by the Waters-Pierce Oil Company during certain months or a monthly statement of that kind showing the cost of barreling and marketing of oil?

A. For what period?

Q. At any period?

A. I think there was such a statement.

Q. What periods did it cover, Mr. McNall?

A. I don't remember.

Q. Do you know whether it was monthly, semi-annually, quarterly—what is your judgment and recollection about it?

A. As near as I can remember, it was six months—semi-annually.

994 Q. Semi-annually?

A. I am not positive that that is so.

Q. Did you receive any reports of the result of the conduct of the business of the Waters-Pierce Oil Company?

A. What result?

Q. Well, the result, the report of the results of the condition of the business?

A. I received a report showing the sales for certain periods, and whether they were an increase or decrease over the previous years; that was a part of the reports referred to.

Q. Did they show the prices at which the oils had been sold?

A. No, I don't remember. What is that question?

Q. Did they show the prices at which the oils had been sold, or did any report made to you show the prices at which the Waters-Pierce Oil Company sold their products?

A. No, I don't think any report covered that.

Q. Do you have any recollection about that matter?
A. That is my recollection only.
Q. Do you say that there was no such report sent to you showing the schedule of prices at which the Waters-Pierce Oil Company sold their oils and petroleum products at the different points in its territory?
A. Yes, I received a report showing their selling prices, if you please; I don't know whether they sold at those prices or not.
Q. You say you then received a report showing the selling prices at different points in the territory of the Waters-Pierce Oil Company; is that a fact?
A. I don't know whether at all points.
Q. What is your recollection about that?
A. They sent such a report on; how complete the report was, I can not say.
995 Q. What did the report of the result of the business show, Mr. McNall, that was sent to you?
A. What do you mean by the result of the business?
Q. Well, the report of the results, the sales and the comparative sales that you spoke of a little while ago?
A. Sometimes they showed gains and sometimes losses.
Q. What particular items did that report cover?
A. The number of barrels.
Q. The number of barrels of stuff sold?
A. Yes.
Q. And the prices received for it?
A. No; there was no mention made, I believe, of the prices received.
Q. Did it show the gross receipts?
A. No.
Q. Was any report of the dividends declared by the Waters-Pierce Oil Company made to you, Mr. McNall?
A. I was occasionally advised by the Secretary.
Q. What were you advised of?
A. And occasionally I got a letter stating what dividends were declared and the date.
Q. And the amount of the same?
A. Yes.
Q. Were you a stockholder in the Waters-Pierce Oil Company?
A. No.
Q. Now, why was that report sent to you?
A. I don't know.
Q. What did you do with it?
A. I filed it with my other letters.
Q. What did you do with the reports of the sales of refined oil that were sent to you?
996 A. Filed them.
Q. Where?
A. In my office.
Q. And the cash reports, what did you do with those?
A. They were filed in my office.

Q. And the construction reports?
A. Also filed with the other reports.
Q. All the reports, now, that were sent there were filed in your office?
A. Yes, sir.
Q. Did you do anything else with them, Mr. McNall?
A. After going over them myself and sometimes writing about them, but afterwards they were filed in my office.
Q. Did you show these reports or that correspondence to anybody else at 26 Broadway?
A. I think they occasionally saw them.
Q. Who saw them?
A. I can not recall now; sometimes a question would be asked and I would get the report out and show it.
Q. Mention some of the cases in which you have shown some of these reports to others than to yourself?
A. I don't know of any specific cases; I don't remember.
Q. Did you ever show the cash report to anybody?
A. No, I don't think I ever did; I don't remember it; it is possible, but I don't remember it.
Q. Well, the sales of refined oil or lubricating oil, did you ever show that report to anybody else?
A. Yes.
Q. Who to?
A. I don't remember.
997 Q. Can't you recall at all the name of any person that you ever showed it?
A. No, I do not recall.
Q. But your judgment is that you have shown it to parties there at 26 Broadway?
A. Yes, sir.
Q. Well, the salaries reports, did you show them to anybody?
A. I can not say; I don't remember.
Q. Well, what is your judgment about it?
A. I think not.
Q. Why was the report of salaries made to you, Mr. McNall?
A. I don't know.
Q. Did you call for any such report?
A. I don't remember calling for any such report.
Q. And they just sent it up there to you?
A. Yes, sir.
Q. Well, now, didn't you submit that report to some other parties at 26 Broadway for their information, Mr. McNall, during the time you were there?
A. No, I may have spoken to others.
Q. Who did you speak to about it?
A. When such a report would be received, and in going over it, I might find out from others what a certain position was paying at some other points, and in that way, that would be information that I was trying to get at.
Q. I don't understand that. Explain it a little more fully.

A. When such a report was received, I would go over it carefully, and I might have to send information to other places, what a certain place was paying.

Q. From whom?

998 A. From any of my friends.

Q. Can't you name any one of them that you ever sought such information from?

A. No, I don't remember.

Q. Did you ever show that report to Mr. H. M. Tilford?

A. I might have.

Q. What is your recollection about it?

A. I don't remember.

Q. Did you ever show it to Mr. W. H. Tilford?

A. I don't remember.

Q. I will ask you, Mr. McNall, to refresh your memory, if it was not the usual custom, and if you did not carry out the policy of submitting that report of salaries to other parties at 26 Broadway, and they were either approved or rejected, and you made a report on it to St. Louis?

A. No.

Q. You say that you never reported to the St. Louis office of the Waters-Pierce Oil Company any report on a salary list as submitted by them at all? Did you ever have any correspondence about it?

A. I think I have had correspondence about it; I can not recall it.

Q. What character of correspondence did you have, Mr. McNall, with the Waters-Pierce Oil Company, concerning the salaries paid to their officers?

A. I don't remember any particular correspondence in regard to it.

Q. And do you know why it was submitted to you, the salary list?

A. The lists—no, except with the other reports.

Q. Just to be filed in your office?

A. I don't know what they expected to be done with them.

Q. Did you ever inquire what they sent them to you for?

A. No.

Q. You never made any inquiry about it?

999 A. I have never made such inquiry as I can recall.

Q. These barreling and marketing reports, what did you do with them?

A. Filed them in my office.

Q. Did you show them to anybody?

A. Other people may have seen them; I can't tell.

Q. How did they see them? Would they come to your office and inspect these files, or would you exhibit them to them?

A. They may have seen them on my desk after going over them, and while I was going over them, or they might have seen them on the files.

Q. Did you object to anybody there in the office inspecting the reports that you received there from the Waters-Pierce Oil Company?

A. I don't know of any cases where they did.

Q. But you did show them those reports occasionally?

A. Yes, as business required.

Q. I will ask you if any letters were written in any of those departments there, say Mr. Bemis's office or Mr. Bedford's office or Mr. Silas H. Paine's office or any of those men connected there at 26 Broadway, and sent to your office to be signed by you for the Waters-Pierce Oil Company?

A. There were letters, I believe, in other offices besides my own.

Q. For the Waters-Pierce Company?

A. Addressed to the Waters-Pierce Company.

Q. Well, did you sign those letters, Mr. McNall?

A. I did.

Q. On what kind of stationery were they written?

A. On my own.

Q. On the Waters-Pierce Oil Company's stationery?

A. Yes, sir.

Q. Did you supply those departments with your stationery?

A. I did.

1000 Q. And what character of letters would they write?

A. There were only two offices that did that to my knowledge at the time.

Q. What two offices were they?

A. The lubricating oil and the purchasing of supplies.

Q. The lubricating oil department and the purchase of supplies department?

A. Yes, sir.

Q. Who was in charge of the Lubricating Oil Department?

A. I can not say who was in charge of the Lubricating Oil Department.

Q. But you know, as a matter of fact, that letters were written in that department and sent to your office and addressed to the Waters-Pierce Oil Company?

A. Yes, at my request.

Q. Yes, and you signed the letters?

A. Yes.

Q. Why were the letters not signed in those two departments?

A. It was information sent to me in regard to certain matters which I had to take up with the Lubricating Oil Department or Purchasing Department and I asked them if they had any objection to my making their replies instead of their writing to me and I in turn writing it, and they very kindly did that in some cases.

Q. After that you received letters from the Waters-Pierce Oil Company for those departments that were addressed to you, and you afterwards sent them to those departments?

A. In some cases, yes, sir.

Q. Did you send any letters or correspondence by you and addressed by you to any of the officers or departments at 26 Broadway?

A. Yes, sir.

Q. Now, what letters and correspondence did you send, Mr. McNall?

1001 A. Some letters regarding lubricating oil and some letters regarding the purchase of supplies.

Q. Please state whether or not the Waters-Pierce Oil Company

conducted all of their correspondence with parties at 26 Broadway through you by correspondence addressed to you?

A. I don't know.

Q. Well, they conducted a great deal of it that way, did they not?

A. Yes, sir.

Q. How often did you receive letters, Mr. McNall, for distribution in those offices there at 26 Broadway?

A. I never received letters for distribution.

Q. Well, that you did distribute?

A. Frequently.

Q. Well, about how often?

A. I think there was something in every mail.

Q. And you said that in two of those offices that you recall your stationery was provided and they addressed their communications to the Waters-Pierce Oil Company and sent the letters to your office to be signed by you?

A. Yes, sir.

Q. And you did sign them and conduct the correspondence between those offices and the Waters-Pierce Oil Company in your name; is that a fact?

A. I signed those letters.

Q. Why didn't they sign them, Mr. McNall?

A. It was information that was asked of me.

Q. Well, you received it from those departments, did you not?

A. Yes, sir.

Q. Now, to what business matters did that correspondence relate?

A. As far as lubricating oil was concerned, mostly in regard
1002 to orders—orders for shipment.

Q. Shipment where?

A. Shipments from points where they were receiving their supplies; their orders were placed with me, and then some question would arise as to the shipment.

Q. And those letters were sent to you and you sent them on to the departments?

A. I did in some cases.

Q. Well, I will ask you to refresh your memory, Mr. McNall, if you didn't write a letter to the St. Louis office of the Waters-Pierce Oil Company and direct them to make a carbon copy of the letters that they wrote to you, so that you might facilitate matters in sending the letters to the various departments there?

A. I don't remember the letters, but I received carbon copies.

Q. Of all the letters that you received?

A. Not all.

Q. What proportion, now, of the letters that you received were there carbon copies enclosed?

A. I don't remember.

Q. Well, what is your best judgment about it, Mr. McNall? Approximate it.

A. Well, if I approximate it, I might say half, but I am not sure that that is correct.

Q. Well, your judgment is that you received carbon copies of

about half of the letters that you received from the Waters-Pierce Oil Company?

A. Yes.

Q. Now, what did you do with the carbon copies?

A. Those that required information from other points I forwarded them and asked them to make a reply.

1003 Q. What do you mean by "other points"?

A. Well, if it was in regard to lubricating oil matters I would send it down to the Lubricating Oil Department, and get their reply.

Q. In the same building?

A. Yes.

Q. Mention some other instances?

A. Supplies, the same way.

Q. Did you send them to the supply department?

A. Yes, sir.

Q. Well, suppose it was about barreling and market reports?

A. I don't remember ever receiving such.

Q. Suppose it concerned salaries?

A. I don't remember ever receiving any about salaries.

Q. Well, about the dividends or cash payments?

A. I don't remember receiving any with any of those papers.

Q. Did they report to you the result of the business of Mexico also?

A. You mean the total sales?

Q. Yes.

A. I think that was included.

Q. The same character of reports concerning the business in the United States?

A. Similar reports.

Q. Similar reports were made about the Mexican business also?

A. Yes.

Q. Who did you purchase your supplies of lubricating oils from?

A. Of the lubricating oil office.

Q. Of the Standard Oil Company?

A. I assume it was of the Standard Oil Company.

Q. It was located in the same building?

A. Yes, sir.

Q. Who did you purchase your supplies of refined oil from?

1004 A. I don't remember purchasing any refined oil.

Q. Did you not state that orders for refined oil were sent to you?

A. Only occasionally.

Q. Where did you purchase that from whenever it was sent to you?

A. I think I remember occasional orders for refined oil, but I don't know where they were placed. I did buy some from the Export Department, I think; I am not clear.

Q. Did you ever buy any from any of the refineries in Texas?

A. No, I don't think I ever bought any from refineries in Texas.

Q. Did you buy it from the refinery at Whiting, Indiana?

A. I don't remember.

Q. Now, Mr. McNall, these letters that were written in the other departments that you have referred to, did they have any marks on them for identification, showing where they originated, or who wrote them?

A. When they came to my office?

Q. Yes, sir.

A. No, I think not.

Q. Did you put any on them yourself, showing where the letter originated?

A. Yes.

Q. Well, how would you mark them for identification?

A. The letters were not marked—I would like to correct that previous statement.

(Next to the last question repeated.)

A. Where the letter originated, they were not marked for that purpose.

Q. For what reason were they marked?

A. To show where I obtained my information.

Q. How would you mark those letters?

A. How?

Q. How?—yes.

A. With the initials of the party that was known, or the
1005 initials of the party from whom I got it or the office from which I got it.

Q. Now, give us an illustration, Mr. McNall.

A. On lubricating oil matters, information that I received from the office where Mr. Silas H. Paine is, I would mark it S. H. P.

Q. Where would you mark it?

A. In the upper left hand corner.

Q. Would you put the initials S. H. P. on the upper left hand corner of the letter and forward the letter then to the St. Louis office?

A. Yes, sir.

Q. You would sign it yourself and forward the letter there?

A. Yes, sir.

Q. Would that convey any information to the St. Louis office, those initials that you put on the upper left hand corner there?

A. I think they would know from that from whom I obtained the information.

Q. They would know from those initials from whom you obtained that information?

A. Yes, sir.

Q. Now, what is the initials of some of those that you put on letters that you can recall now?

A. S. H. P.

Q. Who did that stand for?

A. Silas H. Paine.

Q. Well, some others, now—give us some other illustrations.

A. Regarding the supplies, T. H. W.

Q. Who would that stand for?

A. T. H. Wheeler.

Q. Now, state some other examples, if you can recollect any?
A. There may have been others; I don't recall them.
Q. Well, now refresh your memory, have you ever placed W. E. B. on the corner of any letter?
1006 A. I don't remember.
Q. Do you know of anybody that W. E. B. would stand for there?
A. W. E. Bemis.
Q. How about H. M. T.?
A. That would be H. M. Tilford.
Q. Did you ever place his initials on a letter?
A. I don't remember; I may have.
Q. How about C. E. B.?
A. C. E. B., if I placed that on a letter, would be for C. E. Bedford.
Q. And W. H. T. would be for who?
A. Those are the initials of W. H. Tilford.
Q. And so it is your custom that when a letter was written in either one of those departments giving the information that you desired, that you would place the initials of the head of that department on the upper left hand corner and then sign the letter yourself and send it to the St. Louis office?
A. No, it covered only such information; I may have written the letter myself.
Q. But you have stated that you did receive letters written in the other departments?
A. Yes, with reference to lubricating oil business.
Q. Now, you have stated, Mr. McNall, that these letters conveyed the information that you had requested. I will ask you if you did receive letters from those departments or some departments or offices in 26 Broadway addressed to the Waters-Pierce Oil Company, in which they asked for information from the Waters-Pierce Oil Company through you?
A. There may have been such letters.
Q. What is your recollection of it?
A. I don't remember.
Q. Do you say there may have been such letters?
1007 A. I don't remember.
Q. Didn't you frequently receive requests for certain information from the Waters-Pierce Oil Company by the different officers and companies located at 26 Broadway?
A. I was occasionally asked questions of people located there.
Q. Did you receive letters asking for that information?
A. I don't remember.
Q. Did you receive statements of accounts that were due to any of the companies at 26 Broadway by the Waters-Pierce Oil Company?
A. I don't remember such.
Q. Well, I ask you to refresh your memory whether or not the Atlantic Refining Company or the Standard Oil Company of New York notified you when there was anything due them from the Waters-Pierce Oil Company for oils and supplies bought?
A. I don't remember; they may have done so.

Q. Was it your custom to write letters to the Waters-Pierce Oil Company notifying them of the balances due any company located at 26 Broadway and request them——

A. (Interrupting:) I would, if I received such information.

Q. Did they render their bills to you?

A. No.

Q. You didn't keep any accounts, then, in your office at all?

A. No.

(Evening Session.)

Direct Examination by Mr. ALLEN:

Q. Mr. McNall, you stated this morning that you were connected with the Waters-Pierce Oil Company from the early Spring, or the late Spring, or early Summer of 1900 up to the 1st of last year, 1906. Do you remember about what time in 1906 you severed your connection with the Waters-Pierce Oil Company?

A. The first of April, I think.

1008 Q. What company or individual have you been connected with since that time, Mr. McNall?

A. The Standard Oil Company of New York.

Q. Have you offices or a desk in the same suite of offices with them?

A. No, sir.

Q. What department are you in?

A. Export.

Q. Who has charge—who is the head of the Export Department?

A. I don't know who is the head of the Standard Oil Company of New York.

Q. Well, who employed you in that department? I understood you to say you didn't know who was the head of that department?

A. I was appointed by Mr. W. H. Tilford.

Q. Where are your offices now—your desk or your office—located with reference to the office that you occupied as Commercial Agent of the Waters-Pierce Oil Company?

A. I am now located on the seventh floor.

Q. A different floor?

A. In room 700.

Q. Where was your office prior to that—on what floor?

A. The twelfth.

Q. Is Mr. Tilford's office on the same floor that your office now is on?

A. No.

Q. It is now in a different place?

A. Yes, sir.

Q. You gave in considerable detail this morning your duties and what you did as Commercial Agent of the Waters-Pierce Oil Company. What business, or what are your duties now in a general way? I don't care, of course, specifically, nor to go into details; your duties now in the department you are in?

1009 A. In the general export business.

Q. In a general way what does that cover?

A. The supplying of certain countries with export oil.
Q. What countries?
A. Australia, New Zealand, and other points.
Q. How about Mexico?—anything to do with that?
A. Nothing to do with it.
Q. Do you know the territory in which the Standard Oil Company of New York does business? You gave us this morning—I mean in the United States—you gave us this morning the territory in which the Continental Oil Company and the Waters-Pierce Oil Company did business. What territory does the Standard Oil Company of New York do business in?
A. I don't know. I don't recall that I ever heard.
Q. Do you know which one of the Standard Oil Companies does, if it does, business in Louisiana East of the Mississippi River, whether it is the Standard Oil Company of Kentucky or the Standard Oil Company of Indiana?
A. I don't know.

(Portion of deposition omitted.)

Q. Who was Mr. Coombe?
A. He was an employé of the company at St. Louis.
Q. Of the Waters-Pierce Oil Company of St. Louis?
A. Yes sir.
Q. I have here a letter dated New York, March 24, 1904, addressed to Mr. S. Johnson, St. Louis, Missouri, purporting to be signed by you. Who was Mr. S. Johnson?
A. I believe an employé of the Waters-Pierce Oil Company of St. Louis.
Q. To refresh your memory, don't you know he was at the head of what is called the Lubricating Department?
A. I understood him to be, yes.

1010 Mr. ALLEN: We offer in evidence these letters, which it is agreed were identified by the witness R. H. McNall as having been signed by him.

(Thereupon the letters identified by the witness R. H. McNall were introduced in evidence, as follows:)

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jul- 29, 1903.
Answered 30.
A. J. H.

Waters Pierce Oil Co. Dividends.

NEW YORK, N. Y., *July* 27, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Some time ago I asked you to advise me each time a dividend was declared by the W. P. O. Co. This you did for several

times, but I was unadvised of the last two or three dividends. Will you kindly arrange to send me a notice of the dividends as they are declared, and oblige,

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Aug. 6, 1903.
Answered "
J. P. Gruet.

Dividend Notices.

NEW YORK, N. Y., *August* 4, 1903.

1011 J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 30th ulto., beg to say, that it will be sufficient notice to me to have you attach to your cash report notices of dividends declared and paid. Not knowing that you had adopted this method of advising me as I seldom see the cash reports, I was not aware that you were attaching to your cash reports these notices.

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jan. 26, 1905.
Ans. ——
A. M. Finlay.

Changes in Mexico Salaries. File 2007.

NEW YORK, N. Y., *Jan. 24th,* 1905.

Mr. A. M. Finlay, Pres. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 21st inst., enclosing list showing suggested changes in salaries of Mexico employés. I have been over this matter with Mr. Van Buren, and as I telegraphed you to-day he agrees with your suggestion that these changes be made effective as of January 1st.

Yours truly,

R. H. McNALL.

1012 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

*Personal.*

Received
Jan. 18, 1905.
Ans. ——
A. M. Finlay.

File 2007. Salary Changes.

NEW YORK, N. Y., *Jan. 16th*, 1905.

A. M. Finlay, Esq., Pres. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 4th inst., enclosing list of salary changes effective on Jan. 1st, 1905. I have gone over this carefully with Mr. Van Buren and he approves of the advances suggested on Form No. 408. Hereafter in sending similar lists to me, will you kindly send on a separate sheet Lubricating Oil Dept., managers and salesmen. I do not care to have the clerks of the Lubricating Dept. on a separate sheet, but simply the managers and salesmen.

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 27, 1903.
Answered 27.
J. P. Gruet.

Salary List.

NEW YORK, N. Y., *June* 25, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 23rd inst.,
1013 also salary list forwarded by express. In looking over same, I note ıe omissions and possibly there are other names omitted which ı would not know about. The omissions are those of Mr. H. C. Pierce, Mr. R. H. McNall and Mr. J. D. Johnson.

This list should include the names of all parties receiving over $50 per month. You also omit all of the Mexico salaries which I should like to have.

Yours truly,

R. H. McNALL.

S. H. P. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Mar. 30, 1903.
Answered 31.
E. S. H.

NEW YORK, N. Y., *March* 27, 1903.

Mr. A. P. Coombe, St. Louis, Mo.

DEAR SIR: Referring to deliveries made to the St. Louis Shovel Company, on account of contract held by the Swan & Finch Company of this City. The St. Louis parties have called attention to the disposition of the barrels in which oils are delivered to them. In order to enable the Swan & Finch Company to keep the accounts straight, it is requested that you kindly report to the writer all empty packages taken from the St. Louis Shovel Company. The latter have been advised that you will take these empties away, as deliveries are made.

Respectfully, R. H. McNALL.

1014 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 9, 1903.
Answered ——
J. P. Gruet, Jr.

Prices on Invoices for Marine Oils.

NEW YORK, *6th February*, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 3rd inst., in regard to your custom in billing Lubricating Oils by memorandum only to the Marine Oil Department, would say that this is true where the delivery is for contract oil, such as Marine Engine Oil and Marine Cylinder Oil, wherever other oils are delivered they should be billed at a price which will allow the Marine Oil Department 5 per cent. and still bill it to their customer at your market price at point of delivery. In other words, at the market price less 5 per cent., but the Marine Oil Department would prefer a net price.

Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Mar. 28, 1904.
Answered ——
E. S. H.
Cir. Letter.

Crude Scale Wax. Minimum Selling Prices.

NEW YORK, N. Y., *March* 24, 1904.

Mr. S. Johnson, St. Louis, Mo.

DEAR SIR: I suggest that your minimum selling prices on
1015 Crude Scale Wax, from this date until further advised, be as follows:

| | | | |
|---|---|---|---|
| 105 | Melting Point ..... | 5 cents | per pound. |
| 117/119 | " (White or Yellow)... | 5¼c. | " " |
| 124/126 | " ..... | 5¼c. | " " |

These prices to be F. O. B. Cleveland, Whiting or New York, with freight added to destination, in less than carload lots, or delivered to all points East of the Mississippi River, if taken in full carload quantities. For delivery West of the Mississippi add excess freight.

While my suggestion is that your *minimum* prices be as above, at the same time, I do not want you to try to get anything above these prices, if by doing so any business is jeopardized.

On all orders received after this date, the billing price to you will be one-half cent below the above schedule.

Respectfully,

R. H. McNALL.

P. S.—For carload lots the above minimums can be applied as f. o. b. St. Louis.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Sep. 1, 1902.
Answered "
J. P. Gruet.

NEW YORK, N. Y., *Aug.* 29, 1902.

Monthly Report Deliveries of Paraffine and Lub'g Oils and Average Prices Realized.

J. P. Gruet, Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I have mailed you, under separate cover, blank reports
15-L. Commencing with July 1, 1902, it is desired that you
1016 should send the writer a monthly statement, showing the total deliveries of Paraffine and Lubricating Oil, Wax,

Greases, etc., and the average prices realized on same. This report to take the place of any statement that you have been rendering, showing the average prices, and also to be rendered in place of your monthly report form 5-L, showing your total deliveries of Lub'g Oils, etc. In arriving at the average price, you should in all cases reduce the price to a bulk basis. In reducing the price obtained for shipments in bbls. to a bulk basis, please deduct from the prices realized the average cost per gallon of the barrel prepared and ready for shipment.

In reducing case oil to a bulk basis, please deduct from the prices realized the average cost per gallon including, of course, the cans, cases, faucets, etc. In regard to the bottles and small can specialty goods, it will be necessary for you to obtain an average cost, per gallon, for the cans, bottles, and the cost for filling and shipping same for each kind of package, and then deduct this average from the price, to reduce to a bulk basis. In all cases, the prices realized should be net f. o. b. in bulk refinery. The cost for freight, lighterage cartage, and other expenses of shipping or delivering to be deducted.

It has been impossible for me to have these forms prepared and this matter satisfactorily arranged earlier, but I am very anxious to have you commence rendering these reports, if possible, for the month of July and trust that you will be able to do so.

Kindly acknowledge receipt and oblige.

Yours truly, R. H. McNALL.

1017 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Nov. 20, 1902.
Answered 20.
J. P. Gruet.

NEW YORK, 18*th November*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: On September 19th I wrote Mr. Finlay giving him a list of deliveries to make to the Buffalo Bill's Wild West Show at various points, among them Gainesville, Texas: 4 Bbls., Stove Gasoline, delivery on October 9th. No delivery was made at this point, and I wired you yesterday in regard to the same, and received a reply this morning, stating that no delivery had been made. Will you kindly advise me why this delivery was not made, and oblige,

Yours truly, R. H. McNALL.

(Pencil memorandum:) Did not show at night and took no Gasoline at Gainesville 10/9.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Nov. 24, 1902.
Answered 25.
J. P. Gruet.

Transmitted
Nov. 24, 1902,
To A. M. F., V. Pt.

Report on Outside Purchases of Fuel Oil for October.

NEW YORK, 22*nd November*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

1018 DEAR SIR: I am in receipt of your favor of the 20th inst., enclosing monthly statement showing Outside Purchases of Fuel Oil for the month of October.

I note, on your purchases from T. W. Lane, that the price given on your statement is "at well." In your contract with T. W. Lane the price specified is 2 cents per barrel more delivered to cars than at the well. Will you kindly advise me what arrangement you have for the delivery of this Fuel Oil to cars, and at what extra cost to you.

Yours truly, R. H. McNALL.

W. E. B.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Nov. 22, 1902.
Answered "
J. P. Gruet.

Salesmen's Expense.

NEW YORK, N. Y., *Nov.* 20, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I am in receipt of your letter of the 15th, in reference to charging a proportion of certain salaries and expenses to item of 'Salesmen' for Refined Oil and Naphtha in barrels and cases. Your proposed method will take care of this charge and, beginning with reports for November, please put same into effect.

In regard to trucking expense at St. Louis; will you please advise me the exact situation in reference to the expense of hauling barreled and cased goods. Are you having all goods hauled by outside parties at a certain charge, per package, or do you hire horses and trucks at a certain charge, per month, from outside parties?

1019 Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Dec. 12, 1902.
Answered 15.
J. P. Gruet.

Iron Barrel No. 3167 Belonging to Standard Oil Company, Seattle, Washington.

NEW YORK, N. Y., 10*th December*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Some time ago you wrote me that the Sells & Downs Circus, exhibiting at Texas points, had in their possession an iron barrel, marked S. O. Co., Seattle, No. 3167. I wrote you, at the time, to get possession of this barrel, if possible. I am, this morning, in receipt of a letter from San Francisco, stating that this barrel is the property of the S. O. Co., and does not belong to the Circus people. Will you kindly advise me if you have the iron barrel, if you can use it in your business, and if so at what price. It may be possible that I will ask you to ship this to Seattle, Washington, but it seems to be an expensive way of straightening out the matter.

Yours truly,

R. H. McNALL.

1020 R. P. T. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Dec. 8, 1902.
Answered ——
C. M. A.

Settlement of November Account.

NEW YORK, N. Y., *December 5th*, 1902.

Waters Pierce Oil Co., St. Louis, Mo.

GENTLEMEN: I attach hereto statement of November account with R. P. Tinsley, Agent, showing debit balance of $493.69, which I will thank you to settle as follows:—

Check to order of Standard Oil Co. of New York..... $18.45
" " " " Atlantic Refining Co..... 475.24

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Dec. 15, 1902.
Answered ——
J. P. Gruet.

Fire Losses and Insurance for Year 1902.

NEW YORK, N. Y., 13*th December*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you kindly send me as soon as possible, after January 1st, a statement giving a list of fires at each of the stations in your section during the year 1902, showing date of fire, place where fire occurred, the origin of the fire as near as can be ascertained, together with the estimated loss of stock and plant, separately. Please also give amounts of money paid during the year as premiums for Fire, Marine and Boiler insurance, and the amounts collected for losses under such insurance. Kindly use enclosed form in making out your report, and oblige,

1021

Yours truly, R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jan. 27, 1902.
Answered "
J. P. Gruet.

NEW YORK, N. Y., *Jan.* 24, 1902.

Mr. J. P. Gruet, St. Louis, Mo.

DEAR SIR: I thank you very much for your favor of the 20th inst., enclosing form 22-E, showing shipments from Port Arthur and Sabine Pass, and am very much placed to have this information. Note what you say in regard to the blank not being ruled exactly correct for the information, but we have no blank at present which would exactly suit, but if your Agent would give us the same information as he gave us in these reports, it will be perfectly satisfactory to us.

Yours truly, R. H. McNALL.

1022 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 24, 1902.
Answered 24.
J. P. Gruet.

Leaky Union Tank Line Tank Car No. 4630, Cairo, Ill.

NEW YORK, N. Y., *Feb. 20th*, 1902.

A. M. Finlay, Esq., V. P. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I am in receipt of a communication from Mr. C. T. Collings stating that Union Tank Line Tank Car No. 4630, containing Stove Gasoline, shipped from Whiting, Ind., to Pine Bluff for your account, was damaged near Cairo, Ill., and the tank being in a leaky condition was unloaded at the station of the Standard Oil Co. at Cairo.

In regard to billing the contents of this tank car to the Standard Oil Co., they state that you have charged them 7.93¢ per gallon. I write to inquire if you should not have charged them your cost price, F. O. B. Whiting, plus freight to Cairo, which, I understand, is 11¢ per hundred.

If my understanding is correct, will you kindly correct your invoice to the Standard Oil Co., Cincinnati, advising me at the same time of price charged and how it is arrived at, and oblige,

Yours truly, R. H. McNALL.

1023 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jan. 6, 1902.
Answered 7-31.
J. P. Gruet.

B. & M.

Cash Sales Adjustment Account.

NEW YORK, N. Y., *Jan.* 4, 1902.

J. P. Gruet, V. P. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: It has been suggested that it would be desirable to maintain at the Main Stations a Ledger Account entitled 'Cash Sales Adjustment Account' to take care of errors in cash sales. At the present errors in Cash Sales are being taken care of in the manner provided for by Item # 51 in the Resolutions, which reads as follows:

Item 5—Error in Cash Sales: We recommend that the following method be pursued to correct errors in Cash Sales. The Correct amount of Cash Sales should be passed through Sales Sheet and actual cash receipts entered on Cash Report and the amount of Cash 'over' or 'short' be carried as a memorandum until such error can be corrected by next settlement.

Enclosed herewith proposed Circular Letter which I submit to you for your careful consideration.

Please advise me whether or not you favor keeping the separate account as outlined.

Yours truly, R. H. McNALL.

1024 W. J. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 17, 1902.
Answered "
J. P. Gruet.

January Account.

NEW YORK, N. Y., *Feb. 15th*, 1902.

Waters Pierce Oil Company, St. Louis, Mo.

GENTLEMEN: Referring to our statement of January account, mailed you February 11th, showing balance due us of..... $479.28
From which we deduct your invoice Jan. 31st..... 155.95

Balance due us..... $323.33

Yours truly, R. H. McNALL.

H. M. T. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 17, 1902.
Answered 17.
J. P. Gruet.

Semi-annual Statement # 3.

NEW YORK, N. Y., *Feb.* 15, 1902.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your letter of the 13th inst., enclosing me semi-annual Statement # 3 showing total sales and results of the business in United States territory for year 1901.

In looking over this statement I notice your sales of Fuel Oil show you only made a profit of $9946, or 3¢ per barrel. If you should sustain any loss on account of bad debts on any of your fuel oil sales it would practically reduce the profit on this class of
1025 business to very little, if anything.

I also notice in your Naval Stores Dept. that you have your sales as being 100,678 barrels, on which you made a gross profit of $279.18. You also show this as your net earnings, no expense being charged against it. As a matter of information will you please let me know if the sales referred to above represent the rosin which you are selling for account of the Shotter Co. If this is so, then am I to understand you only made a gross profit of $279.18 in selling the 100,678 barrels of rosin?

Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 6, 1902.
Answered 6.
J. P. Gruet.

Fire at Pine Bluff, Arkansas.

NEW YORK, N. Y., *Feb. 4th*, 1902.

A. M. Finlay, Esq., V. P. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to hand you herewith clipping from the Philadelphia Drug Paper reporting fire at your plant at Pine Bluff, Arkansas. Loss $8,000.

I can not find that you have reported this fire.

Will you not kindly advise if there is any truth in this report, if so, give what details you can, and oblige,

Yours truly, R. H. McNALL.

1026 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Mar. 13, 1902.
Answered 13.
J. P. Gruet.

Shipments Fuel Oil from Beaumont.

NEW YORK, N. Y., *March* 10, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: Replying to your favor of Feb. 25th, in which you say that the information of tank car shipments could be obtained, but

it would necessitate employing another man. There is no way that I can obtain this information except through your efforts, and I feel that it is of very vital importance that I have information of these car shipments.

Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 26, 1902.
Answered "
J. P. Gruet.

Closing Statements.

NEW YORK, N. Y., *Feb'y 24th*, 1902.

Mr. J. P. Gruet, St. Louis.

DEAR SIR: I acknowledge receipt of yours of the 19th inst., enclosing balance sheet and trial balance as of Dec. 31st, and also am later in receipt of trial balance of Division Ledger of same date, but as we have not had time to carefully look these over, are not in position to acknowledge their correctness.

In regard to the question you ask *in re* Profit & Loss and
1027 Surplus A/c, would say that it will not be necessary to carry a Surplus A/c as formerly, bringing the capital and surplus to an amount equalling the investment less plant depreciation, and we would suggest that you carry all profits for the present into your Profit & Loss A/c.

Yours truly, R. H. McNALL.

H. M. T.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Feb. 26, 1902.
Answered 27.
J. P. Gruet.

Banks used by W. P. O. Co.

NEW YORK, N. Y., *Feb. 24th*, 1902.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your letter of Feb. 20th, enclosing me statement giving the names of banks you do business with in your territory and their locations. My understanding is that this list shows every bank at which the W. P. O. Co. has an account, but the list seems very small. I was under the impression that you had bank accounts at a number of small points. If you have not, will you please let me know as a matter of information how you take care

of the funds collected by your agents at all the other points. Did you not understand from my letter that I wanted the name of every bank and the location of same where the W. P. O. Co. had an account?

Yours truly, R. H. McNALL.

1028 W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Apr. 18, 1902.
Answered 18-30.
J. P. Gruet.

NEW YORK, N. Y., *April* 16, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I am sending you an extra supply of blanks form 23-D. Please report on this blank, each month, the purchases of Texas oil made by you from different parties, showing the amounts received from each shipper. I would be very glad if you would send me a report of this business from January, 1902, each month, separately.

Yours truly, R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Apr. 21, 1902.
Answered 22.
J. P. Gruet.

Depreciation of Iron Packages.

NEW YORK, N. Y., *April* 19, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: Referring to recent correspondence in regard to the question of charging depreciation of all iron packages to B. & M. expense, it is the feeling that this should be done and that our ruling should be changed to take effect July 1st, but before this change is made I want your views as to whether the 4¢ per package per month is a fair charge. Also, if you please, whether or not the
1029 method as given in the B. & M. Primer, page 27, is the easiest and best way to carry this expense to the proper station.

Yours truly, R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
May 21, 1902.
Answered 5/21/02.
J. P. Gruet.

NEW YORK, N. Y., *May* 19, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: In looking over your reports 80-D, showing construction equipment, etc., as of Dec. 31, 1901, beg to call your attention to reports that are missing for stations mentioned.

Will you kindly advise if reports should not be rendered for these stations; if so, will you kindly have same sent in.

Mount Vernon, Mo. Missouri Div.
Ozark " " "
Alma, Arkansas Arkansas "
Benton, " " "
Greenwood " " "
Luxora " " "
Nettleton " " "
Queen City, Texas, E. Texas and La. Div.
Como " North Texas "
Chico " Central " "
Columesniel " Southern " "
Ledbetter " " " "

1030

Paige " " " "
Boerne " West " "
Castroville " " " "
Apetatillau Mexico Central Mexico "
Santa Anna " North Mexico "

Yours truly,

R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
May 9, 1902.
Answered 9.
J. P. Gruet.

80-D Encyclopedia.

NEW YORK, N. Y., *May* 8, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I am very anxious to receive your Encyclopedia Report form 80-D, showing construction, equipment, etc., at your different

stations as of Dec. 31, 1901. Will you kindly hurry these reports as much as possible?

Yours truly, R. H. McNALL.

(Pencil memorandum:) They are all ready to send off to-day, 595 of them.

1031 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
May 1, 1902.
Answered ——
J. P. Gruet.

Prices Paid for Supplies.

NEW YORK, N. Y., *April 29th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Kindly fill in enclosed report showing prices paid for supplies, and oblige,

Yours truly, R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 18, 1902.
Answered ——
J. P. Gruet.

May Account.

NEW YORK, N. Y., *June 16th*, 1902.

Waters Pierce Oil Co., St. Louis, Mo.

GENTLEMEN: We enclose herewith itemized statement of May account, with balance in our favor of $557.38, for which kindly remit checks as follows:—

In favor of Atlantic Refining Co..... $470.90
" " " Standard Oil Co. of New York..... 86.48

Yours truly, R. H. McNALL.

(Attached to this letter is the following statement:)

1032 Waters Pierce Oil Company in a/c with Walter Jennings, Ag't.

| | | | | May 31, '02. | |
|---|---|---|---|---|---|
| May 13. | Star | Transfer | #1198 | 30.52 | |
| 20. | " | " | 1228 | 11.27 | |
| 26. | " | " | 1258 | 30.60 | |
| 28. | " | " | 1270 | 14.09 | |
| 3. | Scranton | " | 194 | 117.04 | |
| 5. | " | " | 199 | 21.42 | |
| 8. | " | " | 200 | 46.09 | |
| 9. | " | " | 406 | 33.25 | |
| " | " | " | 407 | 8.02 | |
| 12. | " | " | 411 | 21.28 | |
| " | " | " | 412 | 21.08 | |
| 14. | " | " | 418 | 132.03 | |
| 16. | " | " | 419 | 48.30 | |
| 19. | " | " | 428 | 10.97 | |
| 21. | " | " | 435 | 86.08 | |
| 22. | " | " | 436 | 58.15 | |
| 27. | " | " | 450 | 56.24 | |
| 31. | " | " | 452 | 27.92 | |
| | | | | | 774.35 |

Credits.

| | | | | | |
|---|---|---|---|---|---|
| May [illegible] | Your charge | | | 57.04 | |
| 23. | " | " | | 25.44 | |
| 29. | " | " | | 134.49 | |
| | | | | | 216.97 |
| | | | | | 557.38 |

1033 W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 13, 1902.
Answered 17.
J. P. Gruet.

Transmitted
Jun- 16, 1902.
To J. A. S.

Cost of Barrelling & Marketing.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I beg to give below memo. of the average costs of barrelling and marketing oil at stations in the various divisions during the last six mos. of 1901, to be used in preparing Cost & Selling Price Statements during the last six mos. of 1902.

| | Prep'n. Iron bbls. | | Total cost barrelling. | | Tank Wag. | | Marketing. Bulk. | | Barrels. | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Head. | Subs. | Head. | Subs. | Head. | Subs. | Head. | Subs. | Head. | Subs. |
| St. Louis..... | .09 | .07 | 2.25 | 2.12 | 1.13 | 2.20 | .36 | 2.12 | .49 | 2.19 |
| Arkansas ..... | .32 | .11 | 1.80 | 1.76 | 2.01 | 2.39 | 2.15 | 1.87 | 1.49 | 1.84 |
| E. Texas & La.. | .11 | .24 | 1.63 | 1.58 | 1.88 | 2.56 | 1.97 | 2.66 | 2.53 | 2.25 |
| N. Texas..... | .11 | .18 | 1.83 | 1.78 | 1.73 | 2.20 | 1.42 | 2.11 | 1.94 | 1.73 |
| Central Texas... | .72 | .21 | 1.41 | 1.42 | 1.81 | 2.53 | 2.03 | 2.64 | 2.29 | 2.41 |
| So Texas..... | .41 | .12 | 1.48 | 1.43 | 3.22 | 3.66 | 3.00 | 2.87 | 3.14 | 2.96 |
| West Texas. .... | .20 | .08 | 1.46 | 1.44 | 2.48 | 2.71 | 2 04 | 2.71 | 2.57 | 2.44 |
| No. Mexico..... | .09 | ... | .... | .... | 2.16 | .... | 1.20 | .... | 2.02 | |
| Central Mexico . | .11 | .20 | .... | .... | 1.86 | 1.98 | .98 | 1.22 | 2.13 | 1.93 |

If you desire to make any change in basis of costs to be used during the coming six months, please advise.

Yours truly,

R. H. McNALL.

1034 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 12, 1902.
Answered ——
J. P. Gruet.

Discontinuing Semi-monthly Reports of Sales of Stoves, Lamps, etc.

NEW YORK, N. Y., *June* 10, 1902.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: In regard to semi-monthly reports which you are now rendering showing sales of Stoves, Lamps, etc., would say that they can be discontinued and a report made say on June 30th and Dec. 31st, showing sales of these articles for 6 months.

Yours truly,

R. H. McNALL.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jul- 9, 1902.
Answered ——
J. P. Gruet.

Salary List—December 31st, 1901, and January 1st, 1902.

NEW YORK, N. Y., *July 7th,* 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 3rd inst., enclosing Salary List as of December 31st, 1901, and January 1st, 1902.

Thanking you for same, I remain,

Yours truly,

R. H. McNALL.

1035 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jun- 21, 1902.
Answered July 3d.
J. P. Gruet.

Salary List.

NEW YORK, N. Y., *June 19th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Referring to my letter to you of the 13th inst., and your reply under date of the 17th inst., in regard to statement of Salaries paid on December 31st, 1901, and January 1st, 1902, beg to say that while we have had some correspondence in regard to this salary list, yet I have only received a copy of the list 1900 and 1901, which I am under the impression was sent to me by mistake. Your salary list for December 31st, 1901, and January 1st, 1902, has not been received by me.

These lists may have been sent to Mr. H. C. Pierce, but he has not turned them over to me. Therefore, I will have to trouble you to make up a new list of these salaries, and forward it to me at your earliest convenience.

In regard to the letter which you refer to as having been written from this office to Mr. H. C. Pierce, dated February 27th, 1902, would say that these changes on which comments were made, were shown by a list which you sent, recommending advances in salaries to various parties in the different Divisions.

What I would like is a complete salary list such as you have before furnished.

Yours truly, R. H. McNALL.

1036 S. H. P. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jul- 14, 1902.
Answered ——
J. P. Gruet.

Transmitted
Jul- 14, 1902,
To Ex. Com.

Read at Committee Meeting Jul- 14, 1902. C. A. P., Secretary.

NEW YORK, N. Y., *July* 11, 1902.

Mr. J. P. Gruet, Sec'y Waters-Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Referring to your letter of the 7th—the documents referred to are returned with this. The Inland Oil Co. as a corporation has surrendered its charter, and is out of existence.

If you continue the use of that name any longer, it should be on a new letter-head, and upon your own responsibility. The writer's advice would be to discontinue it.

Respectfully, R. H. McNALL.

W. E. B. Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Received
Jul- 9, 1902.
Answered 9.
J. P. Gruet.

41-D and 41-N Reports.

NEW YORK, N. Y., *July* 7, 1902.

J. P. Gruet, Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of July 3rd on the above subject. I beg to state that it will be perfectly satisfactory for you to render reports as stated. Please understand that these de-
1037 liveries should represent the total deliveries of the Mexico refineries to the trade, the amount of money and the average price received, reduced to a bulk basis; that is, deduct all freights, cartage, terminal charges, etc., so that the report will show the total deliveries, and the average price received f. o. b. refinery.

Yours truly, R. H. McNALL.

26 Broadway.

Received
Aug. 22, 1900.
Answered ——
J. P. Gruet.

Subject: Report of Total Sales U. S. Divisions for July. Comparative Statement of Tank Wagon Sales for July at Commission and Other Points.

NEW YORK, *Aug.* 20, 1900.

J. P. Gruet, Esq., Vice Pres. W. P. O. Co., St. Louis, Mo.

DEAR SIR: We beg to acknowledge receipt of your favors of the 17th and 18th enclosing comparative statement of total sales of refined oil and naphtha and gasoline in U. S. Divisions for July, 1899, 1900, Forms 10 N and 10 D. Also comparative statement of tank wagon sales of refined oil and gasoline at commission tank wagon points, and the same statement for all other tank wagon points, both for July, 1899/00.

Yours truly,

H. M. TILFORD.
R. H. M.

1038 Mr. ALLEN: We are going to offer some answers on page 44. There is one question we want to read with reference to Exhibit 14. It is just simply to identify who "R. P. T." is. Read both of those questions.

(Mr. Brady reads questions and Mr. Allen the answers.)

Q. We have here a letter dated New York, December 5, 1902, addressed to Waters-Pierce Oil Company, St. Louis, Missouri, purporting to be signed by you. I will ask you if that is your signature? (Handing witness letter.)

A. That is my signature.

Q. Who is R. P. T.? Who does that stand for?

A. The initials of R. P. Tinsley.

Mr. ALLEN: Now, then, on page 46, referring to a letter dated New York, February 15, 1902, with reference to Exhibit 19.

Q. We have here a letter dated New York, February 15, 1902, addressed to Waters-Pierce Oil Company, St. Louis, Missouri, purporting to be signed by R. H. McNall, and I will ask you to examine that letter and say whether or not that is your signature? (Handing witness letter.)

A. That is my signature, yes.

Q. I see in the upper left-hand corner the initials "W. J." For whom do those initials stand, or whom do they represent—what name do they represent?

A. I believe Walter Jennings.

Q. Who was Walter Jennings? What connection had he with any of the Standard Oil Companies?

A. I think certain accounts were in his name as agent.

Q. What kind of accounts?

A. Certain goods purchased by the Waters-Pierce Oil Company.

Q. Certain goods purchased by the Waters-Pierce Oil Company, the accounts were run in his name as agent?

A. I believe so.

1039 Q. What goods do those accounts include?

A. I don't remember.

Q. Is there anything in that letter to indicate.

A. No, there is nothing in the letter to indicate.

Q. To refresh your memory, didn't you carry accounts with the Atlantic Refining Company and the Standard Oil Company of New York both in Walter Jennings' name?

A. I don't know about the accounts.

Q. What is your recollection about it?

A. I know nothing about it.

Q. Well, you stated this morning that those initials in the upper left-hand corner indicated from whom you got information, or with whom you had dealings. Do you mean to say that you were dealing with him, having accounts running with him, and didn't know who he was representing?

A. This referred to an account.

Q. Well, doesn't the letter refer to an account?

A. It refers to an account.

Q. What accounts?

A. Goods purchased by the Waters-Pierce Oil Company.

Q. In whose favor are those accounts?
A. Well, it is an indebtedness of the Waters-Pierce Oil Company.
Q. To whom?
A. To Walter Jennings, Agent, I believe.
Q. Is the account in his name as agent?
A. I don't know; I should think it was.
Q. Why are you requesting checks sent? This letter doesn't show—I beg your pardon; I thought it didn't. Did you buy these goods that are represented by this invoice, or this statement?
A. I don't know.
1040 Q. Well, why did you put in here that these statements, if they were purchased from Walter Jennings, why did you put in here, "Showing the balance due us of $479.28"?
A. That was the statement showing a credit balance.
Q. A credit balance to whom?
A. Who ever it says in this letter.
Q. The letter says, "Referring to our statement of January account mailed you"—this is addressed to the Waters-Pierce Oil Company—"mailed you February 11th, showing balance due us of $479.28, from which we deduct your invoice, the Waters-Pierce oil invoice, January 31, $155.95, balance due us $323.33." That was a balance due to Walter Jennings, Agent?
A. Walter Jennings, Agent.
Q. Why do you say it is due us if you are representing the Waters-Pierce Oil Company?
A. I don't remember.
Mr. ALLEN: Now, on page 54.
Judge PENN: With reference to what exhibit?
Mr. ALLEN: Well, it's the last exhibit. It begins in the middle of the page, "By Mr. Allen," is the way it is headed.
Q. We have here a letter dated "New York, August 20, 1900," addressed to J. P. Gruet, Esq., Vice President of the Waters-Pierce Oil Company, purporting to be signed by H. M. Tilford, with the initials "R. H. M." Please examine that and see if you can identify that as having been written by you. Is that signature of Mr. Tilford in your handwriting (handing witness paper)?
A. It is in my handwriting.
Q. Did you write the letter, or did Mr. Tilford write it and give it to you to sign?
A. I must have written this letter.
Q. Have you any independent recollection of the letter,
1041 writing it, or anything why you signed Mr. Tilford's name to it instead of your own?
A. It was undoubtedly signed by oversight on my part.
Q. You were so accustomed to signing Mr. Tilford's name, per you, that you——
A. (Interrupting.) I had signed letters for him; yes, I had signed letters in his name, and undoubtedly this was an oversight.
Q. Were you signing letters in his name at that time?
A. I think it is likely that I should have; I don't remember.
Q. Isn't it a fact that you were signing a great many letters in his name at that time?

A. I signed some letters in his name.

Q. And you were so in the habit, you say, of signing them, that you unconsciously signed his signature instead of your own?

A. I might have signed his name just prior to that to some other letter, and it was an oversight my signing that.

Mr. ALLEN: We now offer the cross examination of Mr. McNall by Judge Priest, counsel for the defendant, on page 60.

Judge PENN: Mr. Allen, couldn't you read both the questions and answers, so we could have the benefit of a copy?

Mr. ALLEN: All right.

(Mr. Allen read both the questions and answers.)

Q. Mr. McNall, you have stated in your examination in chief that you were employed by the Waters-Pierce Oil Company from about the first of April, 1900, until 1906, as agent at the city of New York; that some months after you entered upon that employment you were given the title of Commercial Agent; is that a true summary of your statement?

A. With the exception of the dates, Judge. You said April first.

Q. From about the first of April?

A. It was in the year 1900.

Q. Yes, the early part of 1900. Was the title of Commer-
1042 cial Agent understood by you to be in any wise definitive of the duties which you were to perform?

A. No, I didn't understand that it was.

Q. It was simply an official designation without attaching to it any particular signification?

A. Yes, sir.

Q. You discharged such duties as were requested of you in addition to the general line of duties that you understood would be attached to your functions here at New York?

A. Yes, sir.

Q. Do you know whether the Waters-Pierce Oil Company had any other agent or official representative in New York during that period?

A. I do not think they had.

Q. What, in dollars, approximately, was the amount of transactions conducted by you in New York for the Waters-Pierce Oil Company annually?

A. A very large amount; I should say several hundred thousand dollars.

Q. And generally all of the correspondence of the Waters-Pierce Oil Company concerning its business dealings and intercourse in the East was conducted through you for purposes of convenience?

A. So I understand.

Q. You know of no other than yourself?

A. I do not.

Q. The period of your employment was quite an active one and involved a great many dealings of different characters for the Waters-Pierce Oil Company and a great deal of correspondence with the home office at St. Louis; is that true?

A. Yes, sir.

Q. Prior to being called as a witness you had no knowledge either

from the plaintiff or the defendant in this case as to what facts
1043 you would be interrogated, did you?

A. No, sir.

Q. So that necessarily you couldn't recall the details of transactions at this distant period from the occurrence of many of them?

A. I could not.

Q. A great many supplies were purchased by you for the Waters-Pierce Oil Company in New York and the vicinity of New York?

A. Yes, sir.

Q. A great deal of export business was done by the Waters-Pierce Oil Company from New York to the Republic of Mexico, was it not?

A. Yes, sir.

Q. That consisted of the purchase of raw materials, machinery, and all of the incidents of an equipped refinery being conducted by the Waters-Pierce Oil Company in the Republic of Mexico?

A. Yes, sir.

Q. Did you make large purchases of tin and of crude petroleum for the Waters-Pierce Oil Company?

A. I did.

Q. Now, will you describe the formula requisite in the exportation of merchandise or material from New York or other ports in the United States to the City of Mexico?

A. After the purchase, Judge?

Q. After the purchase.

A. Certified invoices had to be obtained, bills of lading, gross and net weights, freight arrangements had to be made. It was necessary to collect the goods in New York City if shipped from out of town and see that they were delivered at a specified time to the exporting vessel.

Q. And did all of these consignments require the signature of the Mexican Consul here?

A. Yes, sir.

1044 Q. You know in a general way that the Standard Oil Company of New Jersey—by that I mean the Standard Oil Company organized under the laws of New Jersey—does a large manufacturing business in petroleum and its products and by-products?

A. Yes, sir.

Q. Did the Waters-Pierce Oil Company, so far as you know, manufacture any products from petroleum or refined petroleum in the United States?

A. As I understand it they did not.

Q. A great many of the purchases made by you were made from different manufacturing interests in the East and in the vicinity of New York?

A. They were.

Q. You have been shown and identified about 37 letters written by you. They cover a date, I think, from 1902 to 1905, inclusive, one being dated as early as August 20, 1900. Now, in your opinion, are the letters thus exhibited to you a mere fraction of the correspondence conducted by you with the officers of the Waters-Pierce Oil Company at its home office in St. Louis?

A. Yes, a small part.

Q. In one of these letters you refer to a Mr. Van Beuren. For the purpose of specifically directing your attention to that subject I submit to you a letter dated January 24, 1905, entitled "Changes in Mexico Salaries." Who was Mr. Van Beuren and what relation did you understand he bore to the Waters-Pierce Oil Company?

A. I don't know who Mr. Van Beuren was, but I understood he was largely interested in the Waters-Pierce Oil Company?

Q. You know Mr. Van Beuren personally?

A. Yes, I knew him personally.

Q. And you understood he was largely interested as a shareholder in the Waters-Pierce Oil Company?

A. Yes, sir.

1045 Q. Did you understand early in your connection with the Waters-Pierce Oil Company that the Standard Oil Company of New Jersey held a stock interest—by that I mean shares of stock—in the Waters-Pierce Oil Company?

A. I thought they were interested in the company.

Q. Now, I will ask you whether it is not true that the most of those letters which were written by you, without specifically enumerating them, making inquiries as to the business affairs, the cash, the statement of salaries, statement of improvements, and all questions of that kind, were not inquiries which you were asked to make as the Eastern representative of the Waters-Pierce Oil Company in the interest of the shareholders of that company, either Mr. Van Beuren or the Standard Oil Company of New Jersey?

A. Yes, sir.

Q. And those inquiries were made as a matter of course assuming that the home office at St. Louis if they were improper would not answer them, and if they were proper would answer them?

A. Yes, sir.

Mr. ALLEN: Well, we don't offer the next question and the answer.

Q. From what source did you receive the orders for the purchase and shipment of supplies, and so forth?

A. From Mr. C. M. Adams, mostly, of the Waters-Pierce Oil Company at St. Louis.

Q. I want to call your attention to a letter, New York, June 16, 1902, addressed to the Waters-Pierce Oil Company, St. Louis, in which you say, "We enclose herewith itemized statement of my account with balance in our favor of $557.38. Will you kindly remit checks as follows." Now, I ask you if you know how the pronoun "our" came into that letter?

1046 A. I believe that this letter was written from a memorandum received by me from one of the accounting officers in the building, and the memorandum was probably turned over by me to my stenographer to write the request for remittance, and I think he must have copied the memorandum just as he received it.

Q. Now, is there attached to that letter a copy of the account referred to?

A. Yes, sir.

Q. And that shows that the account was in favor of whom?
A. Walter Jennings, Agent.
Q. Were you ever employed by Walter Jennings, Agent?
A. No, sir.
Q. Did you purchase any goods from Walter Jennings, Agent, for the Waters-Pierce Oil Company?
A. I purchased goods covered by this statement.
Q. Well, many times, didn't you, besides——?
A. Oh, yes.
Q. And you never inquired and don't know for whom Walter Jennings was agent?
A. No, sir.
Q. (Continued) Did you?
A. No, sir.
Q. Do you know now for whom he was agent at that time?
A. I do not.
Q. The purchases which you made of Walter Jennings simply ran in his name as agent?
A. Yes, sir.
Q. Without disclosing for whom he was agent?
A. Yes, sir.
Q. And you don't know for whom he was agent?
A. I don't.

Q. And you were never employed by Mr. Jennings at that
1047 time, or during the period that you were employed by the Waters-Pierce Oil Company?

A. No, sir.
Q. Never at any time, in fact?
A. Never.
Q. Now, while I am on that proposition, I want to ask whether during the time you were employed as commercial agent by the Waters-Pierce Oil Company you received any salary from any one else?
A. I did not.
Q. I call your attention now to a letter dated New York, March 24, 1904, addressed by you to Mr. S. Johnson, the one marked Exhibit 8 to your deposition in chief, and ask you from whom you purchased the crude scale wax referred to in that communication, if your memory is refreshed by reference to this communication, or by your general course of business?
A. (Looks at letter.) It was purchased, I think, through a lubricating office in the building.
Q. From the manufacturer?
A. Not from the manufacturer, No.
Q. And was this a memorandum which you originated, or which was in the form of a communication to you, in turn transmitted by you to Mr. Johnson?
A. It was a communication received by me, as I remember.
Q. And for the purpose of economy in time you had it transcribed and sent to Mr. Stephen Johnson at St. Louis?
A. Yes, sir.

Q. You can't state at this time, in view of the large number of your business transactions, the particularities of any one of the matters referred to in the correspondence which has been exhibited to you?

A. I can not.

Mr. ALLEN: Redirect examination, by Mr. Lightfoot:

Q. I believe, Mr. McNall, that you stated in your direct ex-
1048 amination that since you severed your connection with the Waters-Pierce Oil Company in May, 1906, that you have been employed in the export department of the Standard Oil Company of New York, at 26 Broadway?

A. The export business.

Q. In the export business. Well, who for?

A. For the Standard Oil Company of New York.

Q. Now, you spoke a moment ago, in answer to a question by Judge Priest, about purchasing the crude scale wax mentioned in your letter marked Exhibit 8, from a lubricating department in the building?

A. Yes, sir.

Q. The lubricating department of what company did you purchase that —?

A. I don't know what companies the lubricating office represented.

Q. Well, you do know that it represents more than one company located at 26 Broadway, do you not?

A. I think it represented more than one company.

Q. Well, now, what is your information about what companies it does represent? Not all of them—I don't suppose you could give them all—but those of them that you know of that it does represent?

A. I know that part of the goods I purchased from them was shipped from different points.

Q. What points?

A. Whiting, Indiana, and from New York City.

Q. Any of them from Neodesha, Kansas?

A. No, I don't remember any.

Q. Any of them from Beaumont, Texas?

A. No, I don't remember any.

Q. Well, from what other points do you remember that goods were shipped that you purchased from the lubricating department at 26 Broadway?

A. I don't think there were other points; I don't recall them.

Q. Any from Franklin, Pennsylvania?

A. I couldn't say.

1049 Q. Well, now, what is your information about the companies doing business through the lubricating department at 26 Broadway? What companies? The Standard Oil Company of New York?

A. Well, I have no information on that point, Mr. Lightfoot.

Q. None whatever?

A. I have none at all as to who is represented there, or as to who that department represents.

Q. It is right there in the building, is it not?

A. Yes, sir.

Q. They have had that department there during the entire time that you have been employed there, have they not?

A. I couldn't say during the entire time; during the time I was employed by the Waters-Pierce Oil Company.

Q. You knew there was such a department there?

A. Yes, sir.

Q. Now, is Mr. S. H. Payne—Silas H. Payne—connected with that department, the lubricating department?

A. He is in that office.

Q. He is at the head of that department, is he not?

A. I understand that he is.

Q. Well, now, you say that this letter just referred to was copied from a memorandum that was sent from that office?

A. Is that correct?

A. As near as my recollection serves.

Q. When did you ascertain that fact? Since you were examined here?

A. Since I saw that letter.

Q. Well, how did you get that letter? Did you see the memorandum?

A. No.

Q. Well, how did you get the information that it was copied from the memorandum—this letter marked Exhibit 8, relating to crude scale wax—how did you get the information that the letter
1050 was copied from the memorandum sent to you from the lubricating department?

A. It is simply a recollection, Mr. Lightfoot.

Q. Well, you just remember that?

A. Yes, sir.

Q. Have you that memorandum now?

A. No.

Q. Have you seen it since you had this letter?

A. No.

Q. Were you instructed by Mr. Payne to make these suggestions to the Waters-Pierce Oil Company concerning these goods?

A. I wasn't instructed by him, no.

Q. Well, who were you instructed by to make these recommendations?

A. The only instructions I received were from the home office, and any letters or memoranda of that kind I would forward to the home office.

Q. And this has "S. H. P." in the corner, and that indicates that the contents of that letter were sent to you by Mr. Payne, does it not?

A. Yes, sir, from that office.

Q. How did you transact your business with that office, Mr. McNall? If you wanted lubricating oils for the Waters-Pierce Oil Company would you make a requisition on the lubricating department there for such lubricating oils as you wanted?

A. For such lubricating oils as the home office ordered.

Q. You would make requisitions to that department for them?
A. Yes, sir.
Q. Now, then, was any of these goods that you made requisition on the lubricating department for supplied to you by the Standard Oil Company of New Jersey?
A. I don't remember.
1051 Q. You don't remember whether they were or not?
A. No, sir.
Q. Were any of them supplied to you by the Standard Oil Company of New York, or any refinery owned by them or controlled by them?
A. I don't remember.
Q. Was any of them supplied to you by the Atlantic Refining Company?
A. I don't remember any specific case.
Q. Any of them supplied by the Standard Oil Company, Pratt Works?
A. I don't remember, Mr. Lightfoot.
Q. You don't remember what companies, then?
A. No, sir.
Q. (Continuing:) Supplied the orders that you filled with the lubricating oil department?
A. No, sir.
Q. Now, then, if you received an order for marine oil to be delivered to vessels at any port in Texas, where would you file that requisition?
A. If the order came from the home office I would file it with the marine oil department in the building.
Q. At 26 Broadway?
A. Yes, sir.
Q. They have such a department there?
A. There is an office there—marine oil office.
Q. And these oils would be furnished you, would they?
A. They would be furnished.
Q. Who by?
A. I don't remember who they would be furnished by. I think the marine oil department invoiced the goods, as far as my memory serves.
Q. Well, now, you did receive such orders during the time that you were there for marine oils, did you not?
A. I believe I did.
Q. And they were shipped to the defendant in Texas?
1052 A. Yes.
Q. Well, now, then, Mr. C. E. Bedford, is he connected with the marine oil department?
A. Who? Initials, please?
Q. C. E. Bedford.
A. Yes, sir. I believe he is.
Q. What position does he hold there?
A. I don't know, but I think he is head of that office.

Q. Well, now, what companies are connected or do business through the marine oil department at 26 Broadway?

A. I don't know.

Q. Do you know whether the Standard Oil Company of New Jersey does or not?

A. I do not know.

Q. You don't know any of the companies?

A. No, sir.

Q. You have never inquired?

A. No, sir.

Q. You know Mr. C. E. Bedford personally, do you not?

A. Yes, sir.

Q. You never asked him what companies were connected with the marine oil department?

A. No.

Q. Now, did the Waters-Pierce Oil Company have any contracts with any vessels touching at the ports in Texas for delivery of marine oil to them?

A. I don't know.

Q. Did you ever see any such contract?

A. I don't remember ever having seen any.

Q. Now, in the course of your business with the Waters-Pierce Oil Company, what did they do with sales or invoices made to
1053 vessels at the Texas ports, in case they delivered to that vessel marine oils? Did they make any report of it to you?

A. Yes, I occasionally received such report.

Q. Is it not a fact, Mr. McNall, that they delivered to vessels touching Texas ports marine oils where the Standard Oil Company had contracts with such steamers for oils? What is your answer to the question, Mr. McNall?

A. I believe the Waters-Pierce Oil Company did deliver occasional oils to the steamers for account of the marine oil department.

Q. Now, in such cases, Mr. McNall, where the Waters-Pierce Oil Company made deliveries to vessels at Texas ports for the account of the marine oil department of the Standard, they would render a statement to the marine oil department, would they not?

A. They would.

Q. And what action would the marine oil department take reference to such statements—with reference to credits for those deliveries?

A. As I remember it, the Waters-Pierce Oil Company would bill the marine office for such goods delivered.

Q. Then what would the marine department do?

A. Well, I don't know; I suppose they would bill their customer.

Q. They would collect the bill from the customer to whom the Waters-Pierce Oil Company had made the delivery?

A. I presume so.

Q. And then give the Waters-Pierce Oil Company credit for the value of the goods delivered?

A. As I remember it.

Q. Now, has the Standard Oil Company of New Jersey an office at 26 Broadway, Mr. McNall, or a representative there?

A. I don't know.
Q. You don't know whether they have an office there or not?
1054 A. No, I do not.
Q. What companies have offices there that you know of, or representatives?
A. Well, I don't know, Mr. Lightfoot.
Q. How long have you been in the building, Mr. McNall?
A. I have been there a good many years.
Q. How many stories is there to it?
A. There are about fifteen.
Q. How many employes inhabit that building, approximately?
A. Perhaps five hundred; I don't know, maybe a thousand.
Q. Do you know of any concern domiciled in that building that is not connected with some of the Standard Oil Companies?
A. Yes.
Q. What concern is that?
A. Jessup & Lamont.
Q. What kind of business are they in?
A. Stock brokers, I believe.
Q. What floor are they on?
A. I couldn't remember that, either.
Q. Do you know of anybody else?
A. There are others, but I can't recall them just at present.
Q. You don't know whether the Standard Oil Company of New Jersey has an office there or not, you say?
A. No, sir.
Q. Well, how about the Standard Oil Company of New York?
A. I think they have an office there.
Q. Well, the Standard Oil Company of Indiana?
A. I know of no such office.
Q. Of Kentucky?
A. I know of no such office.
Q. Did you ever examine the telephone book there to see
1055 what companies were reached through the Standard Oil Company number?
A. No.
Q. Now, Mr. McNall, you say that you were employed by Mr. Pierce?
A. Yes.
Q. To act as commercial agent of the Waters-Pierce Oil Company?
A. Yes.
Q. I ask you if Mr. H. C. Pierce has not an office in New York at 25 Broad Street?
A. I believe he has in the Broad Exchange building.
Q. Have you ever been in his office?
A. Yes, sir.
Q. How long has he had that office there?
A. Something over a year, I think.
Q. Hasn't it been longer than a year? How much longer than a

year? Hasn't he had an office there during the time that you have been employed as commercial agent of the Waters-Pierce Oil Company?

A. I don't know that he has.

Q. Now, you stated in your cross examination that you made large purchases of tin and crude petroleum for export to Mexico. From whom did you purchase that tin?

A. From an office in the building.

Q. At 26 Broadway?

A. Yes, sir.

Q. Well, now, from what office did you purchase it?

A. The office of Mr. H. A. McGee.

Q. What department is it generally called?

A. I don't think it is designated as a department.

Q. The supply department?

A. No; he simply has an office there.

Q. Well, what manufacturing company produces that tin?

A. Some of it is produced in this country, and some abroad.

1056 Q. Some of it produced where?

A. Some in this country and some abroad.

Q. I mean by what companies?

A. I think the American Tin Plate Company in this country.

Q. Is he the representative of the American Tin Plate Company or of the Standard Oil Company?

A. The Standard Oil Company, I think.

Q. Which one of the Standard Oil Companies does Mr. McGee represent?

A. I don't know.

Q. Now, you purchased supplies of crude petroleum to be exported to Mexico for the Waters-Pierce Oil Company?

A. Yes, sir.

Q. From whom did you purchase the crude petroleum?

A. From the Atlantic Refining Company at Philadelphia.

Q. Did it have an office in the building?

A. It had a representative in the building.

Q. Who was the representative in the building of the Atlantic Refining Company?

A. I think Mr. F. D. Ash, as I remember.

Q. Mr. F. D. Ash was the agent of the Atlantic Refining Company, and when you received requisitions for crude petroleum you filed all such requisitions with Mr. Ash, did you not?

A. With Mr. Ash.

Q. Did you ever buy any crude petroleum for the Waters-Pierce Oil Company from any other concern?

A. I don't remember buying any from any other concern.

Q. Did you ever ask for any quotations from any other producing company?

A. No, I don't remember of having done so.

Q. You are now in the export business, you say, connected with that department?

1057 A. Yes, sir.

Q. Is that department fully equipped to look after the exportation of oils to different countries?

A. Yes.

Q. Does it attend to those details in all of its shipments abroad, seeing about getting the bills of lading approved by the consul, and attending to all of the details necessary to the shipment of oils and other products of petroleum to foreign countries?

A. I believe they do.

Q. They look after those details there?

A. Yes, sir.

Q. Now, I believe that you said, Mr. McNall, in your cross-examination, that you looked after those details connected with the export business for the Waters-Pierce Oil Company?

A. Yes, sir.

Q. Did the Waters-Pierce Oil Company have any other representative here in New York at that time during the period of time that you were employed by them?

A. Not that I know of.

Q. Did you personally take the bills of lading to the Mexican Consul to get his approval of them?

A. I did not.

Q. Did you personally look after all the details incident to the exportation of goods purchased for the Waters-Pierce Oil Company?

A. Many of them.

Q. Who attended to the matters, then, that you did not attend to in connection with the exportation of oils and supplies?

A. The parties furnishing the oil furnished the shipping documents.

Q. And so attended to all the details necessary?

A. It was customary.

Q. You say it is customary for the companies you pur-

1058 chased these supplies from to look after these details, is it not?

A. Some of the details.

Q. Well, what details is it they don't look after?

A. The custom-house work they can't look after—the custom-house entries; the collection of draw back; the arrangement from the steamer lines.

Q. What fees do you pay on export goods to Mexico?

A. There aren't many fees on export goods, but there are custom-house entries covering export goods.

Q. It is merely a manifest of the goods to be shipped out, is it not?

A. No, they are draw back entries.

Q. What do you mean by draw back entries, Mr. McNall?

A. The government repays a portion of the duties on tin plate when the same is exported in the shape of tin cans.

Q. Now, you testified a while ago about this letter here of January 24, 1905, marked Exhibit number 3, relating to changes in Mexican salaries. You stated in this letter, "I have been over this matter with Mr. Van Beuren, and as I telegraphed you to-day, he agrees with your suggestion that these changes be made as effective as of

January 1st." You stated that you knew at that time that Mr. Van Beuren was connected with the Waters-Pierce Oil Company in some way, or was a stockholder in it?

A. I thought he was.

Q. And you also thought that the Standard Oil Company of New Jersey had an interest in it?

A. Yes.

Q. At whose request did you submit this salary list to Mr. Van Beuren?

A. I don't know as I was requested by any one.

Q. Was the salary list sent to you?

A. Yes, sir, it was sent to me.

Q. Did any one request you to submit it to him?

1059 A. I do not remember that they did.

Q. What was the purpose of submitting the salary list to him?

A. I submitted other matters to Mr. Van Beuren.

Q. I understand, but I want to know about the salary list.

A. I thought he ought to know what was proposed, and I have his suggestions in regard to them.

Q. And have his approval of it?

A. Approval or suggestions.

Q. Did he approve the salary list that was submitted to him?

A. I believe he did from that letter.

Mr. ALLEN: There is a correction there that he makes—I don't know whether it shows in that copy or not, Judge. I read it just as he corrected it.

Judge STEDMAN: There is nothing shown here.

Mr. ALLEN: "Did he approve the salary list that was submitted to him? Answer—I believe he did from that letter." You will see he has initialed it and struck out the "don't." This is the original, you understand.

Q. Did he ever offer any objections to any lists that you submitted to him?

A. I don't remember that he did.

Q. Did you ever submit any of these salary lists to the Standard Oil Company or any of its representatives during the time you were there?

A. No.

Q. You don't know what Mr. Van Beuren did with the letter?

A. I do not.

Q. You don't know whether Mr. Van Beuren submitted it to any of the officers of the Standard Oil Company?

A. I do not.

Q. Now, I will refer you to a letter about which you testified in your cross examination concerning an account with Walter

1060 Jennings, Agent, at 26 Broadway, marked Exhibit number 30. I believe you identified that account, did you not, Mr. McNall?

A. I identified the letter.

Q. This account, the balance due on it, shows to be $557.38, does it not, Mr. McNall?

A. Yes.

Q. And it is attached to a letter in which you say, "We enclose herewith itemized statement of May account with balance in our favor of $557.38, for which kindly remit checks as follows: In favor of Atlantic Refining Company, $470.90; and in favor of the Standard Oil Company of New York, $86.48." Now, I will ask you to examine that and say whether or not that letter does not refer to the particular account that is attached to it?

A. I think that it does.

Q. Now, then, you bought goods from Walter Jennings, did you not, for the Waters-Pierce Oil Company?

A. I bought goods from offices in the building that may have been invoiced from Walter Jennings, Agent.

Q. Now, then, did you write a letter here to the Waters-Pierce Oil Company in which you asked them to remit checks to the Atlantic Refining Company for $470.90, and to the Standard Oil Company of New York for $86.48, to cover an account made with Walter Jennings? Explain how that is, Mr. McNall, that Mr. Jennings—this account with Walter Jennings should be paid to the Standard Oil Company of New York and the Atlantic Refining Company?

A. I believe that Mr. Walter Jennings was agent for the two companies covered by that letter, and that the accounting department requested payment, as requested in that letter.

Q. And you so directed the Waters-Pierce Oil Company to make payment in accordance with that understanding?

A. Yes, sir.

1061 Q. Now, then, this letter was written June 16, 1902. You stated to Judge Priest that, in explanation of the word "our" in this letter, that that was evidently copied from a memorandum. Have you the memorandum, Mr. McNall, that that was copied from?

A. No.

Q. Have you seen this memorandum since this letter was exhibited to you, two days ago?

A. I have not.

Q. Then upon what do you base the judgment that that was copied from a memorandum?

A. Simply from what occurred occasionally, as I remember now.

Q. Well, state what that occurrence was?

A. Occasionally I would receive a memorandum from some accounting department, requesting payment of an account or enclosing a statement of an account, and when so received I transmitted them to the home office.

Q. Well, did you transmit that memorandum in this case?

A. I presume I did.

Q. Now, since exhibiting to you these letters two days ago, you have gone over them all carefully, have you, Mr. McNall?

A. I have read them, yes.

Q. Have you had any consultation with the counsel for the defendant here concerning these letters?

A. No.

Q. You have not talked with him at all about it during the last two days?

A. No.

Q. Now, when you received the requisitions for these goods covered in this invoice, shown in this invoice, with whom did you file the order?

A. I don't remember, Mr. Lightfoot.

1062 Q. Look at the invoices; it says "star transfer." What is meant by "star transfer?"

A. I don't know.

Q. What is meant by "Scranton?"

A. I don't know what that means.

Q. Is that goods shipped from some other point?

A. It is possible, but I don't remember.

Q. You don't remember who you filed the order with?

A. No, I do not remember who I filed those orders with.

Q. Now, such accounts as these were rendered monthly to you, were they not, Mr. McNall?

A. No.

Q. How often?

A. Only occasionally; I do not remember of receiving but very few.

Q. Now, the crude scale wax that was referred to in the letter a little while ago, you say that was purchased from the lubricating department in the building?

A. Yes.

Q. The lubricating department of the Standard Oil Company?

A. Well, it is a lubricating department; I don't know who they represent.

Q. You knew all the time that you were connected with the Waters-Pierce Oil Company as its commercial agent at 26 Broadway, that the Standard Oil Company of New Jersey was a stockholder in that concern, did you not, Mr. McNall?

A. I did not know it; I had the impression they were interested in it.

Q. Well, that was your information, was it not?

A. Yes, my information.

1063 Q. Now, then, when did you find out, Mr. McNall, that Mr. Van Beuren was a stockholder and interested in the Waters-Pierce Oil Company?

A. I don't remember.

Q. How did you find it out?

A. I don't remember that.

Q. Did Mr. Van Beuren tell you so himself or Mr. Pierce?

A. I can not say.

Q. Where did you meet Mr. Van Beuren when you submitted these different matters to him?

A. He called at the office.

Q. He called at your office?

A. Yes.

Q. How often did he call at your office?

A. Occasionally; I don't remember how often.

Q. Well, just approximate it.
A. I could not even approximate it, Mr. Lightfoot.
Q. What relation is Mr. Van Beuren to Mr. John D. Archbold?
A. I have heard that he was his son-in-law.
Q. Mr. Archbold, he has an office at 26 Broadway, does he not?
A. Yes, sir.
Q. What company is he connected with there?
A. I don't know.
Q. Have you any information on it at all?
A. I have no information.
Q. What business is he in there?
A. He is connected with the oil business.
Q. I will ask you if that is not the fact, that he is one of the higher officials of the organization at 26 Broadway?
A. I believe he is.

"Judge PRIEST: What organization do you mean?
"Mr. LIGHTFOOT: I can not be more specific. If the witness will give me a little more definite information, I will try to be more specific."

1064 Q. You don't know what company he is connected with or what companies?
A. No, I do not.
Q. When did you learn, Mr. McNall, that Mr. Van Beuren was a stockholder in the Waters-Pierce Oil Company?
A. I don't remember.
Q. When did you learn that the stock held in his name was owned by the Standard Oil Company of New Jersey?
A. I never knew it.
Q. Did you ever hear that?
A. I think I saw something about it in a newspaper.
Q. Have you heard some of the officers or people at 26 Broadway say anything about it?
A. I don't remember.
Q. Did you ever hear Mr. Pierce say anything about it?
A. I don't remember ever having heard him say anything about it.
Q. Then, how did you know that he was a stockholder at all?
A. I learned it from some source.
Q. Don't you know what source you learned it from?
A. I don't remember now.
Q. Well, how long did you continue to transact business for the Waters-Pierce Oil Company with Mr. Van Beuren?
A. Up to the time, I think, that I left their employ.
Q. Well, now, when did you commence?
A. That I can not say.
Q. To refresh your memory, I will ask you if it was not during the year 1904, some time during the year 1904?
A. It may have been.
Q. You had conferences and businesses with the Standard Oil Company of New Jersey, the other stockholder of the Waters-Pierce

Oil Company, did you not, during the time you were employed there?

A. I don't remember any conferences; I may have been
1065 asked questions by some of the representatives.

Q. What representatives of the Standard Oil Company of New Jersey asked questions and asked for information?

A. I don't know who the men are connected with the Standard Oil Company of New Jersey's organization.

Q. You knew which ones asked you questions, did you not?

A. Yes.

Q. Which ones asked you questions?

A. I have been asked questions by Mr. H. M. Tilford, and possibly others.

Q. And Mr. W. H. Tilford?

A. I don't remember of his ever asking me anything.

Q. Did you ever submit any reports or letters to Mr. W. H. Tilford received from the Waters-Pierce Oil Company?

A. I don't remember of ever having done so.

Q. Well, to whom did you submit these letters and reports, Mr. McNall?

A. I did not submit letters and reports to any one.

Q. When information was desired by the Waters-Pierce Oil Company from the Standard Oil Company of New Jersey, to whom did you apply for it?

A. Well, whatever information they wanted, I would obtain from parties who I thought could give it.

Q. Well, name some of the parties now that you were in the habit of asking information from?

A. I have asked for information from Silas H. Paine and Mr. H. M. Tilford and the supply department.

Q. Well, who is at the head of that?

A. I don't really know who is at the head of it.

Q. Well, who was at the head of it?

A. I understand it was Mr. T. H. Wheeler, but I am not positive of that, that he is at the head of that department.

Q. Did you ever ask for any information from Mr. H. A. Hutchins?

1066 A. No, I think not.

Q. He has an office at 26 Broadway, has he not?

A. I believe he has.

Q. Has Mr. Rockefeller an office there, John D. Rockefeller?

A. I think not.

Q. John D. Rockefeller, Jr., has he an office there?

A. I think he has; I see him occasionally.

Q. I will get you to look at this telephone directory here, Mr. McNall (handing witness book); it is a telephone directory of the telephone system of New York, is it not?

A. Yes, sir.

Q. Is it the one in general use at this time or has been during this year?

A. It purports to be.

Q. What date has it?

A. February 1st, 1907.

Mr. ALLEN: There is another correction there. It was put down first "January," and then changed to "February."

Q. I will get you to look at that and call off the concerns there and departments that can be reached by telephone at 26 Broadway that are listed under the head of the Standard Oil Company of New York. Just call off that list.

A. (Reading:) Lighterage department; supply department; O. T. Waring; fuel oil department; Acme Works; freight department; James G. Newcomb, Agent; Bergenport Chemical Works; Thompson & Bedford Department; Oswego Works; wick department; naphtha department; stationery department; J. D. Rockefeller, Cashier; Philip Ruprecht, and James Smith.

Q. Now, that also shows that all of those officers are located at 26 Broadway, does it not?

A. Yes, sir, I should say it did.

1067 (By Judge PRIEST:)

Q. It shows there the departments of the Standard Oil Company of New York that have a common telephone?

A. Yes, sir.

(By Mr. LIGHTFOOT:)

Q. Mr. McNall, do you know Mr. H. M. Flagler?
A. Slightly.
Q. Has he an office at 26 Broadway?
A. Yes.
Q. Do you know Mr. G. F. Vilas?
A. I don't know him.
Q. You don't know any Mr. Vilas?
A. No, sir.
Q. Do you know Mr. Charles T. White?
A. Yes, sir, I know Mr. Charles T. White.
Q. Has he an office at 26 Broadway?
A. Yes, sir.
Q. What business is he in there?
A. Transfer clerk, I think.

(By Mr. ALLEN:)

Q. You mean stock transfer clerk?
A. Yes, sir.

(By Mr. LIGHTFOOT:)

Q. And transfers the stocks of these various corporations?
A. The stock of the Standard Oil Company.
Q. Is he not Secretary of the Standard Oil Company of New York?
A. I don't know what companies he may be connected with.
Q. Now, the Continental Oil Company referred to in your direct examination as the Continental Oil Company of Denver, is that the company organized under the laws of the State of Iowa?
A. I believe it is.

Q. With its principal office at Denver, Colorado?
1068 A. Business office, yes.
Q. Has the Standard Oil Company of Ohio a representative at 26 Broadway?
A. Not that I know of.
Q. Mr. H. H. Rogers, did you know him?
A. Yes, sir.
Q. Has he an office at 26 Broadway?
A. Yes, sir.
Q. Mr. W. H. Tilford?
A. Yes.
Q. He has an office there?
A. Yes, sir.
Q. Mr. H. M. Tilford?
A. Yes, sir, he has an office at 26 Broadway.
Q. Mr. Silas H. Paine, he has an office there, you have already testified?
A. Yes, sir.
Q. And John D. Archbold, he has an office there?
A. Yes, sir.
Q. Who are the general attorneys for the Standard Oil Company at 26 Broadway?
A. I don't know; I understand Mr. M. F. Elliott is.
Q. How long has he been there?
A. I don't know how long, Mr. Lightfoot; a number of years.
Q. Since 1900?
A. I think so.
Q. Do you know Mr. S. C. T. Dodd?
A. I knew Mr. Dodd.
Q. He is dead now, isn't he?
A. Yes, sir.
1069 Q. He had an office also at 26 Broadway?
A. Yes.
Q. What position did he hold?
A. I understand he was attorney for the Standard Oil Company.

Mr. ALLEN: We don't offer the next two questions on page—third page from the last—by Judge Priest, two questions by Judge Priest, and the objection follows by myself.

Q. And is it a fact that the Waters-Pierce Oil Company charged for oil furnished the ships at the request of the Standard Oil Company of New York its current prices for the sale of oil at that place?
A. Yes, sir.
Q. And charged that to the Standard Oil Company of New York and bills were forwarded against the Standard Oil Company of New York?
A. I understand that is so.

(By Mr. LIGHTFOOT:)

Q. Did you have any information about what the current prices of the Waters-Pierce Oil Company for marine oils delivered at the ports in Texas were, Mr. McNall?

A. I don't remember that I did.

Q. Well, then, how did you know that the Waters-Pierce Oil Company charged those steamers or the Standard Oil Company their current prices for oil delivered to steamers?

A. The Standard Oil Company of New York charged the current——

Q. (Interrupting.) No, I said, how did you know that the Waters-Pierce Oil Company charged the Standard Oil Company of New York their current prices for marine oils delivered to steamers at Galveston, if you don't know what their current prices for marine oil were at those ports?

A. I believe I so instructed them to at one time.

Q. You so instructed them to—— (Last question repeated.)

A. I believe I so instructed them to, at one time. (Pausing.) Requested them to, instead of instructed.

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Q. What did you request them?

A. As I remember it, I asked them to make deliveries of marine oils to vessels and bill those deliveries to the Standard Oil Company of New York, Marine Department, at their current prices; I think I have a recollection of doing that.

Q. Now, I will ask you to refresh your memory, if that don't refer to contract oils, oils for which the Standard Oil Company of New York had contracts with vessels touching at those ports?

A. Not necessarily.

Q. I will ask you, then, if they had any instructions with reference to illuminating oils for delivery to steamboats—I mean, to vessels at Texas ports?

A. I think I requested them to follow a similar custom in billing.

Q. Then, it is your recollection that the Waters-Pierce Oil Company had instructions to deliver all oils to vessels touching at ports there for the account of the Standard Oil Company of New York, is that true?

A. Not on all oils.

Q. For which oils, then?

A. For oils which the marine oil department ordered from them.

Q. They would be delivered before the marine oil department would order them, wouldn't they?

A. If we received instructions that a vessel was coming there before she arrived at a port in Texas, they would be requested to deliver anything to that vessel that she might require and charge *if* to the marine oil department.

Q. Now, suppose that the vessels reached there before you knew it and needed oil, what would be the custom then?

A. As I understand it, they would sell the oil to the ships and collect the money for it.

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Q. And not bill it out to the Standard Oil Company?

A. No.

Q. And on all oils delivered to them?

A. On all oils delivered to a ship, and not ordered of the Standard Oil Company, Marine Department, they would bill to the ship and collect the money from the ship.

Mr. ALLEN: There is a correction there that he initials, also.

Q. Have you any knowledge of any such transaction ever taking place, Mr. McNall?

A. I have a general business idea that that took place.

Q. By whom were you informed of such transactions that they did take place?

A. It came out in correspondence with the home office.

(By Judge PRIEST:)

Q. The home office of the Waters-Pierce Oil Company, you mean?

A. The home office of the Waters-Pierce Oil Company.

Judge STEDMAN: We offer the third page from the last of McNall's deposition, two questions propounded by Judge Priest and answered by the witness.

Q. I only want to call your attention to one fact in connection with your re-examination in chief. You spoke of the Waters-Pierce furnishing to the Standard Oil Company of New York some oil at ports in Texas?

A. Yes.

Q. You said that that was a sale by the Waters-Pierce Oil Company to the Standard Oil Company of New York. It having no oil in Texas and doing no business there, it requested the Waters-Pierce Oil Company to furnish to ships that might touch at certain ports and charge to it?

1072 Mr. ALLEN: To that question and answer we object as being leading and suggestive, and calling for a conclusion and not the facts, and states the information of the witness,—the same objection that was made at the time.

Judge STEDMAN: In response to that objection of counsel, I will say that witness was called by the other side, and this is cross examination by the counsel for the defendant in the case. Furthermore, as to the nature of the answer, I do not think it is subject to the criticism that it is merely a conclusion of the witness. They are facts that he relates.

The COURT: The objection is overruled.

A. Those are the facts.

Mr. ALLEN: Now, plaintiff next offers in evidence the agreement attached to the petition of plaintiff and marked Exhibit "C". It is an agreement made and entered into in the city of Cleveland, Ohio, on the 5th day of October, 1894, by and between the Eagle Refining Company and others, and A. W. Clem of the city of Dallas, and the Waters-Pierce Oil Company, a corporation organized under the laws of the State of Missouri, and then the additions and acceptances thereto.

Judge STEDMAN: We desire to offer the objection to the document proposed to be placed in evidence, (1) that those documents were executed long anterior to the creation of this defendant, and long anterior to the enactment of the statute under which this suit is being prosecuted; (2) because the testimony offered is immaterial and irrelevant, and does not tend to establish any issue in this case; and (3) because those documents evidence an executed contract

and can not be introduced in evidence in this case as affecting the matters to which this suit relates. Those documents evidence a contract that was consummated long prior to the organization of this defendant, and long prior to the enactment of these
1073 laws, and being an executed contract it can not be maintained that that matter was continued in effect by the parties; and, further, that those matters were adjudicated in the prior Waters-Pierce Oil Company case in this court, as set up in our answer.

Mr. ALLEN: The contract was dated the 5th day of October, 1894. It is an agreement that these parties named as parties of the second part would not for a period of fifteen years do certain things. (Reads from contract.) A part of the consideration, as is shown, for that agreement is the employing of one A. W. Clem, who is a party to the instrument, as manager to conduct and carry on this business, and the agreement we shall offer in connection with it shows that this contract was carried out, and we propose to show that the present corporation carried out this contract for four years after it was organized.

The COURT: What do you mean by "carrying it out?"

Mr. ALLEN: By paying Clem the sums of money called for in the contract, after that time keeping him on a salary, and letting him run the business in the name of the Eagle Refining Company in accordance with the agreement here stated. I do not know whether Your Honor is familiar with all the details of this contract or not, but there are several details, among them being one that Clem shall continue as manager of the business.

The COURT: Do you propose to show that the defendant managed and controlled the business of the Eagle Refining Company in Texas under the name of the Eagle Refining Company subsequent to May 31, 1900?

Mr. ALLEN: Yes, sir, until 1904, we propose. Now, here is that part that I wish to call Your Honor's attention to. "This memorandum of agreement, made and entered into this 5th day of October, 1894, by and between the Waters-Pierce Oil Company and A. W. Clem"——

Judge STEDMAN: We prefer for the gentleman not to read
1074 that in the presence of the jury.

The COURT: It has all been read to the jury as a part of the pleadings.

Mr. ALLEN: We say this is all one transaction, and this is a memorandum we offer in connection with it, based upon the same consideration, that the first party has employed and by these presents does employ, etc. (reading from contract).

Judge STEDMAN: We desire to add specifically the objection to the arrangement with Mr. Clem, that it is shown by the document that the arrangement expired within two years after it was made in 1894. Therefore, it was an executed contract in 1897. That is in addition to the other objections.

Mr. ALLEN: The acceptance,—this is in the shape of a letter to W. H. K. Rose, General Manager of the Eagle Refining Company.

We propose to show that they carried out—that there was a transfer, and, of course, so far as the property was transferred that became an executed contract, but we propose also to show that they continued the business under the name of the Eagle Refining Company, ostensibly as an independent concern, in accordance with this agreement and in accordance with the provisions they kept Clem on the pay-roll, and continued to pay him, and continued to carry it on and conduct the business just as they had been doing theretofore, until 1904,—the present company.

The COURT: What was the date of the former suit, or what was the issue with reference to this contract?

Mr. ALLEN: Of that I am not advised. That is a matter of defense, however, as far as that is concerned.

The COURT: Ordinarily it would, but in that case the judgment is a record of this Court, and the Court judicially, but not personally, knows.

Mr. ALLEN: That judgment in that case was rendered in
1075 1897, but just what issue was made about this I am not personally familiar.

Judge PENN: That was withdrawn from the jury by the instruction of the Court, the jury instructed that that was not a violation of the law, and that issue was withdrawn. The matter is reported in full in the 44th Southwestern Reporter.

The COURT: Admitting it was withdrawn by the charge of the Court, I do not know what violation of the law was charged and predicated on this agreement.

Judge PENN: Our recollection is that the entering into of this agreement was a violation of the anti-trust law.

Mr. ALLEN: We admit that, that it was that the entering into of this agreement was a violation of the anti-trust law, and that the Court held that it was not, but still that would not affect the cause of action as we allege it in this case. The courts have repeatedly held that the Legislature may, after a contract has been made, provide that the carrying out of a contract of that nature may be a violation of the law, where it is a continuing contract and calls for something to be done in the future by the parties; that if they carry out the provisions of that contract thereafter, that then it becomes an offense, just as the Supreme Court of the State held in the case of the State against the American Express Company, that went up from this Court, went off on demurrer in Your Honor's Court. They held there, Your Honor will remember, that all of the contracts that were set up as violations of the law were executed prior to the passage of this anti-trust case. We charge that they continued to carry out those contracts. They might have been perfectly valid at the time they were entered into.

The COURT: There is no necessity of arguing that. Most of the evidence that has been admitted in this case has been admitted on that theory.

1076 Mr. ALLEN: That is all we are contending for. We expect to show that these exclusive features of the contract were carried out by this corporation after its formation in 1900, and which

was then in violation of the law that went into effect on the first day of January, 1900. Of course, we are claiming no penalties back of that time, back of May 31, 1900, but we propose to show they continued to carry out this contract up until 1904, when by mutual consent it was abrogated.

The COURT: What was the date of the judgment in the prior case?

Mr. ALLEN: 1897, three years before the passage of any anti-trust act that made it a violation of the law. That was under the law of 1889.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

(Thereupon the said agreement between the Eagle Refining Company and A. W. Clem and the Waters-Pierce Oil Company, dated the 5th day of October, 1894, was introduced in evidence.)

Mr. ALLEN: In connection with that, we offer in evidence an agreement signed by counsel, as follows:

"It is hereby stipulated and agreed by and between the counsel in this cause that the agreement signed and entered into by the Eagle Refining Company, S. S. Drake, President, S. S. Drake, A. G. Carpenter, W. A. Smith, William H. K. Rose and A. W. Clem, on the 5th day of October, 1894, and the memorandum of agreement dated St. Louis, Missouri, September 13, 1894, and signed by H. C. Pierce, President, and William H. K. Rose, and the acceptance signed by W. A. Smith, Secretary, dated Cleveland, Ohio, October 1, 1894, and the memorandum of agreement made and entered into in the city of St. Louis on the 5th day of October, 1894, and signed
1077 by the Waters-Pierce Oil Company, by H. C. Pierce, Pt., and A. W. Clem, all of which are attached to plaintiff's first amended original petition in this cause and marked Exhibit C, are true copies of each of said documents and may be offered in evidence in this cause with the same force and effect as if they were originals and properly proven up.

"It is further stipulated and agreed that the said agreements and contracts were executed and carried out; that if the defendant shall produce the originals of said documents, as set forth in Exhibit C as aforesaid, upon the trial of said cause, said originals may be substituted in lieu of said copies, and this stipulation and said orignal documents or this stipulation and the copies herein agreed to, in the event defendant does not so produce said originals, shall be offered in evidence in said cause subject to all legal objections that may be offered against the originals if the same were introduced."

Mr. ALLEN: We next offer a portion of the deposition of S. K. Wheeler. I am going to read the first two or three questions of the direct examination simply to identify Mr. Wheeler, show who he is, and then the other is on page 14 of his examination.

S. K. WHEELER, being produced and sworn on behalf of the Defendant, testified as follows:

Direct examination by Mr. JOHNSON:

Q. What is your age?
A. 40.
Q. What is your occupation?
A. Assistant General Manager of the Waters-Pierce Oil Company.

Mr. ALLEN: Now, then, you can begin the Cross Examination, beginning on page 14 of his testimony. We offer, I think it is all of that cross examination, practically speaking.

Q. You were employed, you say, as general representative
1078 of the company from November, 1903, to June, 1905. During that period, how often did you visit the important cities in Texas?
A. Generally, as a general proposition only once.
Q. Only once during the entire time?
A. Yes, sir.
Q. What were your duties as the general representative in regard to the important cities in Texas?
A. I had authority to extend bulk deliveries, to points where they had not been making them before, and authorizing improvements in the plants.
Q. What were your duties with reference to giving instructions to the managers of the divisions, at that time?
A. I had authority to instruct them in relation to the conduct of our business.
Q. Did you give them instructions at that time as to what prices they should sell at?
A. No, sir.
Q. You had nothing to do with that, at all, at that time?
A. No, sir.
Q. Well, did you have any authority as to instructing them as to what representatives they should employ, in their departments?
A. Yes, sir.
Q. How often during that time had you visited San Antonio, in your capacity as general representative of the company?
A. I think twice.
Q. How often did you visit Dallas during that time, as a representative of the company?
A. Probably three times.
Q. Do you know Mr. Roy Campbell, at San Antonio?
A. Yes, sir.
Q. During that time, or the times that you were there, what was
he doing?
1079 A. He was—I don't know what his employment was at that time.
Q. Did you come in contact with him?
A. No, sir, I did not know him at that time.
Q. Well, did you at any time as a representative of the company know who he was?

A. Not at that time I did not.
Q. Well, at any time?
A. I have, though, recently.
Q. Who is he? What connection has he with the Waters-Pierce Oil Company, or did he have at any time?
A. Of my own personal knowledge, I don't know that he ever had any connection with it.
Q. What is your information? Why did you hesitate?
A. Well, that is very vague. I am not trying to evade the question. My information is very vague. Officially or otherwise I had nothing to do with Mr. Campbell.
Q. You say you were the general representative of the company, with authority to say—govern the employment of the men, at these different places. Don't you know, Mr. Wheeler, that he was in the employ of the Waters-Pierce Oil Company during a portion of this time?
A. I believe he was.
Q. Operating ostensibly as an independent dealer, being paid by the Waters-Pierce Oil Company?
A. Now, that is only hearsay with me.
Q. Well, what is your information on that? You were Assistant Manager part of the time, and the general representative part of the time?
A. During the time I was general representative and visited San Antonio I knew nothing whatever—I was not acquainted with Roy Campbell.
Q. Well, as Assistant Manager, then?
A. I am under the impression that he was an employé of the company.
Q. Do you know under what sort of contract? Did you
1080 ever see the contract?
A. No, sir.
Q. Have you had any information as to what sort of a contract it was?
A. No, sir.
Q. Why did you have him employed ostensibly as an independent concern, and paying him a salary or commission by the Waters-Pierce Oil Company?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. You had nothing to do with that employment?
A. No, sir.
Q. You only know that it is a fact, but you don't know the basis of it or what the original agreement was?
A. No, sir.
Q. Now, do you know Mr. A. W. Clem, at Dallas?
A. No, sir.
Q. Did you ever hear of him?
A. Yes, sir.

Q. Do you know what connection he had at any time with the Waters-Pierce Oil Company?

A. No, sir.

Q. Did you ever hear of his having any connection with it?

A. No, sir.

Q. Do you know anything about the Eagle Refining Company, at Dallas?

A. Only by name.

Q. Did you ever visit or go to see that company when you were there as the representative of the company?

A. No, sir.

Q. Did you ever have any information about it whatever?

A. No, sir.

1081 Q. Why not? Why didn't you?

A. Well, it was a matter that I knew nothing about. I know nothing about it; I had no occasion to visit the Eagle Refining Company, or any other company, except our own.

Q. You did not know that the Waters-Pierce Oil Company owned it and was operating it until recently?

A. No, sir.

Q. You knew nothing about that?

A. No, sir.

Q. Now, as general representative of the company up to June, 1905, did you have anything to do with the furnishing of prices to the different division managers?

A. No, sir.

Q. You had nothing to do with that until you got to the General Manager's office?

A. Yes, sir.

Q. Who is the General Manager?

A. C. P. Ackert.

Q. How long has he been General Manager, do you know?

A. No, sir, I do not.

Q. When did your connection begin with the company?

A. In May, 1902.

Q. Whose supervision was you under?

A. I was under the supervision of Mr. E. M. Tolliver.

Q. E. M. Tolliver at Houston?

A. Yes, sir.

Q. You were in that employ only a short time?

A. Yes, comparatively speaking.

Q. When you went into the employ in November, 1903, whose supervision were you under?

A. C. P. Ackert.

1082 Q. He was General Manager at that time?

A. Yes, sir.

Q. Afterwards, in June, you came to St. Louis?

A. Yes, sir.

Q. And made your headquarters here?

A. Yes, sir.

Q. As the Assistant General Manager?

A. Yes, sir.

Q. To Mr. Ackert?
A. Yes, sir.
Q. And C. P. Ackert is now General Manager?
A. Yes, sir.
Q. And has been ever since your second connection with the company?
A. Ever since my first connection, he has been General Manager.
Q. I understood you to say that you did not know that he was General Manager?
A. I say I don't know how long he has been General Manager.
Q. Then he was General Manager since you first went with the company?
A. Yes, sir.
Q. Mr. Ackert is the man that during this time that you speak of, as General Manager, has promulgated the prices at which oils of different kinds should be sold by the agents in Texas?
A. Yes, sir.
Q. At different points?
A. Yes, sir.
Q. Where is Mr. Ackert?
A. You mean at the present time?
Q. Yes, sir.
A. He is in Houston.
Q. Do you know—how long has he been there?
1083 A. I think he reached there yesterday morning.
Q. His headquarters are here?
A. Yes, sir.
Q. How long has he been away?
A. He left last Thursday afternoon.
Q. Do you know when he will return?
A. No, sir, I do not.
Q. During his absence who has charge of his department?
A. I have charge of it.
Q. Have you in your custody and control any documents, books, or record of any sort that shows the prices at which the different kinds of oils were sold at the different points in Texas for the years 1900 and 1907,—down to this time, inclusive?
A. I think so.
Q. Will you——
A. It will take some time to go back to 1900. I believe we have them, though.
Q. Will you produce the records? What is it in the shape of—a memorandum, book, or what?
A. When the manager is instructed as to the selling prices, he issues a schedule which goes to the local agent, and the carbon copy of that schedule comes to this office and is part of our files. And then——
Q. Where does that come from?
A. From the division headquarters.
Q. Well, the General Manager, I understood, promulgated those prices?
A. No, the Manager promulgates it to the agent.

653

Q. Well——

A. The General Manager instructs the Manager.

Q. Well, the General Manager promulgates the prices in the first instant, doesn't he?

A. Yes, sir.

1084 Q. How does he do that?

A. By letter or telegraph.

Q. By letter? Now, what record do you make at the time of the promulgation of those prices, of what prices are promulgated?

A. A carbon copy is kept of any change that is made in the prices, and that carbon copy is retained up till the revised schedule is received.

Q. Now, those carbon copies—you make no permanent record of it, then?

A. The revised schedules are sent here and kept in the files, and then the old schedule is filed away.

Q. The whole schedule is filed away? No permanent record in a book or anything of that sort is made of the different changes in prices?

A. Well, we have a record of changes that have been made, but I don't think that record goes back any earlier than 1904.

Q. Is that in the shape of a permanent record?

A. Yes, sir.

Q. In book form?

A. Yes, sir.

Q. Does that show the various prices at which you sold the various kinds of oils at different points in Texas during the years 1904, 1905, 1906 and 1907 up to the present time?

A. Yes, but they only show the refined oil and gasoline.

Q. The refined oil and gasoline?

A. Yes, sir.

Q. You do not make it to cover the lubricating oils and greases, or anything of that sort?

A. No permanent record, no, sir.

Q. Now, the record that you speak of, does that show the various schedules which were promulgated during the year?

A. Every time there is a change in the schedule it is noted

1085 in the book.

Q. It is noted in that book?

A. Yes, sir.

Q. Will you produce that record book before the Commissioner so that it may be examined by the counsel for the State, or furnish a copy or abstract from it, showing the different prices at which the oils have been sold by the Waters-Pierce Oil Company during these years, 1904, '5, '6 and '7 up to the present time, at the different points in Texas?

"Mr. JOHNSON: This is a matter that the witness has no control over. We object to it, further, as being a matter for counsel to determine whether papers will be produced or not. Also, it is the duty of counsel for the State, if they want any such records produced, to give notice under the statutes for its production."

Q. I understood you to say that that record was under your control as Acting General Manager, during the absence of Mr. Ackert?

A. It is a part of the office record.

Q. Part of the office records of which you are the head of it during his absence. Is that not a fact?

A. Yes, sir.

Q. It is in your control, then?

A. Yes, sir.

Q. We have heretofore notified the President of your company, Mr. Wheeler, to produce for our examination all books and records. Now, then, we notify you at this time, as being the head of the department, who has the care, custody and control of the book, to produce it for our examination. And we request you to produce it here, so that we may go over it and get from it such detailed information as you testify it contains.

"Mr. JOHNSON: We object to that. The witness is not required to say what he will or what he will not do. That is under the control of counsel,—not the witness. If the State wants those
1086 papers produced, the statute prescribes the mode in which it should be done. This is not pertinent to this inquiry,—at least so far as this witness is concerned."

Q. What do you say about that, Witness? Will you or will you not produce that record as asked for? I say, what do you say about it? Will you or will you not produce that record for examination?

A. I refuse to produce it.

Q. You stated that prices are promulgated from the General Manager's department to the division managers. Who furnishes those prices to him, do you know of your own knowledge?

A. To the General Manager?

Q. Yes.

A. The General Manager, in consultation with other officials, determines the price.

Q. Is that based upon hearsay, or actual knowledge?

A. It is based on reports and recommendations from the local managers, the division managers.

Q. Well, none of the officers, then, of the Waters-Pierce Oil Company, except the managers, have anything to do with fixing the prices?

A. The General Manager, you mean?

Q. I mean the General Manager. None of the officers here?

A. Oh, yes, I say the General Manager, in consultation with other officers of the company.

Q. They fix the prices?

A. They fix the prices.

Q. And the General Manager promulgates them?

A. Yes, sir.

Q. Well, that is the way I understood it. Now, did you ever participate yourself in those consultations?

A. Yes, sir, in the absence of the General Manager.

Q. Upon what are those prices based? What consider-
1087 ations enter into your consultation upon which you base the prices?

A. The change in the price is determined by the local conditions. If other oil companies make a lower selling price than we have been maintaining, and we find it necessary to meet that price, to protect our business, that price is met.

Q. In other words, changes of prices are almost always affected by competition from other companies, aren't they?

A. In a great many instances, yes, sir.

Q. Well, what other consideration influences you besides competition in lowering prices? What other consideration? Is that the only one? Why do you hesitate about answering that question, Mr. Wheeler? You say you participated in these consultations and know what was said and done there?

A. There are a great many instances where the prices are regulated,—either advanced or lowered,—without the influence of competition.

Q. Well, of course, in those instances then what causes the raising or lowering of this price? Why do you do that?

A. Well, it is done through the judgment of the officers, as to what the proper price should be.

Q. Well, but you consult about that, and some reason is given for it, isn't there, in this consultation?

A. Yes, sir.

Q. What is the reason, then? What reasons are given, when that is done?

A. The reason may be that it is considered that the price in itself is higher than it should be. It may be——

Q. Now, then, name one place, one time, one price, that you lowered, when it did not come from competition?

A. I could not do that from memory.

Q. Well, can you by refreshing your memory?

1088 A. I think I can.

Q. Give us a memorandum of that, can you?

A. I think I could.

Q. Will you do that when you are excused here temporarily?

A. I will.

Q. Now, did the cost of the commodity have any effect at all upon your fixing or changing the price?

A. Yes, sir.

Q. What effect does that have?

A. The cost of the commodity usually forms a very large basis as to what the selling price will be.

Q. Isn't that, aside from competition, the principal ground for changing the price?

A. Yes, I should say it was.

Q. Did you have anything to do with the purchase of oils? Is that in your jurisdiction? I mean oils that you sell?

A. No, sir.

Q. What department is that in? Who is at the head of that department? I suppose your department is the one that distributes and sells the oil?

A. Yes, sir.

Q. Yours is the Sales Department, as a matter of fact?
A. Yes, sir.
Q. Now, when you want certain oils, of any kind, shipped to any point in Texas, how do you get it shipped there?
A. The order is placed at the refinery, where the supply comes from.
Q. Who places it there?
A. It is placed there by Mr. Finlay, the Vice President.
Q. Placed there by Mr. Finlay. You have nothing to do with that part of it?
A. No, sir.
1089 Q. You make requisitions upon Mr. Finlay, stating where you want the oil, and the kind you want, and the quantity, and then he acts?
A. Yes, sir.
Q. And you have nothing to do with the purchase of it, or where it shall come from?
A. No, sir.
Q. How long has Mr. Finlay had charge of that part of it?
A. I think for several years.

(Redirect examination by Mr. JOHNSON:)

Q. Isn't it a fact that when the refinery prices are lowered the selling price by the company is lowered?
A. Yes, sir.
Q. When the refinery prices are increased or advanced, the company advances its selling price?
A. Yes, sir.
Q. In Texas?
A. Yes, sir.

(Portion omitted.)

Q. And then there is—enumerate the others?
A. Well, the Eagle Refining Company, about three years, the Lone Star Oil Company for several years, the Oriental Oil Company for several years, and the Southwestern for several years.
Q. What facilities have those different companies for handling oils and supplying the trade in Texas?
A. Do you want me to describe it in detail?
Q. Yes, in a general way, I don't want to go too much in detail.
A. The Eagle Refining Company have a few agencies in Texas, where they carry refined oil in bulk.
Q. Do you know how many, Mr. Wheeler?
A. No, sir, I don't—probably not over six or eight.

1090 (Recross-examination, by Mr. ALLEN.)

Q. Mr. Wheeler, what kinds of oil do you sell in Texas of the refined oils to the trade? What brands? What do you call them?
A. The best oil is called Eupion.
Q. What other?
A. The second grade is called Brilliant.

Q. What is meant by Prime White or Water White?
A. Prime White is practically synonymous with Brilliant, and Water White is an intermediate grade between Brilliant and Eupion.
Q. And what is S. W.? What does that stand for?
A. S. W. is also synonymous with Brilliant.
Q. Now, you speak of an oil as 120 flash or 150 flash?
A. Yes, sir.
Q. What do you mean by those terms?
A. The flashing point of an oil is determined by the degree of heat to which you can heat the oil when it will form a gas that will flash with a match.
Q. In other words, that represents a degree of temperature that the oil will stand before it will ignite from heat?
A. Before it will light, yes, sir.
Q. Now, what flash is the oil that you sell in Missouri, the ordinary burning oil?
A. That is 150 fire test.
Q. What is that you sell in Texas?
A. There is a difference of about 20 degrees between flash and fire. The flash is just where the gas will ignite and then go out, and the fire test is where the gas is formed so that the flame is continuous.
Q. So that it will ignite the whole bulk?
A. Yes, sir, and it continues to burn. Usually there is a difference of close on to 20 degrees between the flashing point and the firing point.
1091 Q. What is the oil that is sold in Texas as to the flash and fire test?
A. It is about 112 flash, that would make about 132 fire.
Q. It is 112 flash which would make about 132 fire?
A. Yes, sir.
Q. And in Missouri it is 150——
A. Fire. It would be about 130 flash.
Q. The reason for making that difference is that there is a law in Missouri prescribing the fire test?
A. Yes, sir.
Q. And there is none in Texas?
A. No, sir.

Mr. ALLEN: Clay Arthur Pierce, examination beginning at the beginning, page 195, a witness produced by the defendant and examined by Mr. Johnson, and we offer his direct examination also.

Q. State your name in full, please?
A. Clay Arthur Pierce.
Q. Your age?
A. 33.
Q. Your residence?
A. No. 40 Vandeventer Place, St. Louis, Missouri.
Q. Your occupation?
A. President of the Waters-Pierce Oil Company.
Q. How long have you been President of the Waters-Pierce Oil Company?

A. Since June, 1905.

Q. Since that time you have actively discharged the duties of President of the company?

A. I have.

Q. And managed and controlled its affairs as far as a
1092 President can manage and control?

A. Yes, sir.

(Objected to as leading and suggestive.)

Q. Well, what have been your duties as President of the company since your election?

A. I have been the executive head of the company, to manage its business affairs, all details connected therewith, and to take final executive action on all business of any nature pertaining to the company.

Q. Who did you succeed as President of the company?

A. Mr. Andrew M. Finlay.

Q. You were employed by the company before you were made its President, were you?

A. I was first employed by the company in the Spring of 1898 as Assistant Treasurer.

Q. That was the old firm, the Waters-Pierce Oil Company?

A. The old firm, the Waters-Pierce Oil Company. I was re-employed as Assistant Treasurer by the new company organized in 1900 and continued as Assistant Treasurer until June, 1905, when I was elected President. Just two months previous to that time, however, I was made Acting President, and I occupied that position for two months.

Q. What were your duties as Assistant Treasurer? What duties did you perform?

A. I performed such duties as would naturally fall to the position of Assistant Treasurer in the Treasurer's Department, and in addition I sat on the Executive Committee as Secretary of that committee, and a member of the committee from the time of its formation until the committee was disbanded.

Q. When was the Executive Committee organized?

A. If I remember correctly, it was organized in 1900. I am not sure as to the date.

1093 Q. And it existed down to what time?

A. Until the Fall of 1904, I believe.

Q. What have you had to do since the organization of the Executive Committee with the fixing of prices at which the company sells its commodities in the State of Texas?

A. Since the organization of the Executive Committee I have been actively one of usually three who have determined or fixed the selling prices in the State of Texas.

Q. Who were the other members of that committee? I mean who were the other parties—not the Executive Committee, but who were the other parties that acted with you or that you acted with in fixing prices of sales of oil in Texas and other commodities?

A. The entire Executive Committee while it was in session acted finally upon the fixing of prices of a sub-committee, composed of

Andrew M. Finlay, then President, C. P. Ackert, General Manager, and myself as Assistant Treasurer, examined schedules which were exhibited to the Executive Committee for their final approval with our recommendation.

(Portion omitted.)

(Cross-examination by Mr. ALLEN:)

Q. Where the order or requisition for supplies were ordered to be sent from the refinery of the Standard Oil Company at Whiting, Indiana, where is that order sent?

A. Direct to Whiting, Indiana.

Q. And is that true of the Atlantic Refining Company also?

A. It is true of the Atlantic, and the Sugar Creek, and all the other refineries. I presume you are acquainted with them.

Q. How about the Security Oil Company at Beaumont?

A. Sent direct to the Security Company at Beaumont.

Q. Do you have any oils of any consequence shipped to you from Whiting, Indiana, or Sugar Creek or Neodesha to Texas?

1094 A. We have sent a small amount of Northern gasoline from the three refineries to Texas, because of the inability of the Southern refineries to meet the supply.

Q. That is gasoline?

A. Yes, sir.

Q. But the bulk of the supplies are received from the Corsicana refinery and the Security Oil Company at Beaumont for Texas sales?

A. For Texas, Louisiana, Oklahoma, Indian Territory and the Southern part of Arkansas, we purchase what we can from the Gulf Refinery and Texas Refinery Company as they are able to supply.

Q. Are they Standard Oil refineries?

A. I knew nothing about that.

Q. You have no information of those two?

A. Nothing whatever.

Q. Mr. Pierce, do you know anything about the so-called division of territory heretofore testified about by your father, H. Clay Pierce, based upon the original agreement made by the Standard Oil Company, giving to the Waters-Pierce Oil Company the territory that includes Texas?

A. Nothing whatever.

Q. You know nothing about the original agreement?

A. Nothing whatever.

Q. What do you know about its practical workings since you have been connected as an officer and an active officer of the company so far as the observation of that territory is concerned?

A. I know nothing whatever about the practical workings of any agreement such as you speak of. I know of course that we sell oil in such territory where we are equipped to handle it and sell it, and that there is other territory that we do not sell it.

Q. You know, of course, your father has heretofore testified in the case, of what was originally the agreement or understanding

1095 that was had as to that territory?

A. That I don't know absolutely. I did not read Mr.

Pierce's testimony, throughout, and I was not present all the time at the trial.

Q. Has any question of that sort come up since you have been a member of the Executive Committee, Advisory Board, or President of the company, about a violation of that stipulation, expressed or implied, for adjustment?

A. On our part?

Q. On the part of either the Waters-Pierce Oil Company or the Standard Oil Company or its interests?

A. You mean has any question arisen between the Waters-Pierce Oil Company and the Standard Oil Company?

A. Yes, that has been the subject of discussion by the Executive Committee or the Advisory Board or any other officer, with you as the executive head?

"Mr. JOHNSON: We object to that unless it is in respect to any part of the State of Texas.

"Mr. ALLEN: Of course, I will limit it to that."

A. None has arisen during the time that I was a member of the Executive Committee or since then regarding the State of Texas that I know of.

Q. Now, what portions of the United States does the Waters-Pierce Oil Company and has it during your connection with it, done business? In what portion?

A. In the Southern half of the State of Missouri, in a portion of the State of Illinois immediately East of the Mississippi River, and St. Louis, in all of Arkansas, in all of Texas, in all of Oklahoma and Indian Territory, in a portion of Louisiana West of the Mississippi River, and in all of the Republic of Mexico.

Q. And all of Louisiana West of the Mississippi River, or only a portion of it?

1096 A. Practically all. I think there is a small portion down in the extreme Southwest of the Mississippi River in which we do not operate. That is a very poor part of the country down there, deltas, etc. We never operate in that portion of the country.

Q. Don't you know as a matter of fact, and isn't it your information as the executive head of the Waters-Pierce Oil Company and as member of its Executive Committee during its existence, and as a member of the Advisory Board, that questions have arisen about the territories in Texas? To refresh your memory, isn't it the custom daily almost of the Waters-Pierce Oil Company to supply to customers at Texas ports oils for which they have contracts with the Standard Oil Company?

"Mr. JOHNSON: That is, contracts between steamers and the Standard Oil Company?

"Mr. ALLEN: Between steamers and the Standard Oil Company."

A. I am not entirely informed on that. I know that the Standard has certain contracts with steamship lines.

Q. That makes Texas ports?

A. That makes Texas ports, and that the Waters-Pierce Oil Com-

pany furnishes supplies to them when requested, and it is furnished to them on the Standard Oil Company's account.

Q. And charged to whom?

A. To the Standard Oil Company.

Q. Who says how much shall be charged on this sort of a transaction?

A. The Lubricating Department of the Waters-Pierce Oil Company.

Q. Don't you know that you charge your ordinary market prices where under ordinary instances and in most instances five per cent. is added for the Marine Department of the Standard Oil Company as their part of it?

A. That I don't know.

Q. Well, what is your information on that?

A. The Marine Department is a small branch of the

1097 business.

Q. Well, that is a department of the Standard Oil Company that has all these contracts, isn't it?

A. That is a department of itself.

Q. Whether for the Marine Department or any other department of the Standard Oil Company, you collect a certain price, whatever it may be, five or ten, or whatever it is, you know that there is a per cent. collected in addition to the market price, do you not?

A. I do not know that.

Q. What is your information about it?

A. I have none.

Q. You don't know what those charges are, what the basis of the charges are?

A. I know in a general way, yes, sir. The Marine Department of our business is a very small part of it.

Q. I am not talking of that.

A. The Lubricating Department is understood to handle it without supervision of any of the other departments. That is one of the few branches of business handled direct under the management of the Lubricating Department. He is, so far as I know, authorized to charge oil sold to steamers for account of the Standard Company his existing Prices for such oils at the point at which they are delivered. Beyond that I don't know.

Q. He is authorized by who to do that?

A. By myself.

Q. The Executive Committee during its existence, and the Advisory Board does not fix the price at which he shall furnish oils to the steamers?

A. No, it does not.

Q. Who is the Manager of the Lubricating Department?

A. Mr. Harris.

Q. How long has he been such manager?

1098 A. Several months. I think he was made Manager in the Fall of 1906.

Q. Mr. Stephen Johnson was the Manager before him?

A. Yes, sir.

Q. And was for many years?

A. For many years, twenty-eight years, I think, or thirty.

Q. You say you don't know just what arrangement there is, then, about charging for the benefit of the Standard Oil Company a commission or whatever it is in addition to that price, for their benefit?

A. I know of no arrangement dictated by the Standard Oil Company at which we charge lubricating prices for their benefit.

Q. I am not asking about lubricating prices.

A. Well, any prices.

Q. I am speaking especially with reference to the oils furnished vessels touching ports in Texas.

A. I know nothing, absolutely nothing, of any such arrangement.

Q. Do you know of the Central Coal & Coke Company, a corporation that runs a lot of saw mills down in East Texas?

A. I know of it, yes, sir.

Q. Don't you know that they have a contract with the Standard Oil Company, made with the Kansas City branch, the corporation being located at Kansas City?

A. Yes, sir.

Q. By which the Standard Oil Company is to furnish all the oils of certain kinds, especially lubricating oils, that they may desire in their business trade in Texas, and in the territory in Louisiana in which the Waters-Pierce Oil Company does business, wherever they have a saw mill or other plant that demands oils, that the Waters-Pierce Oil Company furnishes those oils to them and charges them against the Standard Oil Company?

A. You are speaking of a contract which the Standard Oil Company has at present with the Central Coal & Coke Company at Neome and Parsons, Louisiana?

1099 Q. Yes, sir.

A. I don't know of their having any such contract at present.

Q. Or recently?

A. They may have had one in the past.

Q. Didn't you furnish oils on requisitions of that sort and get paid from the Standard Oil Company for doing so?

A. We have done it.

Q. And what prices did you charge?

A. So far as I know, we have charged our regular prices that we would ordinarily charge for such oils, based upon the delivery.

Q. You didn't charge the contract prices, then, at which the Standard had agreed to sell them? To refresh your memory, isn't it a fact that you did furnish for the prices at which the Standard Oil Company had agreed or contracted to furnish those people for the different grades of oils which you yourself furnished them at those points?

A. I want to be entirely clear and answer your question directly. The Standard Oil Company when they desired us to make such deliveries as you speak of would inform us that they had a customer at such a point, naming it, at which point they desired to sell that customer certain oils, naming the oils, and they would tell us that the customer was willing to pay such and such prices, naming the

prices which presumably the customer had made with the Standard Oil Company under a blanket contract.

Q. You just assume that?

A. I have to, because I don't know. If the prices were agreeable to us we accepted them, and if not we replied to the Standard Company naming the prices at which we would supply those oils, and then if the Standard Company accepted the prices we supplied them on behalf of the Standard Company.

1100 Q. You charged them direct?

A. Yes, sir, but the Standard did not dictate the prices at which we would supply the oils.

Q. Now, this concern that I have been speaking of, have you any approximate knowledge of the business that was done with them in the territory, and what it is, in a general way?

A. No, we supply them at Neome and Parsons, Louisiana, and the business was the average business done by a plant of that kind.

Q. How about our saw mills in East Texas that operate along in what is known as Waters-Pierce Oil Company territory?

A. I think we supply them at one point in East Texas; I am not sure of that.

Q. In what is known as the Kansas City Southern?

A. Well, we may have supplied them, but I am not entirely sure of that.

Q. You don't remember the number of places in East Texas now?

A. I do not. No, I don't recall any name in East Texas. If there was an order from there we probably supplied it.

Q. What was the custom with reference to orders that were received by you from customers in what is known or what has been known as Standard Oil territory, if a personal customer would write to you for prices and you were not doing business in that territory?—what did you do with those orders?

A. We did one of two things. We either quoted the customer F. O. B. our St. Louis supply sheet, which was practically the only thing we could do if we were going to sell him, or we turned the order over to the Standard Company out of courtesy, because they operated in the territory and we did not.

Q. And they did the same thing on orders that went to them?

A. So far as I know. Occasionally they did not. Sometimes they shipped the oil requested by customers in the territory in which we operated direct to the customer, presumably the

1101 parties selling it, that would be our nearest supply point, the same as we did.

Q. Did you ever hear of their doing that in Texas?

A. I think I have.

Q. At what point?

A. I think at El Paso.

Q. Have you any way of refreshing your memory or giving any actual information about that?

A. I have, decidedly. Not here at present, but I have memoranda.

Q. That is what I mean.

A. Oh, yes.

Q. Will you try and get that information?
A. I will.
Q. Is your memory now distinct as to that? I don't care about the dates.
A. No, it is not.
Q. I wish you would ascertain that at adjourning time.
A. I will endeavor to do so.

(Redirect examination by Mr. JOHNSON:)

Q. Vessels touch there at Galveston which have contracts with the Standard Oil Company at New York for supplies of marine oils that a vessel requires from time to time?
A. They do.
Q. Now, do you know of any regular arrangement or understanding, or is there a regular arrangement and understanding between the Waters-Pierce Oil Company and the Standard Oil Company with respect to supplying vessels of that kind with oil at Galveston?
A. None that I know of.
Q. Is it done by special letter or request?
A. It is done in each case relating to any separate steamship line by special letter requesting us to supply certain steamers with
1102 marine oils at certain prices for account of the Standard Company at prices which we name for our marine oils. That is my knowledge.
Q. And the Waters-Pierce Oil Company sells its oil to the Standard Oil Company instead of to the steamships?
A. Exactly, and delivers them to the steamships.
Q. And makes its invoice or bill to the Standard Oil Company for the oils supplied?
A. That is correct, to the Standard Oil Company.
Q. And the Standard Oil Company pays the transportation for the oils thus supplied?
A. That is right.
Q. As to the prices, you say you don't know how those prices are fixed?
A. I know less clearly regarding the marine oil prices than any other detail of the business, as to prices.
Q. Now, how about sales of oils supplied like in the case mentioned of the Central Coal & Coke Company?
A. That is the sale of oils to the Standard Oil Company, that delivery to a customer in our territory who has a contract with the Standard Oil Company under which the Standard Oil Company desires to make such deliveries.
Q. The Standard Oil Company in a case of that kind would write to the Waters-Pierce Oil Company asking them to quote it its prices, the prices at which it would supply oils to a customer at a certain point, say in Missouri, of certain enumerated oils?
A. The exact procedure, I think, is for the Standard to write the Waters-Pierce Company today that they have a customer under contract or otherwise at a certain point, and wish to deliver certain oils, specifying them, to that customer, on their contract, if it is a contract and the customer requires delivery at specified prices, and is the

Waters-Pierce Oil Company willing to make delivery of those
1103 oils at those prices. If we are willing to deliver at those prices, we tell them so, and if not we tell the Standard Company at what prices we will deliver those oils, and the Standard Company either rejects or accepts the price. I would like to amend my first testimony to this extent. I recollect now, these letters do not pass through my hands unless I ask for them. If the Standard writes us saying that they have a customer at such a point under contract and would like us to quote prices and we quote in reply to the letter and they wish to get the prices that they can, and make us a proposition and we conclude to accept their price, we tell them so, and if not we tell them what prices we will accept, and it is a free proposition between the Standard and the Waters-Pierce Oil Company.

(At this point a recess was had until 2 P. M.)

(Examination by Mr. JOHNSON continued:)

Q. Have you the memoranda that you were to get before we adjourned?

A. You wanted to know the date that R. P. Tinsley was elected Vice President. That was April 28th, 1904. You also wanted to know the date that he resigned. That was June 22nd, 1905. You asked the date that Mr. A. M. Finlay was elected President. That was the 18th of February, 1904. He also served until June 22nd, 1905, as President.

Q. When were you made President, at that time?

A. Yes, sir.

Q. Do you remember as a matter of fact when it was that Mr. Tinsley came to the home office and assumed the duties of Vice President?

A. It was April, 1904.

Q. And when did he leave the home office entirely?

A. He left the home office very nearly the end of April, 1905; it was the last few days.

Q. And he left here for good, finally, before he tendered his resignation as Vice President of the company?

1104 A. Very nearly two months before he tendered his resignation.

Q. Mr. Pierce, from the time that you have been connected with the present Waters-Pierce Oil Company, in the different capacities which you mentioned, what has been Mr. H. C. Pierce's connection with the company?

A. He was President up to February, 1904, and since that date he has been Chairman of the Board of Directors.

Q. And what supervision or control has he exercised over the management of the business of the company while you have been connected with it?

A. Such matters as I have found advisable to refer to him for final decision, he has passed upon and advised me, and his decision in the matter has been final, and it was handled in accordance with his ideas entirely.

Q. That has been while you have been Vice President?
A. Yes, sir, while I have been Vice President.
Q. How was it before that?
A. The same procedure was followed by Mr. Andrew M. Finlay, as far as I recall, and in addition Mr. Pierce received copies of the minutes of the Executive Committee, and controlled the company through action taken there.

(Portion omitted.)

Q. You say after that date, and until Mr. Tinsley left here, you don't know how the prices were fixed?
A. I do not.
Q. During that time you yourself had no voice in the fixing of the prices?
A. None whatever.

(Portion omitted.)

Q. From the time the company was organized in 1900 down to the time that Mr. Tinsley came to St. Louis to take the
1105 position of Vice President, who was it that directed and carried out the general business policy of the company?
A. Mr. H. C. Pierce.
Q. Mr. H. C. Pierce?
A. Yes, sir.
Q. Through the officers of the company, of course?
A. Through the officers of the company.
Q. Who was it after Mr. Tinsley left here?
A. Mr. H. C. Pierce.
Q. During the time Mr. Tinsley was here as Vice President, Mr. Andrew M. Finlay was the President and executive head of the company?
A. Yes, sir.
Q. Mr. Andrew M. Finlay is a brother-in-law of H. C. Pierce, is he not?
A. Mrs. Pierce was his sister.
Q. Your mother was Andrew M. Finlay's sister?
A. My mother was Andrew M. Finlay's sister, yes, sir.
Q. Now, you speak of reports and information being given to the Standard Oil people, the Standard Oil Company of 26 Broadway, New York. Why were those reports—why was that information given, as you have understood it?
A. I have understood, without knowing, except through the testimony as it was presented through the Missouri case, that the Standard Oil Company owned about two-thirds of the stock of the Waters-Pierce Oil Company, and as such owner I have always understood that the Standard Oil Company had the right to ask for such statements as a two-thirds stockholder or a majority stockholder would be entitled to, and for that reason statements were sent to them at their request.
Q. Have you refreshed your memory in regard to the manner in which deliveries were made by the Waters-Pierce Oil Company for

marine oils, etc., on account of the Standard Oil Company,
1106 and also in connection with contracts similar to the one that existed between the Central Coal & Coke Company and the Standard Oil Company?

A. I have. I recalled this morning more or less indefinitely regarding the marine oil prices, because that was a detail merely of the business. In general they were fixed by the Lubricating Department upon instructions from myself. It was some time back and I don't specifically recall that. I have since looked that up. I find in December—December 6th, 1905, if I recollect correctly—I have a copy of a letter in my book which I wrote the Controller's Department, fixing the price of marine oils, which price ever since has been the price at which they have been billed.

Q. When was it you wrote that letter?

A. May I refer to the copy?

Q. Yes, to refresh your memory.

A. I think it was December 6th, 1905. (After reference to paper:) Yes, it was. That is correct.

Q. Who was the letter addressed to?

A. To the Controller at that time of the company.

(Portion omitted.)

Q. Now, go on and state, your memory being refreshed, just how the matter is handled, and has been handled, since you wrote that letter?

A. After I wrote that letter?

Q. Yes.

A. The Lubricating Department received requisitions from time to time from the Standard Oil Company's Marine Department, to deliver to certain vessels certain marine oils. This was only at Galveston; that is the only point at which we handled marine oils,—Galveston, Texas. They would state when the vessels would be lying at the port and the amount of oil that they would need. Those were vessels that the Standard Oil Company had contracts for the sale of marine oils to. We would make deliveries there through our Lubri-
cating Department of the oils requested, and bill those oils
1107 against the Standard Oil Company, at the prices which I have named in this letter, which I have subsequently adjusted from time to time, the Standard Oil Company paying us in accordance.

Q. Then the matter of the price at which you delivered those oils is fixed by agreement between you and the Standard Oil Company? That is, you supplied the oil to the Standard Oil Company?

A. Yes. But those prices are not fixed by the agreement. The agreement is that we will supply the oil at the prices which we adjust from time to time here.

Q. You have nothing to do, then, the Waters-Pierce Oil Company has nothing to do with the price that the Standard Oil Company charges the vessels?

A. Nothing whatever; we don't even know what price they are charging. That is a matter between the Standard Oil Company and the company that had this contract.

Q. You don't know anything about the terms of the contract as between the Standard Oil Company and the vessel owner?
A. Nothing at all.

(Recross-examination by Mr. ALLEN:)

Q. Did you investigate to find out whether you could learn anything definite about the El Paso matter?
A. I did, Mr. Allen. I was mistaken in that. I did not find any evidence of a delivery of oil to El Paso, such as was mentioned.
Q. Now, in stating that Mr. H. C. Pierce controlled the policy of the Waters-Pierce Oil Company during the time you have been connected with it, of course you mean all the time excepting during the time that Mr. Tinsley was assuming—assumed control?
A. I do.

At 12.45 P. M. Court adjourned until 2.30 P. M.

1108 Court opens at 2.30 P. M.

Mr. ALLEN: We next offer in evidence the cross-examination of Mr. ANDREW M. FINLAY.

(Cross-examination by Mr. ALLEN:)

Q. Mr. Finlay, from the time of the organization of the new company in May, 1900, up to April, 1904—or '5, was it?—that you were President?
A. Up to June, 1905.
Q. June, 1905. Mr. Tinsley came here in April, 1904, I believe?
A. I think that is about the time.
Q. And left the following April, was it, or May?
A. No, I think it was the last of May, or the first of June. I think it was probably the very last day of May, the last days of May.
Q. He resigned his office as Vice President in June, at the June meeting?
A. Yes. He left suddenly. I did not see him at all, after I got back from Europe.

"It is agreed, in connection with the testimony of this witness, the suit of the State of Missouri against the Waters-Pierce Oil Company was filed on the 29th of March, 1905."

Q. Now, to refresh your memory, you stated that you knew when Mr. Tinsley left St. Louis. Isn't it the fact that he left when you were away?
A. I was in the city when he left.
Q. Had you returned from Europe then?
A. I had. I was out at my house. I did not feel like coming down to the office at that time.
Q. And your impression is that it was the latter part of May that he left the city?
A. I think so.
Q. Do you know where he is now?
1109 A. I do not know where he is.
Q. Have you any information about it?

A. Not a bit.

Q. While you were President of the company, up to the time that Mr. Tinsley came here and undertook to run the company, what were your duties with reference to handling the requisitions for supplies of oil to be sold by the company? That is, if one of your Division Managers in Texas, for example, should make a requisition on the General Manager for certain supplies to be delivered at points in Texas, did you have anything to do with that?

A. Yes, the freights would play a part in that.

Q. I am not asking about that, but the order itself—would it come through your hands, through your department?

A. At that time?

Q. Yes.

A. I don't think it did at that time; I am not clear. It has changed from time to time. Sometimes it would come into Mr. Ackert's room. At present it is coming into my room now.

Q. I am asking about it originally. Who orders those supplies, and who did during this time?

A. They are placed by Mr. Adams' Department.

Q. They were during that time?

A. I think they were.

Q. Were they transmitted by your department to his department, or by Mr. Ackert's department to his department?

A. I think by Mr. Ackert's department.

Q. You did not handle them?

A. I don't think I did at the time.

Q. Do you know anything of your own personal knowledge of how they were placed?

A. I have never seen—well, I have seen the forms used in Mr. Adams' office.

1110 Q. I mean where they were sent to,—requisitions made by the division officers, the officers of this company. Suppose a Division Manager in Texas wanted a supply of oils for any part of Texas, to go to points in Texas,—he would make a requisition upon the General Manager, and that requisition would then be approved, would it not—or disapproved? And if it was approved, it went to Mr. Adams' department?

A. Yes, sir.

Q. Then Mr. Adams, what did he do with it?

A. He would have an order made out on the regular form of order, with the number.

Q. Where would he send the order?

A. If it was for oil to be shipped from St. Louis, it would go from his office to our works here.

Q. Suppose that it was from the Corsicana refinery, or the refinery at Whiting, Indiana, where would it go?

A. If it was from Whiting, Indiana, it would go to Mr. E. Bogardus.

Q. Where?

A. Chicago.

Q. If it was from Corsicana, a Corsicana refinery, wouldn't it go to the same place?

A. At that time?
Q. Yes, at that time?
A. Yes, sir.
Q. It would also go to E. Bogardus?
A. Yes, sir.
Q. Who determined—this is what I want to get at—who determined the points from which the shipments should be made—the Waters-Pierce Oil Company or the Standard Oil Company?
A. The Waters-Pierce Oil Company, by all means. Dependent on the cost of the oil and on the cost of the transportation.

Q. And you sent your orders in to Mr. Bogardus, and you
1111 designated where they should be shipped from?

A. We decided before the order was forwarded where it should be shipped.
Q. And instructed Mr. Bogardus whether you wanted them shipped from Whiting or Corsicana?
A. Corsicana, or from Beaumont.
Q. The Security Company?
A. No, sir, not the Security Company.
Q. You did not send orders to him for the Security?
A. No, sir.
Q. Where were they sent?
A. They were not in existence at that time.
Q. When did they come into existence? Were they not organized in 1901? Well, I want to get at it in a general way. After they were organized, and you began buying from them, did not requisitions also come to Mr. Bogardus?
A. No, sir.
Q. They were sent direct to the company—to New York?
A. They were sent—they always have been sent direct from here to our agent in Beaumont, or Sawyer, and he would in turn place it with the refinery.
Q. With the Security Company?
A. Yes, or the Gulf Company, or the Texas Company, whoever it was.
Q. Now, these orders—you purchased the great bulk of your supplies for Texas and elsewhere from the Standard Oil Company, or its interests, of course? That is, the Corsicana refinery, or the refinery at Whiting, or Sugar Creek or Neodesha, Kansas, or these places known as the Standard Oil Company's places?
A. That is correct, the bulk of them.

Q. You don't know whether the Gulf or Texas Company is
1112 operated by the Standard or not?

A. No, sir, I do not.
Q. Now, in placing these orders, did you get quotations from these different refineries or the Standard, in place of placing the order, or did they quote you the prices from time to time and you simply placed the orders then, based on those quotations?
A. They quote us the prices at which they will sell us the oils at the different refineries that we would place the orders with for shipment from, depending on the freight rates as to where we would tell

them to make the shipments from, or which refinery we would tell them to make it from.

Q. I understood you to say that Mr. Stephen Johnson was Manager of the Lubricating Department at one time?

A. Yes, sir.

Q. Is Mr. Horn in his department?

A. Yes, sir.

Q. This department that was formerly his?

A. Yes, sir.

Q. What are Mr. Horn's initials?

A. E. S., I think.

Q. Do you know his handwriting?

A. I think I do, yes, sir.

Q. That "'Lubricating Department"—in whose handwriting is that, in your opinion? That is Mr. Horn's writing, isn't it?

A. To me it looks like Ed. Horn's, yes.

Q. And this is his stamp upon that letter?

A. Yes, sir.

Q. Now, is that the character of quotation that you usually got from the Standard people, when they were quoting you the full list of prices—of course, I understand from time to time you got

1113 quotations for the small quantities, or rather the small number of grades of oils—two or three grades perhaps?

"Mr. JOHNSON: I want you to identify that paper that you have handed the witness, which he is testifying from now.

"Mr. ALLEN: Yes, I will."

Q. Do you know Mr. McNall's handwriting?

A. Yes, sir.

Q. You have received a great many letters from him?

A. Yes, sir.

Q. That is signed by Mr. McNall, isn't it?

A. Yes, sir.

Q. Now, attached to it is a list of a great number of kinds of different oils, and the prices quoted, is there not?

A. Yes, sir.

Q. Now, what I am getting at, is that the ordinary way they had of advising you of what the prices were, when they gave you a general price list, during the time Mr. McNall was Commercial Agent of the Waters-Pierce Oil Company? Those things were usually transmitted through you, were they not?

A. Not always. The prices that I referred to as receiving myself were on refined oils and gasolines, principally; these appertain to lubricating oils—and were taken up in the Lubricating Department, of the business.

Q. All that pertained to the lubricating oils usually came to you?

A. The refined and the gasoline came to me.

Q. Through Mr. McNall?

A. Not always through Mr. McNall.

Q. But they usually came to you either through Mr. McNall or direct from the refineries?

A. Yes, sir.

Q. And the lubricating oils and things of that sort went to
1114 Mr. Stephen Johnson?

A. Yes, sir.

Q. Who was head of that department?

A. The Manager of the Lubricating Department.

"Mr. JOHNSON: Won't you indicate that letter, so as to identify it?

"Mr. ALLEN: We offer in evidence the letter dated June 15th, 1904, addressed to Mr. S. Johnson, and signed by Mr. R. H. McNall. Also the list thereto attached, being the letter identified by the witness, and signed by Mr. McNall, marked by the Commissioner 'Plaintiff's Exhibit No. Z.'"

"Mr. JOHNSON: We object to the introduction of the three legal sized sheets attached to the letter, because there is nothing to indicate that they are a part of the letter or referred to in the letter."

Q. Now, Mr. Finlay, during the time that the Executive Committee of the Waters-Pierce Oil Company existed you were a member of that Committee, were you not?

A. Yes, sir.

Q. Did that Committee fix prices at which you would sell oils and other commodities in the State of Texas, or who did fix prices?

A. They were passed on by the General Manager's office, by myself. Recommendations made to the Committee.

Q. And then if approved by the Committee they were promulgated by the General Manager, were they not?

A. Yes, sir.

Q. Did you take part, either as General Manager or as President or as a member of the Executive Committee, in the consultations about the fixing of those prices?

A. When I was present.

Q. Well, you were President of the Company?

A. I say, when I was present in the meetings; I may not
1115 always have been in the meetings.

Q. You attended them pretty regular, didn't you?

A. Yes, when I was here I did.

Q. Upon what did you base your prices? What did you take into consideration in fixing prices?

A. The cost.

Q. The cost of what?

A. The cost of oils that might be under discussion, freight, and local conditions, cost of marketing, handling and everything that pertained to the cost of the oil before it is marketed.

Q. What do you mean by "local conditions"?

A. There are points where we may make delivery by tank wagon, we may make delivery by iron barrels, or by cans, and we may make delivery at the warehouse.

Q. Oh, of course, they are details. I mean in general. Isn't it a fact, Mr. Finlay, that in fixing your prices that the two prime factors in fixing prices for localities were, first, the cost of the products, and second, competition, whether or not you had competition at that point?

A. Not altogether? There may be jobbing centers.

Q. Well, that would be competition?

A. That is what I say.

Q. Those are the two prime factors. Of course, there are other conditions, local conditions that would enter into it, but the two prime factors in fixing prices, of course, would be the cost to you, including the freights and markets, and the original refinery costs, and whether or not you had competition at the points?

A. Just exactly as any competitor would fix his prices or any wholesale house in any line of business.

Q. Exactly, and that is the way that those things are fixed?

A. Yes, sir.

1116 Q. Those are the two prime factors that you take into consideration in fixing the prices?

A. The cost, competition and local conditions.

Q. Now, do you have any sort of supervision or control of the Lubricating Department as to what prices they shall sell oils?

A. The Lubricating Department handles its own business.

Q. You have nothing to do with the fixing of the prices in the Lubricating Department?

A. Not at that time. They fixed them in that Department.

Q. Isn't it the fact that very many of the oils and commodities that were sold by the Lubricating Department were fixed absolutely by the Standard Oil people in advance?

A. No, sir.

Q. That is not true?

A. That is not true.

Q. Didn't Mr. Silas H. Payne, who is at the head of the Lubricating Department of the Standard Oil Company, at No. 26 Broadway, fix absolutely the prices at which the Waters-Pierce Oil Company would sell all of their trade mark brands, what are known as the trade mark brands?

A. I am not posted as to that. I didn't know that Mr. Silas H. Payne had any correspondence with——

Q. Look at the left hand corner of the letter there, the Lubricating Department, and see what initials are up there in the left hand corner, very small letters?

A. I will have to get on my glasses for that. That is S. H. P. up there.

Q. Yes. Do you know anything about the methods or procedure by which Mr. McNall would get his information that he communicated to the Waters-Pierce Oil Company?

A. Nothing whatever.

1117 Q. Don't you know that it was the fact and that Mr. McNall has so testified, that he got information from the different Departments of the Standard Oil Company at No. 26 Broadway and that the letters written—he would write the letters upon the stationery of the Waters-Pierce Oil Company, and in the left hand corner would put or have put the initials of the persons from whom he got the information?

A. Only from what you are telling me now.

Q. You never investigated that to know anything about that?

A. No, sir.

Q. So what I am telling you now is news to you?

A. I don't know a thing about that except what you have told me here.

Q. Well, did you learn anything of that sort when you were President of the company?

A. No, sir.

Q. While McNall was Commercial Agent under you?

A. No, sir, these letters went direct to the Lubricating Department.

Q. Who employed McNall?

A. Mr. H. C. Pierce.

Q. Did you supervise or instruct him at all?

A. Mr. Pierce when he employed Mr. McNall told me to give McNall information that he asked for and to address him there as our Commercial Agent.

Q. Mr. Pierce instructed you as he has testified heretofore, as he did all the other heads of departments here, to give McNall, as the representative of the Standard Oil Company, any information or reports that he desired?

A. As the representative of the Standard Oil Company?

Q. Yes, that is what Mr. Pierce has testified.

A. He didn't say that to me.

"Mr. JOHNSON: I object to that question as assuming that that is the testimony.

1118 "Mr. ALLEN: I am only stating to him what Mr. Pierce has testified to.

"Mr. JOHNSON: It is not proper to predicate a question to this witness on what another witness may have testified to. You could ask the witness as to the specific facts, but not in a hypothetical way, and a way that the question is framed.

"Mr. ODELL: And in addition to that, he has stated that he was not present at the time that Mr. Pierce testified, and of his own knowledge he does not know what he testified to.

"Mr. ALLEN: Is that a fact?

"Mr. ODELL: Were you present when Mr. Pierce testified?"

A. I was not. I never heard one word of his testimony anywhere with reference to this case.

Q. Do you know anything about the purpose of having Mr. McNall appointed Commercial Agent?

A. Mr. McNall?

Q. Yes, Mr. McNall?

A. Mr. Pierce employed McNall, but I know nothing more than what I was told to do, by him, or by Mr. Johnson for Mr. Pierce, to address any correspondence with reference to the Waters-Pierce Oil Company to McNall, who had been appointed as Commercial Agent in New York.

Q. You were President of the company?

A. Yes, sir. Mr. Pierce was a very large stockholder.

Q. The Standard Oil Company owned twice as much stock as he did, didn't they, at that time?

A. If Standard Oil owned it at that time.
Q. Well, you don't know whether it did?
A. I don't know who owned the stock. The certificate book will show that.
Q. All that you know, then, about McNall's employment is what Mr. Pierce communicated to you?
1119 A. That is all.
Q. Were you ever there during the time of his employment?
A. Yes, sir.
Q. As a representative of the company?
A. Yes, sir.
Q. Did you see Mr. McNall?
A. I saw Mr. McNall.
Q. Did you discuss matters with him at that time?
A. Well, I have seen him principally when I was on my vacation going up to Maine, stopped there on my way back.
Q. He was in Mr. H. M. Tilford's office?
A. H. M. Tilford was formerly a director of the Waters-Pierce Oil Company—that is, the old company.
Q. And was at the time it went out of business in 1900?
A. I believe he was at that time. I know he was at one time.
Q. Mr. Tilford requested you on one or more occasions, did he not, to come to New York and talk over the business of the Waters-Pierce Oil Company with him and others at No. 26 Broadway after its organization in 1900?
A. I think Mr. Tilford asked me.
Q. How many times did you go in response to those requests?
A. I remember once passing through New York from Kennebuck Port, Maine, going down to New York and stopping on the way home.
Q. How many times do you remember of going in response to those requests that he made?
A. I don't recollect more than that one time, in answer to him.
Q. You were there at other times, dropped in incidentally?
A. Not very often.
Q. Now, what phases of the business did you discuss with Mr. Tilford?
A. My talk on that particular occasion was with Mr.
1120 McNall.
Q. Well, I understood you to say that McNall and Tilford were in the same room?
A. Tilford was in the same room, but I had but very little talk with McNall.
Q. Was he present at your conversation with McNall?
A. No, sir, he was in and out of the room. Matters pertaining to the business I took up with McNall. He had statements sent to him from this office that Mr. Pierce requested should be sent, anything that he asked for, and he would discuss with me different matters.
Q. What sort of statements?
A. Statements with reference to sales of oil in iron barrels, maybe

the question of where we would buy the iron barrels, whether in the East, or Detroit, or here in St. Louis. Those were matters of detail that would come up.

Q. Would you give any instructions to McNall about buying supplies for the Waters-Pierce Oil Company, as to where he would buy them, or where he should buy them?

A. Such orders as we placed with McNall we generally knew where we were going to get the supplies.

Q. Where would you know you were going to get them?

A. Mr. Adams would know.

Q. You said you would know?

A. I would know if anything pertaining to refined oil or gasoline, but very few of those orders were going to McNall.

Q. Where would you know that you were going to get them if you placed them with him?

A. From shipments we placed from him, for instance, from Galveston we would have a quotation quoting refined oil from the Eastern refinery f. o. b. at point of shipment, possibly at Galveston or Mexico.

Q. Don't you know that McNall did not buy any refined oils of any sort upon orders of that kind except from the Standard
1121 Oil Company or some of its interests? Didn't you know it at the time that these orders were placed with him, that it was bought from them?

A. Not necessarily, for I would not pass on all the bills.

Q. Well, the ones that you knew about. Of course, some of them would not go through your department.

A. There was very little of the refined oil or gasoline that was bought in that way.

Q. I don't care whether little or much. Didn't you know that all these orders that were placed, that they were going to be placed with the Standard Oil Company or its interests?

A. I did not know it if they were going to be, nor did I know that they were.

Q. Well, what did you mean by your statement that you know where they would be placed at the time you sent the orders?

A. Following up a quotation, if we had a quotation of a shipment from New York, that quotation would be from a certain interest or company. It would be maybe the Bayonne refinery. The bills never came to me. That would go into the other Department. I never would see them, but Mr. Adams would.

Q. I understand. The Bayonne refinery is a Standard Oil refinery in New Jersey, isn't it?

A. I believe so, I don't know except what I see in the papers.

Q. I don't want, Mr. Finlay, to be unfair with you or anything of that sort. All that I want is the facts, and of course, if you don't know, that is all right, and if you do know, say so, and we will get along very rapidly. The point is this: Can you give me a single instance of orders that were ever placed with McNall for refined oils of any kind that were not supplied by the Standard Oil Company or some of its allied companies?

A. I don't know its allied companies, therefore I couldn't answer the question.

1122 Q. What is your information about it?

A. I have no information on that.

Q. You have no information about any of its allied companies?

A. I don't know a thing about them only what I have seen in the papers and what I picked up from hearsay and from supposition; nobody has ever told me what companies the Standard control.

Q. And you made no inquiries about it?

A. I made no inquiries about it.

Q. Did you ever give any instructions to McNall about who he should buy from?

A. Mr. Adams' Department placed the orders with McNall.

Q. You placed no orders with him at all?

A. Not with Mr. McNall.

Q. Now, how long have you been connected with the Executive Department, the home office of the Waters-Pierce Oil Company?

"Mr. JOHNSON: You mean the present company?

"Mr. ALLEN: Both of them."

A. For 18 or 19 years; that is, in different positions.

Q. The old company ceased to do business in 1900, in May, didn't it, and a new company was organized in May, 1900, was it not?

A. Yes, sir.

Q. What position did you occupy with the old company for a period of a few years before its going out of business?

A. Only a few months.

Q. Well, for a few months?

A. I was President.

Q. Well, before that time?

A. I have been Vice President.

Q. How long?

A. Oh, ten or twelve years.

Q. Were you connected during all this time with the Sales

1123 Department or what Department?

A. The Traffic and Sales Department. There were others that I had something to say about.

Q. You were principally connected with those two departments?

A. Yes, sir.

Q. In your connection with the Traffic and Sales Departments did you become familiar with your representatives in different localities and the territory in which you were marketing oil and commodities that were being sold and manufactured for the Waters-Pierce Oil Company?

A. Not after 1900, only with the Managers. I ceased to cover the small stations after I was made Vice President.

Q. What were your duties as Vice President?

A. Traffic, general supervision of the business including the construction of equipment, and prices, fixing the prices, fixing the salaries of the employés, and others.

Q. Did you have anything to do with the supervision of agents, either in an advisory or actual capacity?

A. Not with agents. We never came in contact with agents.
Q. With the Division Managers?
A. We came in contact with the Division Managers, yes, sir.
Q. Do you know Mr. LeRoy Campbell of San Antonio?
A. Well, I met him.
Q. Do you know anything about a contract that was made with him by which his business was purchased at San Antonio?
A. I know of a contract made by a brother of mine, the same initials as mine, made for the company.
Q. It was made for the Waters-Pierce Oil Company?
A. Yes, sir.
Q. When was that contract made, about?
A. Why, I should judge about twelve or fifteen years ago.
Q. It was made by the old company?
1124 A. Yes, sir.
Q. After the organization of the new company how long did Mr. Campbell continue in the employ of the Waters-Pierce Oil Company at San Antonio?
A. After the new company?
Q. Yes, how long was he in the employ of it?
A. I can not recall unless I would refer back.
Q. Well, about how long?
A. I have no recollection.
Q. Do you know whether a day, or a year, or three years?
A. It may have been a year, or it may have been three years. I couldn't tell.
Q. Well, it was a considerable period of time?
A. I may be wrong as to when my brother first entered into an agreement of some sort with Mr. Campbell. It may not have been as long as 12 years; may not have been more than 10 years. I don't remember how long.

"Mr. JOHNSON: The contract was made in 1894 and Mr. Campbell was discharged by the new company in 1904."

A. Well, then, I didn't miss it very much.
Q. Mr. Campbell was conducting the oil business at San Antonio on a small scale, was he not?
A. My recollection of Mr. Campbell was that he was in the grain or commission business in connection with the retail oil business.
Q. Yes, retailing oil on a small scale?
A. That is as I recollect it.
Q. At San Antonio?
A. Yes, sir.
Q. The Waters-Pierce Oil Company bought him out, did they not, and put him on a salary or commission?
A. I think it was a salary.
1125 "Mr. JOHNSON: Which company?
"Mr. ALLEN: The old Waters-Pierce Company."

Q. That was in 1894?
A. In 1894.

Q. Six years before it went out of business?
A. Yes, sir.
Q. After the new company was organized it continued Mr. Campbell in its employ under that contract, did it not?
A. I believe so.
Q. And paid him his salary under that contract?
A. I believe so.
Q. Up until about 1904?
A. Yes, sir, at the time that he wanted to go out.
Q. Well, he was discharged, or quit, did he?
A. Well, I think it was mutual. It was a mutual agreement.
Q. Do you know Mr. Clem, at Dallas, the Eagle Refining Company?
A. Well, yes, sir, I knew him years ago.
Q. Do you know anything about the contract that was made with the Eagle Refining Company? I don't mean the details, but in a general way?
A. Mr. H. C. Pierce knows about that.
Q. Personally he made the contract?
A. I think he did.
Q. And you as connected with the executive department of the company, did you ever have anything to do with the carrying out of that contract to pay Mr. Clem a salary?
A. No, sir, I did not.
Q. You do know that for some years after the reorganization of this company——
A. He was the agent.
1126 Q. They continued to pay him a salary to operate the Eagle Refining Company?
A. I think as agent, yes, sir.
Q. The Eagle Refining Company ceased to do business in 1904, didn't it?
A. Yes, sir, as well as I remember.
Q. Mr. Clem ceased to be in the employ of the Waters-Pierce Oil Company about that time?
A. Yes, sir.
Q. The Eagle Refining Company was engaged in selling oils at Dallas, Texas, was it not, originally?
A. Well, Dallas and tributary territory. That was their headquarters.
Q. Do you know anything about its operations after it was purchased by the Waters-Pierce Oil Company as to how it was run or operated?
A. That was handled under—I think it was my brother.
Q. You know personally nothing about the handling of it?
A. No, sir, I have no knowledge of the details.
Q. Mr. Finlay, as a matter of fact when the old Waters-Pierce Oil Company ceased to do business in May, 1900, and the new company began to do business about the 31st of May, 1900, there was practically no change in the business, except in some officers of the company, was there, of the two concerns?

A. You mean their method of handling the business?

Q. Yes, and the employés, and the territory in which they operated?

A. I think the employés were all discharged, and——

Q. They were discharged by the old company, and in the same mail were employed by the new company?

A. That is a legal proposition that I have nothing to do with.

Q. You were the President. Didn't you write the letters?

A. Mr. Pierce and Mr. Johnson handled that.

1127 Q. But you were President of the old company at that time that it went out of existence?

A. I presume letters were sent out that way.

Q. Didn't you send letters under your signature discharging those employés, and don't you know that Pierce sent a letter at the same time employing them in the same capacity and for the same salary in the new company?

A. I think that is correct.

Q. Now, the territory continued to be the same in which business was done, did it not?

A. So far as I remember, yes, sir.

Q. Do you know or did you ever hear Mr. Pierce say what the territory was of the Waters-Pierce Oil Company for the handling and retailing of oil?

A. The wholesaling of oil?

Q. I mean the selling of oils, the commodities of the company?

A. When I first came to St. Louis I was superintendent of divisions, and there were statements which showed the towns in each division where they were doing business, and that is all that I had to guide me.

Q. Didn't you have a map in the office which showed the towns?

A. I don't know that.

Q. Did you ever see any map of that sort?

A. I have a recollection of seeing a map, but I couldn't remember the lines of the map.

Q. Oh, I don't ask you for the lines. Don't you know that there was a map?

A. There was one.

Q. They kept a map showing the divisions of the territory?

A. I think in Missouri division office there was.

Q. Everybody connected with the Waters-Pierce Oil Com-

1128 pany, that is, the manager's department, knew that the whole of Texas was in the Waters-Pierce territory, of course, and there was no necessity for having lines?

A. Yes, sir, that is a fact. I never saw any map with reference to Texas.

Q. Of course. This map was with reference to Missouri; and did you have one with reference to Louisiana, also?

A. I don't remember of ever seeing such a map.

Q. Well, it is a fact that you did not do business East of the Mississippi in Louisiana. It was only West of the Mississippi in Louisiana?

A. That is true, I think. We did do business away back beyond up to ten miles somewhere up along the river.

Q. Yes. Now, all of these territorial lines continued to be observed by the Waters-Pierce Oil Company after the new company was organized the same as the old one, did it not?

A. I don't know of any change.

Q. Well, of course you were connected with that company as its President and would have known if there had been any change?

A. I think I would have known it.

Q. You never agreed or instructed any change to me made?

A. No, sir.

(Portion omitted.)

Q. I believe that you stated that you had nothing to do with the practical workings of the lubricating department—that is, as to the filling of orders?

A. I have more now than I used to.

Q. I mean up to the time that Tinsley left?

A. No.

(Redirect examination by Mr. JOHNSON:)

1129 Q. Mr. Finlay, when Mr. McNall was first employed by the Waters-Pierce Oil Company he had his office at No. 26 Broadway, New York City, did he?

A. Yes, sir.

Q. Established his office there?

A. Yes, sir.

Q. All communications were addressed to him at that number?

A. Yes. sir.

Q. Do you know when the change was made from 26 Broadway to 75 New Street?

A. I don't recollect the date.

Q. In 1904, was it?

A. I think it was about that time.

Q. Did you or the company have anything to do with the change, or know anything about it?

A. No, except a request from Mr. McNall to address all mail to him in the future to 75 New Street.

Q. Don't you recollect, Mr. Finlay, when you received that letter from Mr. McNall, that you referred that to the General Counsel of the company, who advised against any such change being made?

A. I remember that.

Q. You advised Mr. McNall of the decision of the General Counsel of the company, did you not?

A. Yes, sir.

Q. Notwithstanding that, Mr. McNall insisted on having his mail addressed to that number?

A. Yes sir.

(Portion omitted.)

Q. Since you testified, Mr. Finlay, have you refreshed your memory as to the manner in which quotations or information was given

to the company from time to time as to the changes in prices,
1130 refinery prices, on refined oil and petroleum?

A. I was thinking over that last night. I recollect, of course, those quotations which I got out of the file this morning.

Q. You have read the letters over, have you, that you referred to?

A. I just glanced at them, to see that they were in the nature of what I was looking for,—quotations from the S. O. Company at Chicago, for the price of oils, and gasolines, to be delivered to us as we might call for them, at the different refineries specified in the quotations.

Q. Just state generally, now, who the quotations were received from, in a general way, and how they came?

A. They were—on refined oils and gasolines and naphtha, they were received by me from Mr. W. P. Cowen, who is Vice President of the Standard Oil Company in Chicago, and the Gulf Refining Company—I think that was addressed to Mr. Ackert, and the Security is addressed to me, I think. I don't recollect that exactly. You have it there.

Q. Well, speaking generally of the method in which quotations were made?

A. They were received in writing from the different parties.

Q. Announcing any change in the refinery or wholesale prices of oils sold to the company?

A. Yes, sir.

Q. And they were received from others besides the Standard Oil Company of Indiana or the Gulf Refining Company?

A. From the Texas Company at Beaumont, and the Security Oil Company, at Beaumont.

Q. Any others?

A. I have not looked for any others, because they only referred to——

Q. Do you recollect, now, any occasion that you received quotations from other companies, other than these?

1131 A. No, I received quotations from Mr. McNall, of the export New York prices.

Q. Those were export prices on crude oil?

A. Yes, and refined oils, too. We had very little to do with the cost of crude—very few shipments of that nature from New York.

Q. Those were refined oils?

A. Refined oils—gasoline.

Q. What were the shipments mostly from New York or Philadelphia, or any Eastern point? What were the shipments mostly? What was the character of the oil?

A. Crude oil, from Philadelphia, was the largest,—to Mexico.

(Recross-examination by Mr. ALLEN:)

Q. I also have here, Mr. Finlay, a telegram dated Chicago, 8-25-'06, addressed to you as V. P. of the Waters-Pierce Oil Company, at St. Louis, Missouri, and signed by W. P. Cowen, reading: "We can not make any reduction in the prices V. M. and P. Naphtha." Can you explain that?

A. That evidently was in answer to a request from me for a reduction on the prices.

Q. The price that they had quoted to you on those grades?

A. Yes, sir.

Q. Now, these purport to be original letters, as testified by you; they are original letters in your possession received by you in the regular course of mail?

A. Yes, sir.

Mr. ALLEN: In connection with this deposition we offer in evidence the letter as being written by McNall, has the initials "S. H. P." on the left hand corner, general price-list, and is stamped, "Received June 18, 1904. Answered E. S. H." It is addressed, "Mr.
1132 S. Johnson, St. Louis, Mo." The price list is also read in part, and all considered in evidence.

Judge STEDMAN: Was a copy of that attached to the letter you introduced before?

Mr. ALLEN: No. This letter was not introduced before. I am introducing it now. This is the letter that has just been proved up.

Judge STEDMAN: There is nothing there to make it appear that the list that you are reading was the list that accompanied McNall's letter.

Mr. ALLEN: Of course, it is only proved up in that way. I identified this letter by Mr. Horn as being received by him, and I identified then the list, all this memoranda on the list, as being made in his department.

Judge STEDMAN: Then we insist on our objection that there is nothing showing that that list is the schedule of prices referred to in McNall's letter.

Mr. ALLEN: In order to get at it at this time, because I want to introduce it, I will introduce that part of Mr. Horn's deposition in regard to it. It is on page 317 of this deposition.

(Portion of deposition of E. S. HORN:)

Q. I wish you would examine this letter and see if you have ever seen it before. That letter is dated New York, June 15, 1904, addressed to Mr. S. Johnson, St. Louis, Mo., and purports to be signed by R. H. McNall, and is marked "Plaintiff's Exhibit Z, cross examination of A. M. Finlay." Whose handwriting is that memoranda there, "Lubricating oil", in?

A. Mr. Coombs'.

Q. In your department?

A. He was at that time, yes, sir.

Q. Now, there is a stamp on it, "Received June 18, 1904.
1133 Answered E. S. H." Whose stamp is that?

A. That is mine.

Q. "E. S. H." are your initials?

A. Yes, sir.

Q. Do you remember that letter and that price list?

A. I do not recollect it.

Q. Examine the price list, especially the extreme left hand mar-

gin, the memoranda in red ink. Tell me in whose handwriting that is.

A. That is one of the clerks upstairs.

Q. In the office of the Waters-Pierce Oil Company?

A. Yes, sir.

Q. What does that indicate to your mind?

A. That indicates a change of price.

Q. That was checked by the clerk in your department?

A. Yes, sir.

Q. You have no independent recollection of that particular list?

A. No, sir.

Q. And the memoranda you recognize as being in the handwriting of one of the clerks in your department—that is, the department with which you are connected?

A. Yes, sir.

Q. And it indicates that the decline was checked. All declines are checked, are they not?

A. Yes, sir.

Q. That is true of all three of the sheets, is it not? I am speaking of the notations in red ink?

A. Yes, sir.

Q. (By Mr. JOHNSON:) When were those check-marks put on there? When were the prices reduced that those check-marks indicate?

A. I do not think there was any change in the selling
1134 price.

Q. You mean those check-marks indicate——

A. The selling price to the Waters-Pierce Oil Company, and this price here in the circular, the red ink price, is the difference between the former cost and what this made it.

Q. That is, it is a change in the price previous to the receipt of the circular that the company had been paying the refinery for those oils?

A. Yes, sir.

Mr. ALLEN: Now, that is the testimony that we offer in connection with the letter and the circular.

Judge STEDMAN: Now, we still insist on our objection, that there is not anything showing that the price list offered in evidence is the schedule referred to in the McNall letter. This witness says he does not remember it.

Mr. ALLEN: It does not make any difference whether it accompanied the McNall letter or not. We prove that up as having been a circular letter, as having been received by them and checked over by a clerk in the department to indicate the decline, and whether it is the identical letter spoken of there is immaterial. We prove that they received it and acted on it, and he testifies to that fact, and testifies to the handwriting on each page.

Judge STEDMAN: Further, there is nothing to indicate when that price list was issued.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

The COURT: What is the date of that letter?

Mr. ALLEN: The date of the letter is June 15th, and the price list is dated June 14th.

(Thereupon the letter and price list were introduced in evidence.)

1135 Mr. ALLEN: We now read Stephen Johnson's testimony, beginning with Direct Examination, page 268.

(Direct examination by Mr. JOHNSON:)

Q. What is your name?
A. Stephen Johnson?
Q. What is your age?
A. 71 years.
Q. What is your residence?
A. St. Louis, Missouri.
Q. What is your occupation?
A. I am out of business now.
Q. How long have you been out of business?
A. Since October last year.
Q. What was your employment up to that time?
A. I was Manager of the Lubricating Department of the Waters-Pierce Oil Company.
Q. You have been associated with Mr. H. C. Pierce a great many years in the oil business, have you not?
A. Yes, sir.
Q. You were with him prior to the organization of the first Waters-Pierce Oil Company in May, 1878?
A. Yes, sir.
Q. You became connected with that company when it was organized?
A. Yes, sir.
Q. And remained with it until it was dissolved?
A. Yes, sir.
Q. In what capacity? What position was it you held with the company?
A. In the first place I was city salesman.
Q. You took charge of the Lubricating Department?

1136 A. I took charge of the Lubricating Department very soon after the company was organized, I think.

Q. And continued as Manager of that department in the old company down to the time of its dissolution?
A. Yes, sir.
Q. When the new company was organized you took charge of the Lubricating Department as Manager of it?
A. Yes, sir.
Q. And continued in that position down to last October?
A. Yes, sir.
Q. By the Lubricating Department you mean the department which had charge of the sales of lubricating oils, as distinguished

from the refined oils and other products of the company that they dealt in?

A. Yes, sir.

Q. You knew of Mr. McNall and the connection that he had with the company?

A. Yes, sir.

Q. In the year 1904?

A. Yes, sir.

Q. You knew Silas H. Payne, too, didn't you?

A. I did, yes, sir.

Q. Do you know what company he was with during March, 1904?

A. Mr. Payne?

Q. Yes.

A. I suppose he was representing the Lubricating Department of the Standard Oil Company.

Q. I show you a copy of a letter dated March 24th, 1904, addressed to Mr. S. Johnson, signed R. H. McNall, the original of which is attested by Mr. F. H. Sanborn, Special Commissioner appointed to take depositions in this case, and is endorsed by Mr. Sanborn "Plaintiff's Exhibit No. 8, F. H. S.," the original letter being made an exhibit to the deposition of R. H. McNall taken in
1137 New York City. Read the copy of this letter through, and see whether you can recollect ever having received the original of that letter. (Paper handed to witness for inspection.)

"Mr. JOHNSON: Mr. Allen, have you the original of that letter here?

"Mr. ALLEN: No, sir. That is attached to Mr. McNall's deposition,—the original of that.

"Mr. JOHNSON: And that has been——

"Mr. ALLEN: That has been forwarded to Austin.

"Mr. JOHNSON: By the Commissioner?

"Mr. ALLEN: By the Commissioner, yes, sir.

"Mr. JOHNSON: With Mr. McNall's deposition?

"Mr. ALLEN: With Mr. McNall's deposition, yes, sir. Do you want to identify this as having been received by him?

"Mr. JOHNSON: Well, I asked him whether he could recollect having received such a letter."

A. I don't think I ever saw that letter.

Q. What makes you think so?

A. In March, 1904, I was absent from the city. I am very sure about that. I went to California, and I did not return to St. Louis until the 15th of April.

Q. You were absent during the entire month of March, 1904?

A. Yes, I left on the 14th or 15th of February of that year and was in California until I returned here on the 14th, I think, of April.

Q. At that time did you have an assistant in your department?

A. Yes, sir.

Q. Who was it?

A. Mr. E. S. Horn. I see that he has initialed the letter, also.

Q. Was he in charge of the Lubricating Department during your absence?

A. He looked after the correspondence and the prices.

Q. Well, did he attend—did he handle the inside business
1138 in connection with you?

A. Yes, sir.

Q. If a letter was received during your absence, it was opened and read by Mr. Horn?

A. Yes, sir.

Q. If any action was taken on it, it was taken by him?

A. Yes, sir.

(Cross-examination by Mr. ALLEN:)

Q. What relation are you to Mr. H. C. Pierce?

A. I am a brother-in-law. I married his sister.

Q. I will ask you to examine this letter, which is Plaintiff's Exhibit Z, to the cross examination of Mr. A. M. Finlay, marked F. H. S., being attached to the deposition of Mr. A. M. Finlay, taken before Special Commissioner F. H. Sanborn, and ask you to carefully examine that letter and also the price lists attached thereto, and call your particular attention to the memoranda in red ink on the left hand side of this price list, and also a memorandum on the face of the letter in pencil, "Lubricating Department", and I will ask you if you recognize whose handwriting either of those memoranda are in?

A. You mean just under the date here, where it says "Lubricating oil"?

Q. Yes.

A. I don't know whose handwriting that is.

Q. To refresh your memory, isn't that Mr. Horn's—Mr. E. S. Horn?

A. I don't know. I could not swear that that is his writing.

Q. All right. Now, you say that Mr. Horn was your assistant in the Lubricating Department, and looks after the mails, especially during your absence, and the prices and the things of that sort. What was the custom in the department about the date of this letter, when letters were received, as to whether or not they were stamped "Received" by anybody, or I will get you to tell me
1139 whether you recognize that stamp which is on there, "Received"?

A. I would recognize that as Mr. Horn's stamp.

Q. That was a stamp that was customary for him to put on mail that he handled?

A. Yes, sir.

(Portion omitted.)

Q. You don't know whose handwriting that is?

A. No, sir.

Q. Mr. Johnson, who furnished you the prices at which the lubricating oils should be sold? Who gave you those prices? Did you

personally fix the prices at which—or did some one else furnish them to you?

A. I almost always fixed them myself.

Q. Did you handle any lubricating oils of the Standard Oil Company which were known as trade mark brands?

A. Some.

Q. To what extent?

A. Well, quite a large extent.

Q. The Waters-Pierce Oil Company manufactures lubricating oils, does it not?

A. Yes, some kinds.

Q. Do you manufacture all grades, or just certain grades?

A. We manufacture certain grades.

Q. And you bought certain grades of the manufactured products of the Standard Oil Company?

A. Yes, sir.

Q. Now, those grades of the manufactured product that were furnished you by the Standard Oil Company for sale, or bought by you from them for sale, known as trade mark brands, isn't it the fact that invariably Mr. Silas H. Payne, who was at the head of the Lubricating Department, as you say, of the Standard Oil
1140 Company, gave you the prices at which those particular brands should be sold?

A. No, sir, I think not.

Q. Well, you say you think not. Don't you know that that was the fact—that he did that invariably. And that they came in the shape of letters, either from him direct or from Mr. McNall, Commercial Agent of the Waters-Pierce Oil Company at New York?

A. There may have been some of the trade mark brands that had minimum prices.

Q. Well, of course, they did not have maximum prices for them?

A. Minimum——

Q. Well, what prices?

A. Minimum cost price of the Waters-Pierce Oil Company, and we would not go below that, usually. Those were prices that we would name for the minimum even price, on that.

Q. The minimum even price would be named for certain particular brands, at times?

A. Yes, sir.

Q. And isn't it a fact, Mr. Johnson, that you invariably conformed to those prices, to avoid any friction with the Standard Oil Company, in having several prices?

A. Well, we did not conform to their prices unless it was consistent with our ideas of the profits that we could make on the oils.

Q. Oh, I do not mean invariably, but I am talking now about the special instances that you mention.

A. They might suggest prices, and if they were agreeable to our ideas we would adopt them.

Q. What do you mean by "agreeable"?

A. Depending upon the conditions and whether we were able to

hold the trade on their prices, or whether it would be necessary to go below those prices in order to get it; we would do that.

1141 Q. What do you mean by minimum prices that were fixed? Maximum prices were never quoted to you by them, were they?

A. No, sir, I think not.

Q. Only minimum prices?

A. It was the minimum cost price that we could get.

Q. What do you mean by the cost price?

A. What it would cost us, in buying from the Standard Oil Company.

Q. Well, you would know what the quotations would be. Did you make requisitions for those supplies yourself, or did some other department of the Waters-Pierce Oil Company make them?

A. The Lubricating Department made them always.

Q. Your department?

A. Yes, sir.

Q. Made them always?

A. Yes, sir.

Q. Now, that is the price, then, that was quoted to you—you say they quoted the minimum price, and not the maximum?

A. There was a price that they would not sell—those things were not sold below that. Sometimes they would also furnish prices on those goods; sometimes they would advance their cost price to us on those goods.

Q. But I am speaking about the selling price—the selling price that you should sell those trade mark brands at. In special instances didn't Mr. Payne write to you, either directly or through Mr. McNall, that in special instances the following should be the minimum selling prices, just like this letter, a copy of which was shown you by Colonel Johnson, appearing to be stamped by E. S. H., in which he quotes the minimum selling prices, but not the minimum cost price of certain kinds of oil,—isn't it a fact that that was frequently done by Mr. Payne, either directly or through Mr. McNall, as to these special grades of oil?

1142 (Objected to, as calling for the contents of written documents.)

A. That is, that he would write to us to suggest minimum prices?

Q. Minimum selling prices, yes, sir, as he did in the letter which you have just read that was shown you by Colonel Johnson?

A. I think he did. That letter would indicate that.

Q. That letter would indicate that?

A. Yes, sir.

Q. Now, you say, of course, as a general thing you promulgated the prices yourself from your department, without suggestions from them?

A. Yes, sir.

Q. That is, as to the bulk of the business?

A. Yes, sir.

Q. Now, upon what did you base the prices of the different lubri-

cating oil or other products sold by your department? That is, what did you take into consideration in fixing the price?

A. We would take the cost of the oil and the freight to the point where we would sell it, naturally, and a profit that was warranted, in order to compete with other dealers.

Q. Well, to make it plain, when you fixed a price yourself, were not the prime factors that you took into consideration the cost to you—that is, which included the freight and competition. Those two things controlled practically the fixing of prices?

A. The prices we made in different localities.

(Redirect examination by Mr. JOHNSON.)

Q. What are the trade mark brands of oil handled by the Waters-Pierce Oil Company—that is, the ones purchased from the Standard Oil Company?

A. There are a number of brands of cylinder oil and engine oil.

Q. Are they all products of the Galena Signal Oil Company?

A. No, No, they are goods that are supplied that bear the Standard Oil Company's brand and label; supposed to be trade mark brands, I suppose. Whether they were ever trade marked or
1143 not, I don't know. They were put out under the brand of the Standard Oil Company.

Q. And sold by the Waters-Pierce Oil Company under those brands?

A. Yes, sir.

Q. Did the Waters-Pierce Oil Company sell any lubricating oils under its own brands?

A. It did.

Q. The bulk of the lubricating oil handled and sold by the Waters-Pierce Oil Company were sold to the railroads, were they not?

A. A large proportion of them, yes, sir.

Q. What other trade did they sell lubricating oils to? What was called the smokestack trade?

A. The consuming trade—stationary engines, smokestack trade.

Q. Factory and mills?

A. Yes, sir.

Q. Establishments of that kind?

A. Yes, used in stationary engines, usually.

Q. Now, Mr. Johnson, you stated that you always fixed the prices at which you sold the lubricating oils to the general trade. Go on and explain what you mean by that.

A. That was fixed in the Lubricating Department; if it was not fixed by me, it was fixed by somebody who was representing me there.

Q. There was never any understanding or agreement as between you and your assistants and the Standard Oil Company at all regarding prices at which the Waters-Pierce Oil Company was to sell or did sell the lubricating oils?

A. No, sir.

Q. You never acted upon or accepted suggestions, as a finality, to

fix these prices, from suggestions made by Mr. Payne to Mr. McNall, or by Mr. McNall?

(Objected to as leading and suggestive.)

1144 Q. I mean you acted on your own judgment in regard to the fixing of prices, even though suggestions were made to you by Mr. Payne or Mr. McNall?

A. Well, if it was consistent, we acted upon their advice; where it was not, we used our own judgment in obtaining the business.

Q. What do you mean by "if it was consistent?"

A. If the Standard Company suggested it we might do it, but——

Q. If other conditions justified it?

A. That is it.

Q. Then, you were influenced by other conditions?

A. Yes, sir.

Q. It was determined by other conditions?

A. Yes.

Q. Competition and the price at which competitors were selling the same kind of oil?

A. Yes, sir.

(Objected to as leading and suggestive, and as being the testimony of counsel.)

Q. Well, state upon what basis you fixed the price of these trade mark brands of oil which you sold?

A. Well, we would take the cost of the oil to us here, and add the freight to it, and would make a price to the consumer, the party that we wanted to sell to—our customer.

Q. You would add the profit to be realized by the company to that? Would that have anything to do with fixing the price that the Waters-Pierce Oil Company would sell it?

A. We always undertook to get a profit over and above the cost laid down. That was not limited to any amount, because the competition came in, and we would sometimes sell below our regular price, because it was necessary on account of competition.

Q. Well, that entered into it, however—you figured that
1145 the company should realize a profit on those oils?

A. Certainly.

Q. The price at which the competitors were selling the same oils would enter into the determination of the selling price, did it not?

A. It did, yes, sir.

Q. Who determined that point, in fixing the price?

A. It was determined by the Waters-Pierce Oil Company, by the Lubricating Department.

Q. Always done that way, wasn't it?

A. Yes, sir.

Q. State whether or not it is a fact that finally you or the Lubricating Department determined the selling price of these trade mark brands of oil, taking into consideration the matters that you have mentioned?

A. I considered that we did.

Q. Is it not a fact that you did so?

A. Yes, I think so.

Q. That that was done?

A. Yes, that is a fact. The prices were actually made by us.

Q. The lubricating oils sold and supplied by the Waters-Pierce Oil Company to railroads were generally under contracts to the roads?

A. Always, almost, yes, sir.

Q. What different kinds of oils did you obtain from the Galena Signal Oil Works, or Galena Signal Oil Company—what is the style of the concern?

A. Galena Signal Oil Company. They sold oil, valve oil and oil known as——

Q. The question is, what supplies of oils did the Waters-Pierce Oil Company get from the Galena Signal Oil Company?

A. What brands?

Q. Yes.

1146 A. Perfection Valve Oil and Galena Engine Oil and Galena Car Oil and Perfection Signal Oil.

Q. Any others?

A. I think those were the only brands. There may have been others, but we never handled but very little of it anyway—there was Galena Coach Oil, but there never was but very little of that; that was one of their brands.

Q. Are any of those what you call or designate trade mark brands?

A. Yes, they were considered trade mark brands; whether they were trade marked or not, or patented, I don't know. They were supplied only by that company, under the brands, I think.

Q. Are any of the lubricating oils set out in the list attached to Mr. McNall's letter to you of June 15th, 1904, which is marked Plaintiff's Exhibit Z to the cross examination of A. M. Finlay, the Galena Signal Oil Company's oils you have mentioned?

A. I don't discover any of those oils on here.

Q. Are all the oils enumerated on that list so called trade mark oils?

A. In this list?

Q. Of the Standard Oil Company?

A. I don't think they are. They are oils named there—Mineral Seal, for instance, is an oil that I think is sold by other parties.

Q. How about the others? Look it through and see.

A. Those are all Standard Oil Company's brands.

Q. You mean by that trade mark brands—what you have designated as trade mark oils?

A. Yes, sir.

Q. (Mr. ALLEN:) You, during the time that you were connected with the Lubricating Department, had contracts and under those contracts furnished lubricating oils to most of the railroads in Texas, did you not?

A. Yes, sir, most of them.

1147 Q. And many other institutions and industries in Texas?

A. Yes, we shipped oils to Texas points to our different representatives, and they distributed them through there.

Thereupon Court adjourned until 9.30 A. M. Monday, May 27, 1907.

MONDAY, *May* 27, 1907.

Court opened at 9.30 A. M., and thereupon adjourned until 2.30 P. M.

Court opened at 2.30 P. M.

ROYER CAMPBELL, a witness for the Plaintiff, having been sworn by the Court, testified as follows:

Examination by Mr. LIGHTFOOT:

Q. Your name Royer Campbell?
A. Yes, sir.
Q. Where do you live, Mr. Campbell?
A. San Antonio.
Q. How long have you lived in San Antonio?
A. Nearly fourteen years.
Q. About fourteen years?
A. Yes, sir.
Q. What business are you now engaged in, Mr. Campbell?
A. At the present moment I am shipping the onion crop of the Texas growers.
Q. Shipping the onion crop for the Texas growers?
A. Yes, sir.
1148 Q. That is, do you buy the crop, or are you agent——

Mr. ODELL: Well we object to that, Your Honor. It is immaterial here whether he buys or under what arrangement.

The COURT: The objection is overruled.

Q. Just state what your business is, Mr. Campbell?
A. I am working for a corporation composed of the onion growers.
Q. Onion growers of——
A. Of South Texas.
Q. South Texas?
A. Yes, sir.
Q. Well, are you in any other business?
A. Yes, sir, I have a couple of farms that I—I don't do any work on the farms myself, but I farm them.
Q. You are running a couple of farms that you own?
A. Yes, sir.
Q. Now, how long have you been engaged in that business, Mr. Campbell?
A. About—oh, I could not say definitely; several years.
Q. How long have you been representing the onion growers?
A. Two years.
Q. Two years?
A. Yes, sir.
Q. Now, then, when you first came to San Antonio what year was it?
A. Fall of 1893.
Q. Fall of 1893. What business did you engage in after you came to San Antonio?
A. Coal oil.

Q. Coal oil business?
A. Yes, sir.
Q. Where?
A. San Antonio.
1149 Q. Coal oil business?
A. Yes, sir.
Q. Where?
A. San Antonio.
Q. What kind of business were you in—jobbing business or retail business?
A. Retail, in the beginning.
Q. In the beginning. Who did you sell to—merchants there?
A. No, sir, consumers.
Q. Sold to the consumers?
A. Exclusively.
Q. What was the name of the business that you established there?
A. Under the name of—it was an unincorporated company; under the name of the Texas Oil and Gasoline Company.
Q. Your business was called the Texas Oil and Gasoline Company?
A. Yes, sir.
Q. Who owned that business?
A. I did.
Q. You were the only member of the firm?
A. Not in the beginning, no, sir; about four months I had a partner, then I bought him out.
Q. You bought him out?
A. Yes, sir.
Q. Then you owned it exclusively?
A. Yes, sir.
Q. Now, what equipment did the Texas Oil and Gasoline Company have in the city of San Antonio at that time for the handling of oil?
A. Three tank wagons and the necessary tools and fixtures.
Q. Own any storage tanks?
A. Not in the beginning.
Q. Well, when did you establish your storage tanks?
1150 A. I think about the first of March, or I will say, in the Spring of 1904—I mean 1894.
Q. 1894?
A. Yes, sir.
Q. Well, now, then, after that time, after the Spring of 1894, and on up until, say, the first of October, 1894, what equipment did you have at that time for handling the oil business in San Antonio?
A. Well, I had the same equipment that I had up to March first, or about that time, and in addition to that I had two storage tanks of ten thousand gallons capacity each.
Q. Now, along about that time how much business were you doing in the city of San Antonio?—what was the volume of your business?
A. I think in September, 1904—1894—I did a business of nearly eight thousand gallons.
Q. For that month?

A. Yes, sir, during that month. I will say, to be safe, seven thousand.

Q. Now, did you have any competition from the Waters-Pierce Oil Company up to that time, Mr. Campbell?

A. Considerable.

Q. Well, just state now to the jury what competition you had up until the first of October, 1894, from the Waters-Pierce Oil Company?

A. Well, in the beginning I bought oil of the Waters-Pierce Oil Company, their tank station at San Antonio, and re-sold it to the consumers. I don't remember definitely whether I got an inside price or not—I don't believe I did at that time.

Q. Well, how long did you continue buying from the Waters-Pierce Oil Company?

A. Up to the time that my tank cars with their contents arrived in San Antonio.

Q. Well, when was that?

1151 A. On or about March first, 1894.

Q. On or about March first, 1894?

A. I might be mistaken several weeks.

Q. Well, just in the neighborhood?

A. I will say the Spring of '94.

Q. Well, then, up until the Spring of 1894, you think, you bought your supplies from the Waters-Pierce Oil Company and re-sold to the consumer?

A. Bought all my supplies up to that time, or up to the time of the arrival of my tanks, with the exception of two or three cars of oil that I brought in when I started in the oil business in San Antonio; I brought that oil in in barrels.

Q. Well, now, at the time you started in the oil business what price was the Waters-Pierce Oil Company obtaining for oils in San Antonio?

A. You mean right from the beginning?

Judge PENN: We object to that, Your Honor, as irrelevant and immaterial.

Mr. LIGHTFOOT: Well, he says he don't remember.

Q. Now, then, I will ask you at the time you received—you quit buying oil from the Waters-Pierce Oil Company what was the price that was being obtained for oil at that place?

Judge PENN: We object to that as irrelevant and immaterial.

The COURT: What is the purpose of the evidence?

Mr. LIGHTFOOT: The purpose of it, if Your Honor please, is to show that after he quit buying oil from the Waters-Pierce Oil Company and undertook to secure it from outside concerns, and did secure it that way, that they immediately cut the price about half in two and commenced to try to destroy his business there, and in a very strong way, and then we want to show that that warfare continued up until October first, 1894, and then the Waters-Pierce Oil Company, in order to get rid of this competition there, bought this concern

1152 out and entered into a contract, which we are going to introduce later—show that they had a monopoly of the business

as long as he was buying from them, but when he quit buying from them they started this warfare, and then in order to re-establish the monopoly they bought him out.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Q. Now, then, do you remember about what prices were being obtained for oil, Mr. Campbell, up to the time that you received your first shipments of oil from other concerns?

A. Yes, sir, within a cent or two.

Q. Well, just state it as nearly as you can.

A. I would say seventeen cents per gallon, wholesale.

Q. That's the prices that were being obtained there?

A. Yes, sir, I think I was paying seventeen cents; I might have been paying sixteen—not less than sixteen.

Q. To the Waters-Pierce Oil Company?

A. Yes, sir.

Q. Now, then, when did you receive—you say about the Spring of '94 you received your first shipment from other concerns?

A. Yes, sir.

Q. Well, where did you get that oil, do you remember?

A. Yes, sir; Independent Oil Company, or Works, Oil City, Pennsylvania.

Q. How much did you get from them, your first shipment?

A. About eighteen thousand gallons—no, about sixteen thousand.

Q. How did it come—in a tank car?

A. I bought two storage tanks in Alliance, Ohio, of ten thousand gallons capacity each, shipped them to Oil City on tank-cars, one tank on each car. I had those tanks half filled with gasoline and they were shipped to me as tank-cars. Along with these two
1153 tanks I had a regular tank-car shipped filled with coal oil. When they got to San Antonio I braced up the car and pumped the oil out of one tank into the other, and in that way saved the freight on the empty tanks.

Q. Now, how soon after the arrival of that oil did the Waters-Pierce Oil Company make any change in their price?

A. Next day—the same day.

Q. The same day that that oil arrived, what change did they make?

A. I think they dropped—the first drop was about from sixteen or seventeen to twelve, then it finally reached a level of eight to ten cents.

Q. Eight to ten cents per gallon?

A. Yes, sir.

Q. Now, did any competition or warfare continue between you and the Waters-Pierce Oil Company after that?

A. Very vigorous one for me.

Q. How long?

A. Until the first of October, 1894.

Q. Now, then, I will ask you what character of warfare and competition did the Waters-Pierce Oil Company carry on with you after that time—just state what they did.

Judge STEDMAN: May it please Your Honor, we object to that as irrelevant and immaterial and not tending to establish any issue in this case. We further object because it appears that the testimony sought to be elicited relates to transactions that transpired in the year 1894, anterior to the incorporation of the present Waters-Pierce Oil Company, and also prior to the enactment of the anti-trust act of 1899 and the act of 1903, under which this suit is being maintained.

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Q. Now, just state to the jury, Mr. Campbell, what the
1154 Waters-Pierce Oil Company did during that time, from the time you received this independent oil until the first of October, 1894—what methods they pursued or employed?

A. Well, the most potent one was the reduction in the price.

Q. Well, did they carry on the competition?

A. Yes, they established what they called the Consumers' Oil Company and made Mr. Schunke—I think that's his name, anyway, he is a brother-in-law of Louis Fries, who was agent of the Waters-Pierce Oil Company at that time—manager of this company. They followed my wagons around town and solicited apparently the business that I was thriving on more vigorously than they did to get other business. They went so far as to solicit business at my own house, they didn't know where I lived, and tried to sell my wife oil, and told her how much superior it was and that I wouldn't last but a short time, anyway, and then the price——

Mr. ODELL: Now, were you present when they were telling your wife that?

A. No, sir.

Mr. ODELL: Then we object, as hearsay.

The COURT: The objection is sustained.

Q. Well, they followed your wagons around and solicited the trade that you had been supplying?

A. Yes, sir.

Q. Do you know whether or not they solicited business that the Waters-Pierce Oil Company was supplying?

A. I do not.

Q. Now, what prices did they fix in following you around to the customers that you had?

A. I can't remember those figures definitely, but I would say ten cents to consumers. At the same time the Waters-Pierce Oil
1155 Company was selling to dealers at eight, and if they were selling at ten cents at the time, the Consumers' Oil Company sold at twelve, or two cents a gallon more to consumers than the Waters-Pierce Oil Company were selling to the wholesale trade or jobbing trade.

Q. Now, what was the difference in the price which the Consumers' Oil Company was making and the price you were making?

A. About four cents a gallon. I never cut my price below fourteen cents to the consumer, and I think it was twelve or eleven cents

to the dealer. I commenced selling the dealers then, when the fight was on.

Q. You commenced selling the dealers also?

A. Yes, sir, I did, whoever I could induce to buy.

Q. Well, was it a well known fact, Mr. Campbell, in San Antonio at that time that you were engaged in warfare with the Waters-Pierce Oil Company and the Consumers' Oil Company?

Mr. ODELL: We object to that, because it calls for the opinion or conclusion of the witness, Your Honor, rather than the statement of a fact, and it is leading and suggestive.

Judge STEDMAN: We object to it, further, that it appears to be a matter of competition between Mr. Campbell and the Waters-Pierce Oil Company. He was cutting their price and they were cutting his price, which all the anti-trust laws even contemplate as perfectly legitimate. He retaliated by doing the same thing in reference to their customers, and it does not throw any light upon the issues in this case.

The COURT: That objection goes to the weight of the evidence, but the other objection is sustained.

Q. Now, Mr. Campbell, to what extent was this rivalry between your company and the Waters-Pierce Oil Company and the Consumers' Oil Company known in San Antonio, if you know?

Mr. ODELL: Any knowledge he gained, Your Honor, is
1156 hearsay as to us. He could not get it from any other source, and unless he imparted the knowledge he had to an agent of the company, we object to it for that reason.

The COURT: What is the question?

(The last question was read.)

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. Well, that's a pretty hard question for me to answer. Of course, it was a very interesting proposition to me, and I don't know whether other people were interested in it to any great extent or not.

Q. Well, were you enabled to get any higher prices for your oil there?

A. Yes, sir.

Q. Well, why was that, if you know?

Mr. ODELL: Well, we object to that, Your Honor. It is hearsay as to the defendant and prejudicial to their rights, as to the private reason or information that he had that was unknown and undisclosed to the defendant in the case.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Mr. LIGHTFOOT: Read the question.

(The question was read.)

A. Well, I claimed at that time, and I think that I was right, that I was selling better oil than they were, and there was a natural tendency, I think——

The COURT: Do you expect to prove prejudice against the defendant?

Mr. LIGHTFOOT: Well, Your Honor, the purpose of the testimony is to show that at that time it was known that he was an independent oil dealer there and that the Waters-Pierce Oil Company was trying to crush him out in his business, and that a good many people patronized him and paid him these higher prices by reason of the fact that the Waters-Pierce Oil Company had enjoyed a monopoly prior to that time.

1157 The COURT: The objection will be sustained.

Q. Now, then, do you know who owned the Consumers' Oil Company, Mr. Campbell?

Mr. ODELL: Of your own knowledge?—if the Court will permit the preliminary question.

A. I would like to ask the Judge how far I can say that my own knowledge extended in that case.

Q. Did you ever have any conversation with Mr. Louis Fries, agent of the Waters-Pierce Oil Company, during the time—that time—with reference to the ownership of the Consumers' Oil Company?

A. Yes, I will say I did; we were friends.

Q. What position, now, did Mr. Fries occupy and hold at that time?

A. He was Local Manager at that time.

Q. Of what?

A. He was Local Manager in the '90's of the Waters-Pierce Oil Company.

Q. Well, was he Local Manager at the time you were talking to him?

A. Yes.

Q. At San Antonio, of the Waters-Pierce Oil Company?

A. I can't remember now definitely just when Mr. Fries was changed from Local Manager to Division Manager, but it was about that time.

Q. Well, was he at that time an agent and officer of the Waters-Pierce Oil Company?

A. He was either agent at San Antonio or the manager of the division.

Q. At the time you had the conversation with him?

A. Yes, sir.

Q. Well, now, just state what he said to you about the ownership of the Consumers' Oil Company?

Mr. ODELL: Now, we object to any statement the witness may make as to the conversation had with Louis Fries, whose relation with the company is shown by the testimony to be uncertain. If a local agent of the company, it is not shown that it was within

1158 the scope of his authority to represent the company or to bind the company by any statement that he might make. If either local agent of the company or division manager of the company, it is not shown that he was acting in such capacity or authority with reference to the company as to know the details of the com-

pany's business, or to be in a position to know the truth of the matters about which it is claimed that he spoke; and, in addition to that, we object to it, for the reason that it is remote—shown to be many years prior to the organization of the present company.

The COURT: The objection that the agency of Mr. Fries is not shown to be such that he could bind the company by his statement as to who owned it is sustained.

Q. Well, now, what are the facts, then——

Judge PENN: If the Court please, we ask the Court to exclude the statement that the witness made a little while ago to the effect that the Waters-Pierce Oil Company established the Consumers' Oil Company in San Antonio and ran it in opposition there. It now appears from his testimony that that was hearsay only with him.

Mr. LIGHTFOOT: Well, we would like to ask a few more questions concerning Mr. Fries.

The COURT: Very well. You may do so.

Q. Now, you say, Mr. Fries was the local agent of the Waters-Pierce Oil Company at San Antonio during that time or before that time?

A. Yes, sir.

Q. Well, now, what were his duties there as local agent?

A. I suppose to conduct the affairs of the business.

Mr. ODELL: Well, we object to it as a supposition and speculative.

Q. Did he conduct the affairs of the Waters-Pierce Oil Company there?

A. Yes, sir.

Q. Market its oil?

A. Yes, sir.

1159 Q. Well, was he in charge there, selling oil in San Antonio?

Mr. ODELL: Your Honor, we object to the question as leading—not desiring to be technical, however, or take up the time of the Court.

The COURT: The objection is sustained.

Q. Well, just state as nearly as you can, Mr. Campbell, about what you know Mr. Fries did in San Antonio as representative of the Waters-Pierce Oil Company, just as nearly as you can, everything that you know that he did there?

A. Well, he directed employés, managed the office, and everything in connection with the duties of a manager or local agent. I don't know just what his duties were.

Q. Well, under what circumstances, now, did he talk to you with reference to this Consumers' Oil Company?—how did it come up?

Mr. ODELL: Well, we object, Your Honor, to how the conversation came up between the witness here and the party named, Louis Fries, because it is clearly shown that the capacity in which Louis Fries was serving the company was that of local agent, having no reference to or connection with any official act for the company or

of the company, and can not bind the company in the absence of authority.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. Now, in what connection did it come up, Mr. Campbell, the conversation you had with him?

A. Mr. Fries desired to eliminate trouble for himself I was causing the Waters-Pierce Oil Company there at that time.

Q. You mean for himself how?

A. As manager or local agent.

Q. Did it refer to the company's business there?

A. Certainly.

Mr. ODELL: We object, because it is leading.

Q. Well, go ahead and state what he said to you in that conversation?

1160 Mr. ODELL: Well, we object to it because it is hearsay, and for the same reasons that have been heretofore urged, Your Honor.

Q. Well, did it occur in the course of a business transaction between you and Mr. Fries, or socially?

A. We had no business transactions at that time.

Q. Well, was it with reference to any business transaction?

Mr. ODELL: We object to it because it is leading. Your Honor, the witness is an intelligent witness.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. Now, just state, Mr. Campbell, how it came up—just go ahead and state the conversation between you and Mr. Fries.

A. Well,——

Judge PENN: If the Court please, we understand the Court has excluded the statement of Mr. Fries because it is not shown to be in the scope of his authority as agent of the Waters-Pierce Oil Company.

The COURT: I understand this is an effort to show his authority.

Judge PENN: Counsel has asked him to state what Mr. Fries said, and to that we renew our objection.

Judge STEDMAN: I will submit to Your Honor—of course, Your Honor is familiar with the rule—that agency can not be established by what a person says.

Mr. ODELL: I would like for the Stenographer to read the question to the Court.

(The last question was read.)

The COURT: Mr. Sheriff, retire the jury.

(The jury retired.)

The COURT: Now, Gentlemen, I would like to know what you expect to prove.

Mr. LIGHTFOOT: We want to show, if Your Honor please, that he had a conversation with Mr. Fries, local agent of the Waters-

1161 Pierce Oil Company, in which they discussed conditions between them there with reference to this competition, in which

Mr. Fries, agent of the Waters-Pierce Oil Company, told this witness that the Waters-Pierce Oil Company owned the Consumers' Oil Company and had established it there to take care of him—to try to break him down and run him out of business there. That's the object of the testimony, and that that condition continued up until October first, 1894, and these conversations led up to the buying out——

The COURT: The Court has already ruled that you could not show that unless you show a connection between Fries and the Waters-Pierce Oil Company that would make it admissible against the Waters-Pierce Oil Company.

Mr. LIGHTFOOT: We propose to show that it came up about the competition and finally resulted in the sale—negotiations started with Fries resulted in a sale to the Waters-Pierce Oil Company of his business, and that the negotiations started there at that time, and that it was during those negotiations that these facts developed, and that Fries took up the question with him and that it resulted in the sale to the Waters-Pierce Oil Company.

Mr. BRADY: Just one further question—there is one further proposition we expect to show by this witness: That at this very conversation he is asked about, with reference to the Waters-Pierce Oil Company business in San Antonio, in the course of that business and in pursuance of his duties Mr. Fries went to Mr. Campbell and stated to him that they were going to drive him out of business and put him out of business, and had this Consumers' Oil Company there for that purpose, and that this conversation arose after he had stated to him that they had this company for that purpose, to put him out of business and to drive out competition. Now, of course the conversation with him comes in very closely connected with the statement to him that it was in the course of his business. He came to
1162 Mr. Campbell and told him that this company was out in the field and that they were the owners of this company, and Mr. Campbell at that very time was—Mr. Fries at that time was engaged in marketing the Waters-Pierce Oil Company's oil in San Antonio in competition with Mr. Campbell, in charge as their local manager and agent at San Antonio, and that in pursuance of a design for the company's benefit and to get rid of competition which was bothering the company, in the course of that business, he goes to Mr. Campbell and tells him, "One of the agencies we have employed to put you out of business is the Consumers' Oil Company, and it's about time we were coming to terms," or something along that line. We want to show that from those negotiations they finally purchased Mr. Campbell's plant, and it was consummated through the agency of the Consumers' Oil Company, which Mr. Fries informed him was one of the agencies employed by the company to put him out of business. Now, we contend that that was certainly in the course of his business as agent of the Waters-Pierce Oil Company, and it seems to us it is as binding as would be a statement from the president of the company.

The COURT: Do you expect to show that the transfer of the property to the Waters-Pierce Oil Company was done through Fries?

Mr. BRADY: No, sir, the negotiations were, but that one of the

officers came down from St. Louis, Mr. Naudain, and made the formal transfer, but that Mr. Fries negotiated with him from time to time.

Mr. ODELL: Now, if you will hear us just a moment, Your Honor. The purpose for which these gentlemen say they propose to offer this testimony illustrates the vice of it. The gist and the substance of the testimony they now seek from this witness is that Louis Fries, who was at that time local agent of the Waters-Pierce Oil Company in San Antonio, made to him a statement that the Consumers' Oil Company was owned by the Standard—by the Waters-Pierce Oil Company. It is not pretended that Louis Fries was a director
1163 of the company—that he was anything more than a local agent of the company, the presumption that may be given to his duties as a local agent of the company being to sell and deliver the products of the company at San Antonio, a thousand miles away from the company's home office. Now, it is not shown in this case, even, as to whether or not Mr. Fries was an agent on commission and that he himself might have a pecuniary profit in the business which he was carrying on, and that he might have the greatest personal motive for making the statement to this witness, whether the statement be true or false. Therefore, they expect to prove here by the hearsay declaration of this local agent in San Antonio, who, so far as acting in the course of the company's business is concerned, had no more authority, no more right, and no more knowledge of the matters about which he talked than a driver for the company had. It would be on the same theory as one of the drivers of the wagons going about detailing hearsay and other information about his employer—a thing that he could not know anything about by reason of the scope of his employment—powers that he derived by virtue of his agency. Now, the admissibility of this testimony must, it seems to us, be tested by that rule—the scope and the powers of his agency to secure information—to bind the company by any statements that he made, and the only development from this testimony is that this man was merely the local agent, having no knowledge of what the officers of the company were doing—not claimed to have established this other oil company himself, the Consumers' Oil Company—not claimed to have organized it or been present or had any connection with it in the world—merely hearsay testimony, such as a railroad agent might make about the I. & G. N. railroad being owned by some other railroad in Chicago or San Francisco or New York—a general statement such as he might gather from the newspapers, and it would be on the same principle to undertake to bind his company, when he was merely the local agent of the
1164 concern, as to bind this company by the declarations of a local agent as to what company owned it, and on that ground, why, we object to it.

Mr. ALLEN: We make this suggestion, if Your Honor please: That this witness has already disclosed that Mr. Fries was in exclusive charge of the sale of oil in that territory. Now, whatever agencies were committed to his care for the purpose of marketing oil for the Waters-Pierce Oil Company, whether it was under the name of the Waters-Pierce Oil Company or Consumers' Oil Com-

pany or something else, certainly came within the scope of his authority. This witness testified he was local agent there and in exclusive charge of the sale of the Waters-Pierce Oil Company's oil, and certainly it is directly in line with the scope of his duties, and the further fact that his own brother-in-law was in charge of this particular concern that they called the Consumers' Oil Company—not a corporation, it is not developed that it was a corporation, but that it was one of the vehicles by which the Waters-Pierce Oil Company marketed oil.

The COURT: Being local agent of the Waters-Pierce Oil Company at San Antonio, it came, I presume, within the scope of his duties to meet and overcome competition. A declaration made while doing that, that he was doing it through the instrumentality of another company, would be a statement within the scope of his duties. The objection is overruled. Recall the jury, Mr. Sheriff.

Mr. ODELL: Well, we except, Your Honor.

(The jury returned.)

Q. Now, you say Mr. Fries was local agent—or was the agent of the Waters-Pierce Oil Company at San Antonio?

A. Yes, sir.

Q. State whether or not you ever had any conversation with him with respect to the Consumers' Oil Company?

A. Yes, sir.

1165 Q. Where was that conversation?

A. San Antonio.

Q. Whereabouts in San Antonio?

A. Oh, that's—I couldn't state.

Q. You could not state?

A. No, sir, I don't remember.

Q. Well, now, state what conversation you had with reference to the Consumers' Oil Company?

A. We had many conversations. We were bitter business enemies during the week, but on Sunday we would usually go fishing or hunting together. Mr. Fries was agent for the Waters-Pierce Oil Company and my personal friend——

Mr. ODELL: I wish you would talk a little louder, Mr. Campbell please, sir.

A. Yes, sir. While he never made definite propositions to me, he was constantly urging me to make them a proposition, to the company or to signify my willingness to accept one from them.

Q. What kind of proposition do you have reference to?

A. To sell out—to quit.

Q. To quit business—to sell out to him personally, or to whom?

A. To the company.

Q. What company?

A. The Waters-Pierce Oil Company. Mr. A. M. Finlay did the same thing.

Q. Who is Mr. A. M. Finlay?

A. At that time he was manager—I don't remember just his title, but he was manager of divisions, I think, in St. Louis.

Q. Of what?
A. Of the Waters-Pierce Oil Company.
Q. Now, I will get you to state whether or not Mr.—just state the conversation or any conversations that you may have had
1166 with Mr. Fries relating to the Consumers' Oil Company, and who owned it?

Mr. ODELL: We make the same objection, Your Honor.
The COURT: The objection is overruled.
Mr. ODELL: We except.

A. I can't recall the exact words that passed between Mr. Fries and myself, because there was hardly a day passed that we didn't discuss the situation.
Q. Well, just the substance of what was said about it.
A. Well, the substance of it was, I neither had the nerve nor the money to withstand the competition that I was going up against.
Q. Well, did he explain that competition?
A. Oh, yes, by word and by action he explained it.
Q. Well, now, how did he explain it?—what character of competition did he have reference to, Mr. Campbell?

Mr. ODELL: We object to that, because it calls for the conclusion of the witness, rather than what was said.
The COURT: The witness will have to state, either exactly or in substance, what was said.

Q. You don't have to state the exact words, Mr. Campbell, just state the substance of the conversation with reference to the Consumers' Oil Company.
A. All right, sir. Mr. Fries told me, not once, but repeatedly, that the Consumers' Oil Company would drive me out of business. Mr. A. M. Finlay told me the same thing—Mr. Arthur M. Finlay.
Q. You say he was manager of divisions at St. Louis?
A. Yes, sir, I think that was his title at that time.
Q. Did you ever make any terms with them?
A. Sir?
Q. Did you ever make them any proposition about your business?
A. Yes, sir.
Q. When did you make the proposition, and to whom?
1167 A. First to Mr. Fries, and he referred the matter to Arthur M. Finlay in Galveston by wire. Let me go back and correct my statement a moment ago. Arthur M. Finlay was not manager of divisions in St. Louis at that time, he was manager of a division with headquarters at Galveston.

Judge STEDMAN: Now, Your Honor, we object to the introduction in evidence of anything that Arthur M. Finlay may have said, in view of his circumscribed authority, as anything he may have said is not shown to be in the scope of his agency.
The COURT: The objection is sustained. You will disregard what this witness said that Arthur M. Finlay said, Gentlemen of the Jury.

Q. Well, did you sell our your business?
A. Yes, sir.

Q. Who did you sell it out to?
A. To the Waters-Pierce Oil Company.
Q. When did you sell it?
A. The contract was made and signed some time in September, 1894, and the transfer was made October first, 1894.
Q. Well, do you mean by "the contract" that the final contract was made then?
A. Yes, sir, a temporary arrangement was made between the Waters-Pierce Oil Company and myself some time in September, 1894.
Q. I will get you to look at that, Mr. Campbell (handing witness paper), and see if you recognize it?
A. Yes, sir.
Q. Is that your signature to that document?
A. Yes, sir.
Q. Now, state when that agreement there was entered into?
A. Some time in September, 1894; at least, a short while prior to October first; it may have been in August, but I think it was in September.
1168 Q. Now, then, you afterwards entered into a contract with the Waters-Pierce Oil Company, is that true?
A. Yes, sir.
Q. Now, I will get you to look at that document and see whether or not that is your signature (handing witness another paper)?
A. Yes, sir.
Q. Is that the original contract entered into between you and the Waters-Pierce Oil Company?
A. Yes, sir.
Q. On the first day of October, 1894?
A. Yes, sir.

Mr. LIGHTFOOT: Now, if Your Honor please, we offer these instruments in evidence.

Mr. ODELL: Let's see it. (Paper handed to Mr. Odell.) Now, do I understand that you offer both?

Mr. LIGHTFOOT: I am going to offer both.

Mr. ODELL: If the Court please, we object to both of these agreements—that is, to the paper styled "Synopsis of agreement between Mr. Roy Campbell, of the Texas Oil and Gasoline Company, San Antonio, Texas, and the Waters-Pierce Oil Company," and the contract of date October first, 1894, for the following reasons: Both the agreement and contract were entered into by a company not the defendant in this case, and entered into some six years before the organization of this company and the securing of a permit for it to do business in Texas, Wherefore these two instruments are immaterial and irrelevant and throw no light on any issue in this case and are remote as tending to throw any light on any legitimate issue in the case; and for the further reason that they were both entered into prior to the enactment of the anti-trust law of 1889 as well as of 1903—1899, and 1903; and for the further reason that at the time they were entered into they came within the law and were
1169 not in violation of either the law or good business morals at the time they were entered into, and are calculated to preju-

dice the rights of the defendant here, as being offered as a circumstance to show that they were in violation of the present laws that were enacted years after they were entered into.

Judge STEDMAN: One moment, Your Honor. We further object because there was no law in Texas inhibiting the buying of the plant of competitors and good will prior to the enactment of the anti-trust law of 1903, which was passed many years after the alleged execution of this agreement and contract; and further, because the preliminary agreement, called the "Synopsis", appears to have been merged in the written instrument called the contract of October first, 1894.

The COURT: Let's see the papers. (Papers handed to the Court.) What is your allegation with reference to this matter?

(Mr. Lightfoot inspects the petition.)

Mr. BRADY: While he is looking that up, we have undertaken to give the assurance to Your Honor before that we expect to show that this contract was carried out by the new company.

Mr. LIGHTFOOT: "That in pursuance and furtherance of the conspiracies hereinbefore alleged, and for the purpose of creating and maintaining a monopoly in the business of refining and selling of refined oils and all the products of petroleum, and for the purpose of destroying all competition between the Waters-Pierce Oil Company and all other persons, firms, and corporations doing business in the State of Texas in competition with said Waters-Pierce Oil Company, plaintiff says that the Waters-Pierce Oil Company hereinbefore referred to bought out competing businesses, doing business in the State of Texas in competition with said Waters-Pierce Oil Company, and did maintain at a number of points oil-selling concerns apparently in opposition to it, in this, to-wit: That the Waters-Pierce Oil Company for the purposes aforesaid in the year 1896 bought out
the business of the Texas Oil and Gasoline Company and of
1170 one Roy Campbell, doing business in the city of San Antonio
and elsewhere in the State of Texas, and entered into contracts and agreements with said Texas Oil and Gasoline Company and said Roy Campbell whereby said Texas Oil and Gasoline Company was thereafter operated under said name as a competing concern of the Waters-Pierce Oil Company, by the Waters-Pierce Oil Company, aforesaid; that it was so operated by said Waters-Pierce Oil Company until May 29th, 1900; that upon the reorganization and incorporation of the Waters-Pierce Oil Company, defendant, on May 29th, 1900, it acquired the said business of the Texas Oil and Gasoline Company and continued to operate it under that name, and for the purposes aforesaid, and from that time down until the present time, and in all things ratified and enforced said contracts and agreements and maintained them in full force and effect as aforesaid." I believe that is substantially the allegation.

The COURT: The objection will be overruled.

Judge STEDMAN: We except, Your Honor.

Mr. LIGHTFOOT: It is agreed that these originals be read in the record and the originals be returned to the defendant. I will introduce the synopsis of agreement. I will read it to you, Gentlemen. (Reads Synopsis of Agreement, as follows:)

Synopsis of Agreement between Mr. Roy Campbell of the Texas Oil and Gasoline Company, San Antonio, Texas, and the Waters-Pierce Oil Company:

The undersigned agrees to sell out his entire business, including storage tanks, oil and gasoline contained therein, or in cars on the track, barrels, cases and bulk, empty wood barrels, pipes and fixtures, three wagons, two teams of ponies, two double sets of harness, office furniture, and other articles used in connection with said business—to the Waters-Pierce Oil Company at cost, or invoice, prices.

The Waters-Pierce Oil Company agrees to pay cash, as soon
1171 as transfer is completed, for all of the above; and, in consideration thereof, and also a certain sum of money to be paid for the good-will of the Texas Oil & Gasoline Company, by the Waters-Pierce Oil Company, as agreed upon, I, the undersigned, agree to enter the employ of the Waters-Pierce Oil Company at a salary of $ Ninety per month and to continue the Texas Oil & Gasoline Company's business in San Antonio locally, as long as they think necessary, under their direction, and for their account.

Further, I agree not to re-enter the oil or gasoline business at any time in the future, without the consent of the Waters-Pierce Oil Company; it being understood that within six months I get a permanent position, as long as service is satisfactory, with the Waters-Pierce Oil Company at some point suitable to my health, for $125.00 per month.

After the transfer of my property to the Waters-Pierce Oil Company, all transactions of my business are to be accounted for to the Waters-Pierce Oil Company and the same to be owned exclusively by them, without reserve; they to assume all expenses of conducting same.

(Signed) R. CAMPBELL.

Mr. LIGHTFOOT: Now, I will ask the witness a question or two about this before I introduce it.

Q. Now, Mr. Campbell, you say that on October first you executed that contract with the Waters-Pierce Oil Company?

A. Yes, sir.

Q. I see section 2 there of that has some scratches or some marks over it. Will you please state by whom those scratches were made there or when that occurred, as nearly as you can recollect it?

A. Well, I have never seen this copy or this original or duplicate, whatever you might call it since I signed it until now; this
1172 contract was issued in duplicate.

Q. In duplicate?

A. Yes, sir and I have a copy with this paragraph 2.

Q. Well, was that scratched out when you signed it?

A. No, sir.

Q. Well, do you know when that was scratched out?

A. I could not tell the definite date, but——

Q. Well, as nearly as you can tell. Has anything ever happened to call it to your mind?

A. Yes, sir, it was some time after I had been—received notice from St. Louis that I had been discharged, that the Waters-Pierce

Oil Company had gone out of business, and in that mail or the next mail I received a circular advising me that my services would be continued at the same salary as before; it was some time after that.

Q. Well, what year was that in?

A. I think 1901.

Q. Now, then, do you know what time the old Waters-Pierce Oil Company dissolved?

A. No, sir, I could not tell you.

Q. You don't know the exact date?

A. No; if I had thought about that question being asked I could have told it.

Q. Well, anyhow, do you recall the circumstance, do you or not, of the old Waters-Pierce Oil Company going out of business?

A. Yes, sir, I remember it.

Q. Well, do you recall the circumstance of the new Waters-Pierce Oil Company being reorganized?

A. Yes, sir.

Q. Well, now, you say you received a letter there the same day or in the next mail. Who was that from?—from the new com-

1173 pany or the old company—the last company, or the old company?

A. The last letter was received from the new company.

Q. Telling you that you would be continued in the employ of this concern?

A. Yes, sir.

Q. At the same salary?

A. Yes, sir.

Q. All right, now. Now, measuring time by that event, was it before or afterwards that anything was eliminated from that contract?

A. After.

Q. Well, now, could you approximate how long after?

A. No, sir, I could not.

Q. Whether it was a month or six months or a year?

A. No, sir, I couldn't tell the time.

Q. Well, can you give any idea at all, whether it was the same day or week?

A. No, sir, it was not the same day. Some time elapsed. That letter was received by me from—letter referring to the scratching of this contract was written, I am sure, by Arthur M. Finlay, and if I am mistaken at all about the dates, which I am sure I was not—(interrupted).

Q. Well, now, what were the instructions you received in that letter?

A. To take my contract to Louis Fries, who would—oh, well, it amounts to scratching out one of the paragraphs, I guess.

Q. Well, is that the paragraph.

A. Yes, sir, that's the paragraph.

Q. Did you take your contract to him?

A. Yes, sir, we were together when that was erased in my copy.

Q. Well, now, was there any consideration paid to you for eliminating that, Mr. Campbell?

1174 A. No, sir.

Q. Did you pay them anything to be released from the obligation of that paragraph?

A. No, sir.

Q. They simply instructed you to do that, and you carried out their instructions?

A. Yes, sir.

Q. And that was after the reorganization.

(No answer.)

Mr. LIGHTFOOT: Now, we offer this contract in evidence, and it is agreed that it may be read in the record and the original returned to the defendant. (Reads contract, as follows:)

Mr. Royer Campbell's Agreement.

SAN ANTONIO, TEXAS, *Oct.* 1, 1894.

To the Waters-Pierce Oil Company, St. Louis, Mo.

1st. I, Royer Campbell, hereby agree and bind myself that in consideration of the Waters-Pierce Oil Company's paying to me the actual cost value, according to invoices, bills of sale, &c., in my possession, of merchandise on hand, also certain iron tanks and other appurtenances which I am now using at San Antonio, Texas, in connection with the petroleum and other business I am now engaged in, and the sum of one thousand dollars ($1,000.00) for the good will of my said business, I will sell and transfer all of my said business, merchandise, iron tanks, appurtenances &c., to the Waters-Pierce Oil Company at its convenience on or after this date.

2d. I Royer Campbell, agree and bind myself that during the term of fifteen years from this date I will not directly or indirectly transact any business in petroleum or other oils and goods handled by the Waters-Pierce Oil Co. in the States of Missouri, Arkansas, Louisiana West of the Mississippi River, and Texas, the Indian and Oklahoma Territories, and the Republic of Mexico.

(This paragraph erased by lines drawn through same.)

1175

3d. I, Royer Campbell, agree that if the Waters-Pierce Oil Company so desire, I will continue my present business at San Antonio or other points in the State of Texas, for its account and under its direction, until June 1, 1895, and as much longer as may be mutually agreed upon, and that I will accept as salary for my services in conducting the said business the sum of ninety dollars ($90.00) per month for a period of six months from October 1st, 1894, to March 31st, 1895, it being understood that my salary is to be one hundred & twenty-five dollars ($125.00) per month from the 1st day of April, 1895, and that I shall be located at some point suitable to my health and be given a permanent position so long as my service is satisfactory, and I further agree that if the Waters-Pierce Oil Co. desires me to do so before or after June 1, 1895, I will serve it in any capacity it may desire, provided such service would not be detrimental to

my health, at any point in the territories mentioned in Section 2d, and if for any reason I do not desire to do so the Waters-Pierce Oil Company shall not be obliged to continue me in its services.

(Signed) ROYER CAMPBELL.

Witness for the Waters-Pierce Oil Co.:
H. NAUDAIN.

(During the reading of the foregoing instrument the following objection was made by defendant's counsel:)

Mr. ODELL: Now, Mr. Lightfoot, are you reading the second paragraph?

1176 Mr. LIGHTFOOT: Yes, sir.

Mr. ODELL: If the Court please, we object to the reading of the second paragraph of the contract, for the reason that it is no part of the contract; it was mutually agreed, as testified to by the witness, that it should be erased and constitute no part of the contract, and having been erased, we insist that it is now no part of the contract and is inadmissible for any purpose.

(The document was handed to the Court for inspection.)

Mr. LIGHTFOOT: Now, before the Court rules on it, I would like to state that we expect to show by this witness also that there was no change in the business whatever; that it continued from that time on up until 1904. The witness has already testified that that was not eliminated until after 1900, and after this new company was reorganized, and that some little time afterwards—he is unable to locate the date—and we think that it would be admissible to show that up until that time that that part of the contract was carried out and observed as between the parties after the reorganization of the new company until he received a request from the defendant to have that eliminated from his contract.

The COURT: The objection is overruled.

Mr. ODELL: We except, Your Honor.

Q. Now, Mr. Campbell, what took place after you executed this contract?

A. The transfer was made and money was paid to me.

Q. The money called for in this contract was paid to you?

A. Yes, sir.

Q. Well, now, what did you transfer?

A. Everything I had.

Q. Everything you had, you transferred it to the Waters-Pierce Oil Company?

1177 A. Yes, sir, everything I had pertaining to the oil business—I didn't have much more.

Q. Well, did you continue business?

A. Yes, sir.

Q. Well, now, in what name was that business conducted?

A. Texas Oil and Gasoline Company.

Q. Texas Oil and Gasoline Company. Where did you get your supplies from that time, Mr. Campbell?

A. I made requisition on St. Louis for my supplies.

Q. Well, to whom at St. Louis?
A. I forget right now who was the manager at St. Louis at that time.
Q. Manager of who?
A. Waters-Pierce Oil Company.
Q. Well, do you state that you made your requisitions to the Waters-Pierce Oil Company?
A. Yes, sir—yes, sir.
Q. At St. Louis?
A. Yes, sir.
Q. Well, who sent the oils to you?
A. Evidently they did. We never received any oil in W. P. O. Co. Tanks.
Q. Well, now, in what kind of tanks did you receive it?
A. International Oil Works.
Q. Well, do you know what the International Oil Works was?
A. No, sir.
Q. Where were the goods shipped from—do you know where they were shipped from?
A. No, I don't recall that.
Q. Well, how long, now, did you receive it from the International Oil Works?
1178 A. Why, for several years. Then I commenced to get oil from—making the same kind of requisitions on the Waters-Pierce Oil Company in St. Louis, I would get oil from Corsicana.
Q. Get oil from Corsicana?
A. Yes, sir.
Q. Well, now, in what kind of tank-cars would you get oil from Corsicana?
A. Union tanks—Union Tank Line, I believe, it is called.
Q. Any other kind?
A. No, they never sent me any Waters-Pierce Oil Company tanks or any other kind—if they did, I don't remember it.
Q. Well, I will ask you whether or not during the time that you were running the Texas Oil and Gasoline Company whether or not there was ever a Waters-Pierce Oil Company tank-car filled with oil set on your side-track?
A. Yes, sir, there was once; I don't remember whether there was one or two.
Q. Well, what became of that?
A. It was pulled away—they never unloaded it.
Q. Well, what happened to it?—just state to the jury what happened to that tank?
A. We notified the Waters-Pierce Oil Company's office and it was immediately taken away.
Q. Well, had you ordered oil before that?
A. Yes, I had orders in all the time. I could not state specifically whether this car was set in on an order or not; I don't know.
Q. But it was set in on your track?
A. I do know that we didn't unload it.
Q. Why didn't you unload it?
A. Well,——

1179 Mr. ODELL: Well, we object to the reason he may have had, Your Honor, for not unloading it—unknown to the company.

The COURT: The objection is sustained.

Q. Well, did you have any instructions with reference to that matter, Mr. Campbell?

A. The matter of unloading that particular tank-car?

Q. No, any tank-car.

A. No, I was to unload tank cars that were set over there.

Q. Well, did you have any instructions with reference to that particular tank-car, then?

A. No.

Q. About unloading it?

A. No, no—it was pulled away as soon as I gave notice that there was a Waters-Pierce tank there.

Q. Now, then, Mr. Campbell, after 1900, after the company was reorganized, how did you run that business after that time?

A. The same as before.

Q. Was there any change in your business whatever by reason of the reorganization?

Mr. ODELL: We object to that, because it calls for the opinion and conclusion of the witness, Your Honor.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. No change.

Q. No change?

A. Oh, I believe—yes, I will say there was a change. We put up a little sign on our stable, "Waters-Pierce Oil Company."

Q. On your stable?

A. Yes, sir.

Q. Where was your stable situated?

1180 A. It was located out on the S. A. & A. P. railroad track, about nearly a mile from the center of town.

Q. Well, now, did you change the name of the company that was doing business?

A. No, sir.

Q. Did you have the name of the Texas Oil and Gasoline Company on your tank wagons?

A. Yes, sir, stationery and everything else.

Q. How was your stationery?

A. Texas Oil and Gasoline Company.

Q. Texas Oil and Gasoline Company. Well, did you continue to run business in that name afterwards?

A. Oh, yes.

Q. How long, now, did you continue to run it in that name?

A. I think until the first of March, 1904.

Q. Well, did you put any sign up on your office?

A. No, sir.

Mr. ODELL: We object to the question as being leading.

Mr. LIGHTFOOT: Well, I beg your pardon. I don't care to lead the witness.

Q. Now, Mr. Campbell, from 1894 up until the old company went out of existence in 1900, did you make reports to any one?
A. Oh, yes.
Q. Of your business? Who did you make them to?
A. J. P. Gruet, C. M. Adams, Arthur M. Finlay, occasionally A. M. Finlay, and the auditor at that time—I forget his name.
Q. Did you make any to Mr. C. P. Ackert?
A. Oh, yes.
Q. Well, now, what positions did those men hold, or what were their connections?
1181 A. Mr. Adams was treasurer.
Q. Of what?
A. Waters-Pierce Oil Company.
Q. Well, were all of these gentlemen that you named connected with the Waters-Pierce Oil Company?
A. Yes, sir.
Q. Where were their offices?
A. St. Louis, Missouri.
Q. St. Louis, Missouri?
A. Yes, sir.
Q. Now, then, how often did you make reports to the St. Louis office of the Waters-Pierce Oil Company?
A. Daily to J. P. Gruet.
Q. Daily to J. P. Gruet?
A. And wrote by letter, I will say frequently, maybe two or three times a month to A. M. Finlay, and later when he was succeeded by Mr. Ackert, C. P. Ackert.
Q. Well, did you make any reports outside of daily reports?
A. Yes, sir, I sent all trial balances at the end of each month and twice a month I sent in vouchers for expenditures and remitted to the Waters-Pierce Oil Company money that I had left on hand each month after the expenses were paid.
Q. Now, then, after the expenses were paid for running the business, all the money that you had on hand at the end of the month you reported that and sent it to the Waters-Pierce Oil Company?
A. In round figures, yes, sir; I never kept any surplus at San Antonio.
Q. Now, what were those reports about, Mr. Campbell?
A. Number of gallons of oil that were sold daily, oil and gasoline; generally those reports were to Mr. Gruet, the secretary, and a general report of the condition of the business and competition—
1182 a report such as any employé would render his superior.
Q. Now, then, about competition, what did the reports about competition include?
A. Well, for a while we didn't have any; of course, everything sailed easy then.
Q. You mean you didn't have any reports?
A. No, we always had reports, but no competition. When com-

petition would drop in I was supposed to line it up the best I could and make report——

Q. Now, what do you mean by "lining" it up?

A. Tell St. Louis all I knew about it, who they sold to and what they got—a general line of information for the St. Louis office.

Q. Well, state what you did, now, with reference to keeping track of any competition at that point?

A. Well, as an example, I remember at one time the Southern Pacific received a car of lubricating oil for distribution by one of the transfer companies in San Antonio. Mr. Fries called me up and told me there was a car of oil at the Sunset depot consigned to M. Cantu, and for me to investigate it. Well, neither of us knew M. Cantu. I went down to the depot and looked at it, and "M. Cantu" was "in car to" the Merchants' Transfer Company, and the man that was sent by Mr. Fries thought "in car to" meant "M. Cantu". I immediately put a man on a bicycle to trace the floats, and I reported to Mr. Fries how many cans and barrels and half barrels were delivered to the different people.

Q. Delivered to different people in San Antonio?

A. Yes, sir, some of them got away from us—we couldn't keep up.

Q. Well, the consignor too?

A. No, sir, we didn't know anything about the consignor—it was the consignee we were after.

Q. Well, what further action was taken with reference to
1183 matters of that kind?

A. I don't know; that was as far as I went.

Q. Well, did you take any steps to see the merchants or purchasers of oil?

A. No, sir, in that particular instance—I didn't handle lubricating oil at all. My duties were done when I made my report to Mr. Fries.

Q. Well, now, how about other oils that were delivered there?

A. Well, light oils, coal oil and gasoline, when we would find one of the fold straying away patronizing competition we would get after him. If he had some grievance against the Waters-Pierce Oil Company, I would go after him—it didn't make any difference which one of us got him.

Q. Why didn't it?

A. Well, we were all the Waters-Pierce Oil Company.

Q. Now, how long did the Consumers' Oil Company continue in busin ss after the Waters-Pierce Oil Company bought you out?

A. I could not say definitely, but not long.

Q. Well, about how long?—just estimate it as best you can.

A. Well, I will say four months.

Q. Well, do you know what became of its stock?

A. Yes, sir, it was taken—they didn't carry any stock; they only had wagons and horses and——

Q. Well, what became of its equipment?

A. That was all turned back to the Waters-Pierce Oil Company.

Q. And then you and the Waters-Pierce Oil Company conducted business there between you?
A. Yes, sir.
Q. Well, do you know from whom the Consumers' Oil Company got all its oils during the time it was in business?
A. Yes, sir.
Q. From whom?
1184 A. The Waters-Pierce Oil Company.
Q. Do you know whether or not it handled any of their other products?
A. Stoves only.
Q. Well, what do you mean by "stoves"?
A. Coal oil stoves.
Q. The Waters-Pierce Oil Company sold coal oil stoves?
A. Yes, sir.
Q. And the Consumers' Oil Company also handled them?
A. Yes, sir; I am not sure but they tackled gasoline stoves too at that time—it was anything to whip me.
Q. Now, how long, Mr. Campbell, did you continue that business there?
A. Until the first of March, I think it was, 1904.
Q. Was there ever any change in the business or the method of doing business from 1894 up until March first, 1904?

Mr. ODELL: We object to that, because it is leading and suggestive and calls for the opinion and conclusion of the witness.
The Cou[illegible]. The objection that it is leading is sustained.

Q. Well, what difference, now, if any, took place in the method of conducting business of the Texas Oil and Gasoline Company from 1894 up until March first, 1904?
A. None whatever.
Q. None whatever?
A. No, sir, none that I can recall now.
Q. Now, then, you say you made daily reports and semi-monthly reports and monthly reports to the Waters-Pierce Oil Company. What character of stationery did you use?
A. My daily reports—St. Louis had blanks printed headed, I think, either "R. Campbell Division" or "San Antonio"—it was "R. Campbell Division", I am sure. We used blank stationery for our monthly reports; we ruled them up ourselves; no blanks were ever sent to us.
1185 Q. Now, what character of envelopes did you send those in?
A. Blanks.
Q. Blank?
A. Yes, sir, always blank.
Q. Was there anything on the envelope to indicate from whom the letters were?
A. No, sir.
Q. Why was that?
A. On instructions from St. Louis.
Q. Well, what were those instructions?

A. To use blank envelopes.

Q. Well, was that the case at both ends?

A. Oh, yes, sir; yes, I recall no instance where I ever received an envelope with the Waters-Pierce Oil Company's name on it from St. Louis.

Q. Do you recall any instance where you ever sent them a letter with your name on it, or the Texas Oil and Gasoline Company?

A. No, sir, very careful about it.

Q. Now, what was the purpose of that, Mr. Campbell?

Mr. ODELL: We object to that, because it calls for a conclusion, Your Honor. It is not shown that it was known by the company. If he had instructions, it's the best evidence.

The COURT: Unless he had some instructions from St. Louis stating what the purpose was——

Mr. ALLEN: He has already testified that he had instructions, Your Honor.

The COURT: He testified that he was instructed from the St. Louis office to do this, but unless those instructions stated why it should be done he can not state it.

Q. Well, I will ask you whether or not you did receive any instructions as to why you should send your correspondence in blank envelopes?

1186 A. It was not necessary.

Q. You say it was not necessary?

A. Yes, sir.

Q. Now, then, Mr. Campbell, I will ask you if you had any competition or the Waters-Pierce Oil Company had any competition during the time that you ran the Texas Oil and Gasoline Company?

A. Oh, yes.

Q. Now, what character of competition did you have?

A. Well, we had a man by the name of Eckols, Sam G. Eckols, representing George Rice of Marietta, Ohio, some oil company, and later on John Locke of San Antonio put in a storage outfit—storage tank.

Q. Any other that you can recall?

A. Oh, in the territory and in San Antonio we were constantly being bothered by competition.

Q. Well, now, was there any competition after 1900?

A. Oh, yes, sir.

Q. Well, which competition was that?

A. Locke.

Q. Now, was there any before 1900?

A. Yes, sir.

Q. Well, what competition was that?

A. Well, that was George Rice of Marietta, Ohio.

Q. Well, now, what did you do, if anything, with reference to meeting that competition—the Texas Oil and Gasoline Company?

A. Called on the trade that was leaving the Waters-Pierce Oil Company and leaving—not buying from me; after I sold out, you know, and some time before, when I was in the oil business myself, I sold to the dealers as well as to the consumers.

Q. Yes.

A. And when a dealer would show an inclination to leave
1187 either one of us we would get after him; in some instances we paid rebates to hold the trade.

Q. In some instances you paid rebates to hold the trade?

A. Yes, sir.

Q. Well, what do you mean by "rebates"?

A. Well we collected the full price for coal oil when we delivered it, and at the end of the month we would turn—the man to whom we sold would turn in a voucher for a cent or whatever it would be per gallon, and send the voucher in to St. Louis for credit.

Q. Now, how long did that continue, that course of business?

A. That continued, I think, up until probably nineteen hundred—probably some time in 1903. I think all the rebates were cut out when I was discharged.

Q. You think they were all cut out when you were discharged?

A. Yes; I could have told definitely if I had thought about bringing an old book that I have in San Antonio, but I wasn't particularly interested——

Q. Well, it did continue up to that time?

A. Yes, sir.

Q. Well, how many instances of that kind can you recall?

A. Well, I recall one that lasted a long time.

Q. Which one was that?

A. C. Horan & Company.

Q. C. Horan & Company?

A. H-o-r-a-n, Horan & Company, yes, sir.

Q. Did you give him any rebates after the new company was organized?

A. Yes, sir, he got rebates after that.

Q. How often?

A. Every month. There would be an interim perhaps of a few months—prices of oil might get down to where we couldn't
1188 stand a rebate, and then we would cut it out.

Q. Now, state the course of business of the Texas Oil and Gasoline Company during the time you ran it with reference to the Waters-Pierce Oil Company?

A. I don't understand that question.

Q. The question is, state what was the course of dealing by the Texas Oil and Gasoline Company with reference to the settled trade of the Waters-Pierce Oil Company after you sold out?

A. Oh, well, we didn't look after their regular customers; we were to look after the disgruntled fellows.

Q. Well, did you solicit their regular customers.

A. No, sir.

Q. Did you undertake to sell them oil?

A. My men might have done that to make a showing, but not under my instructions; they were instructed to sell an average of so much a day, and they might have sold to some Waters-Pierce Oil Company customers in order to increase their sales.

Q. Well, do you know whether they did or not.

A. Yes, sir, I would say they did, but not much.

Q. Who got the benefit of that—what company?
A. The Texas Oil and Gasoline Company got the credit, but the money went to the Waters-Pierce Oil Company.
Q. Well, the Waters-Pierce Oil Company got the real benefit?
A. Yes, sir, they got the money.
Q. Now, you say your business was to look after the disgruntled trade. What do you mean by the "disgruntled trade"?
A. Anti-trust shouters.
Q. You mean people who were opposed to trading with the Waters-Pierce Oil Company, or the Texas Oil and Gasoline Company?
A. No, they thought I was all right. (Laughing.)
1189 Q. Well, why did they think that, do you know?

Mr. ODELL: We object to why they thought that, Your Honor, because it calls for his conclusion and opinion.
The COURT: The objection is sustained.

Q. What do you mean by that, Mr. Campbell?

Mr. ODELL: We object to that, because the objection has been sustained.
The COURT: The objection is sustained.

Q. Now, Mr. Campbell, I will ask you what the course of business was with reference to keeping track of competitive shipments to that point by the Texas Oil and Gasoline Company?
A. Well, monthly or every two weeks, or as often as I would gather information in regard to what the independent dealers were doing, I would furnish the information to Mr. Fries, who would compile statistics on it, and I gathered and got up my information as to outside business from spying on the railroads and gathering information in that way. Then each tank-car that came to town for competition would be noted. For instance, when Locke was getting oil, I had my instructions to my driver in that end of town to go by there every day and never miss a day and note whether there was any tank-cars, suspicious looking tanks, down there, and if there was a tank being pumped or one opposite his storage tanks, to take the number of it and report it to me, and I in turn turned it over to Mr. Fries, then Mr. Fries would figure how much—see for six months how much oil that Locke had received in that time. Then there were various methods of getting at how much he had on hand.
Q. Well, what were those?

Mr. ODELL: Well, we object to any further inquiry about the methods resorted to by the defendants to secure information with reference to competitive concerns, because it was no violation of the law for any legitimate concern to secure such information
1190 with reference to the business of their competitors. It is wholly immaterial and irrelevant in this inquiry and can serve no purpose but to prejudice the jury.
The COURT: What is the purpose of this evidence?
Mr. LIGHTFOOT: The purpose of it, if Your Honor please, is: Mr. Fries—we expect to show that these reports were constantly made to the St. Louis office. We have shown heretofore that these reports were made to the Standard Oil Company of New Jersey, and these

reports were interchanged, and it influenced business considerably in this territory, and the vigilance in keeping track of the competitive shipments, making him more energetic to wipe out competition and to establish this monopoly in the State of Texas by getting track of this testimony—I mean this information—and where the cars came from, they were enabled to pursue the objects of this concern here and to destroy business as far as possible. The information was used for a good many purposes in that way. It was for the purpose of keeping defendant advised and harassing competition that they had and destroying it.

The COURT: What provision of the anti-trust law does that violate?

Mr. LIGHTFOOT: Well, it would have effect, I think, in several provisions there. You take the rebates, now, that the witness has testified to. By keeping track of these shipments and of his customers and the general plan and manner in which they operated there it enabled them to finally secure business from those people, and by giving these rebates, in that connection, why, they were enabled to secure business of these merchants from the competitors of the Waters-Pierce Oil Company and the Texas Oil and Gasoline Company, and we think that that character and that method of business is an agreement on the part of this concern in violation of several sections of the anti-trust law, to-wit, it would have the effect of lessening competition, of enabling them to fix prices, and in fact to destroy competition—absolutely destroying it between them.

1191 The COURT: Agreement between whom?

Mr. LIGHTFOOT: Between the Texas Oil and Gasoline Company. The question I asked was what he did with this information that he got in that way, and he says he reported it to Mr. Fries. Now, I want to show that Mr. Fries compiled these statistics and that his standing with the Waters-Pierce Oil Company was predicated largely upon his ability to destroy competition there—the vigilance that he exerted in keeping track of competitive oils was for that purpose—and also that by getting all this information they were enabled absolutely to keep track of all the competition that existed at that point, and by a system of rebates and other things destroy the business of their competitors at that point and complete the monopoly which we have alleged that that method of trading that concern brought about.

The COURT: The objection is overruled.

Mr. ODELL: We except to the ruling of the Court.

Q. Now, read that last question.

(The Stenographer read the last question, together with the latter portion of the answer preceding it.)

Q. Now, what were those various methods that you had of securing this information.

A. Well, covering a period of six months, we would keep track of the number of tank-cars unloaded by the competition, and then we would measure what they had in their tanks.

Q. Well, how would you do that?

A. Well, we could tell the way they sweat—certain kind of

weather they will sweat. We knew how much they held, and we could by measurement—we knew what they would originally hold if they were full, you know, and then we could tell within a few hundred gallons of how much they held by the sweat or the leaks.

1192 Q. Well, then, what did you do with that information?

A. Oh, that was all given to Mr. Fries, and he compiled it himself. I didn't furnish it all.

Q. Now, what did he do with the statistics that he compiled there?

A. I don't know.

Q. You don't have any information as to what he did with it?

A. He never told me what he did with it.

Q. Well, did you ever make any reports to the Waters-Pierce Oil Company at St. Louis or any of its officers?

A. Oh, I never turned in any statistics. My business was to turn those in to Mr. Fries. I made suggestions with reference to the raising or lowering of prices. If I saw we could put prices up, I would suggest it. I was more often suggesting putting them down, though, because it was easier to sell oil.

Q. Well, now, Mr. Campbell, I will get you to state what the price of oil was after you sold out to the Waters-Pierce Oil Company?—did it advance or go down after that?

A. Oh, it did both. I remember—it must have been in '95, maybe in the early part of '96, we had the wholesale price of oil up to twenty-two cents a gallon and gasoline was twenty-five, something like that—wouldn't miss it a cent or two cents; that was for bulk oil—no container.

Q. Now, what was it just before you sold out to them?

A. They sold at eight cents. Mine cost me six and three-quarters.

Q. Now, immediately after you sold out to them was there any change?—if so, what was it?

A. Oh, not immediately; I won't say next day, but soon there was.

Q. Well, about how long?—just estimate it as nearly as you can.

A. Well, I can remember it somewhat from the roars I had from my customers. It was, I will say, within a month.

1193 Q. Well, now, what change was made, if any?

A. Why, an advance.

Q. Well, do you remember how much?

A. No, not definitely.

Q. Well, approximate it?

A. Oh, perhaps the first advance was two cents.

Q. Well, what was the next one?

A. It kept on stairstepping it up; I don't remember just what the advances were.

Q. Now, in 1896 it reached what point, you say?

A. Well, the highest point I remember of ever selling oil, I think, was in 1896. It was twenty-two cents for oil and twenty-four for gasoline, or twenty for oil and twenty-two for gasoline.

Q. Now, was there any competition between the Texas Oil and Gasoline Company and the Waters-Pierce Oil Company after you sold out?

A. No, sir.

Q. Did it go down after that?

A. Yes, sir.

Q. How came it to go down?

A. Competition, of course—or perhaps the inclination of the Waters-Pierce Oil Company to sell it cheap.

Q. Well, now, after 1900, and before Mr. Locke put in his plant there, do you have any recollection, independent recollection, of what prices you were getting then?

A. No, sir, nothing more than I have stated. I don't remember even what year Mr. Locke came in, and I don't remember when he went out.

Q. Well, now, I will ask you what regulated the prices, Mr. Campbell, of the Texas Oil and Gasoline Company and the Waters-Pierce Oil Company at San Antonio?

A. Instructions from St. Louis. Mr. Fries never gave me
1194 instructions at what price to sell, except in one or two instances, and I don't remember the circumstances in those two cases. We always got our instructions from St. Louis. I was not under Mr. Fries, understand; I was entirely independent of Mr. Fries, and I was instructed in the beginning not to go to the Waters-Pierce Oil Company office, but Fries and I being good friends, I used to go anyhow.

Q. Why were you instructed not to go in there?

A. I don't know.

Mr. ODELL: I object to that, Your Honor, as calling for the conclusion of the witness.

The COURT: Well, he says he don't know.

Q. Well, go ahead, Mr. Campbell.

A. I am through.

Q. Now, what was the difference, Mr. Campbell, in your prices and the Waters-Pierce Oil Company's prices to the trade after they took you over?

A. Well, most of the time we were the same. Some of the time I was lower, a little lower.

Q. What caused that?

Mr. ODELL: Well, we object to that, because it calls for his conclusion, Your Honor.

Q. If you know?

Mr. ODELL: And we ask that he be required to state the facts.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. There were certain disgruntled fellows in the trade at San Antonio that we had to take care of—chronic kickers.

Q. Now, you stated you made reports there. You say your instructions with reference to prices were received from St. Louis also?

A. Yes, sir.

1195 Q. Now, what would you do when you thought it necessary to reduce prices or to increase them?

A. Oh, I had all my correspondence with St. Louis, and Fries and I would talk it over.

Q. Well, would you make request of them for authority to reduce the price or advance it?

Mr. ODELL: We object as leading, Your Honor.

The COURT: The objection is sustained.

Q. Well, now, what did you do with reference to that, Mr. Campbell, when you wanted to make a change in the price?

A. I was constantly giving information and offering suggestions to St. Louis, and if the business was not going properly and we were not keeping up our—selling our full quota of oil at the usual prices——

Q. Now, upon what would you base your reductions?

A. Well, sometimes they were due to natural causes; hot weather in the Summer, long Summers, would reduce sales of oil; electric light company got after us and put in cheap electric heating apparatus that reduced prices, reduced the quantity sold, and also the groceries would get to cutting prices; they would sell oil, for instance, for five cents a can or one cent a gallon profit in order to make a leader of it, and it would raise Cain with our business—reduced my gallonage down to a point where the expense account and profit were about equal as far as I could tell.

Q. Well, now, from where did you receive all your instructions and from whom as to the changes you made in your prices?

A. Always the manager.

Q. Manager of who?

A. In the beginning it was Arthur Finlay at Galveston. Soon after I sold out, Arthur Finlay was removed to St. Louis and made manager of divisions, I believe, and I continued to report to
1196 Arthur Finlay until Mr. Charles P. Ackert was appointed or elected his successor, and up to the time I was discharged I reported to Mr. Ackert in such matters.

Q. Now, I will ask you what company all these gentlemen you have mentioned were connected with?

A. The Waters-Pierce Oil Company.

Q. Now, you say you ran on until March 31st, 1904?

A. March first or 31st.

Q. Well, how came you to quit?

A. They stopped my pay.

Q. Well, what became of the Texas Oil and Gasoline Company?

A. It was turned over to the Waters-Pierce Oil Company, lock, stock and barrel.

Q. Well, did it continue to operate if after that time?

A. No, sir.

Q. Well, what became of it, then?

A. It went out of business; I collected up the debts and sent them to St. Louis and it was wound up.

Q. Wound up. Now, how far was your office from the Waters-Pierce Oil Company's office in San Antonio?

A. Prior to the establishing of division headquarters in San Antonio, it was—oh, I would say three quarters of a mile.

Q. Now, at the time your business was taken over?

A. The same distance, but in the interim——

Q. Now, what equipment did you have after 1900?
A. Same as I had before.
Q. Yes, but I would like for you to state it.
A. I had just two tank wagons; we had strong competition, I forget who made it, I think it was Locke, and they had taken one of my tank wagons away, I turned it back to the Waters-Pierce Oil Company, one of the original three I had, I was only running two, and competition got pretty stiff and they sent me one from some place, and put that on and ran three tanks, and I turned all that stuff back to the Waters-Pierce Oil Company when——
1197
Q. How many drivers did you have employed?
A. Two at times and three at others.
Q. How many men did you keep employed in your office?
A. None constantly; I had a man to keep books at night, for which I paid him a nominal salary.
Q. Now, did you pay any taxes on the property there?
A. Yes, sir.
Q. Before 1900 and after 1900?
A. Yes, sir.
Q. Now, in whose name were the taxes paid?
A. I would have to refer to the tax receipts; I don't know whether it was Royer Campbell or the Texas Oil and Gasoline Company, but I think the Texas Oil and Gasoline Company.
Q. Well, was the Waters-Pierce Oil Company's name disclosed in any way in connection with those taxes?
A. No, sir.
Q. And that continued after 1900 the same as before 1900?
A. Yes, sir.

Mr. LIGHTFOOT: I believe that's all.

Cross-examination.

By Mr. ODELL:

Q. How long had you been in the oil business up to 1894, Mr. Campbell?
A. Just a few months—October, I think, '93.
Q. You commenced business in San Antonio, did you?
A. Yes, sir.
Q. How long did you continue in business before selling out to the Waters-Pierce Oil Company?
1198
A. I think from September—no, from October to—of '93—until the first of October, '94.
Q. Well, about a year?
A. Yes, sir, approximately a year.
Q. Was there any other company doing business there at that time except the Waters-Pierce Oil Company and your company?
A. When I first started the oil business in San Antonio I believe the Rocky Mountain Oil Company had a station there, I am quite sure they did, but soon after I started they quit; they might not

have had it in operation when I commenced, and it might have lasted two or three or four months after that.

Q. Do you know how long they continued in business there?

A. Who?

Q. The Rocky Mountain Oil Company?

A. No, sir, but I think about two years from the time they commenced.

Q. Now, what did you say oil was worth when you went into the business?

A. Either sixteen or seventeen cents.

Q. Is that to the dealer or consumer?

A. Dealer.

Q. It got down to eight or ten cents, I believe you say?

A. Yes, sir.

Q. There was a time in 1896 when it got up to about twenty cents a gallon?

A. I said '96 or '97, somewhere along there.

Q. Well, that was for a very brief period of time, wasn't it?

A. Not very long, I believe.

Q. Well, you know it was a short time?

A. No, I don't know it, but I think it was a short time.

Q. Now, when did this man you say, Locke—is that the name of the man you have been talking about?

1199 A. Yes, sir, J. Locke.

Q. When did he go into the oil business there?

A. I think some time after—oh, he had been in the oil business for years there, in this way: He would ship his oil in in barrels and distribute it around to the trade in barrels. Some time, I think, immediately after 1900 or during the year 1900 he put up some storage tanks and did business that way and shipped his oil in in tank-cars.

Q. Generally, though, he had been in the oil business there for many years?

A. Yes, sir, but he didn't do much business until he put his tanks in.

Q. Well, I am not asking you how much business he did, but he had been in business for many years?

A. Yes, sir.

Q. Now, your company, was it incorporated or not?

A. No, sir.

Q. Any one associated in the company with you?

A. For a while, yes, sir, I think about four or five months from the beginning.

Q. This contract, you heard it read, didn't you?

A. Yes, sir.

Q. Paragraph two, that was erased, wasn't it?

A. Yes, sir. On my duplicate it is scratched a little different from this—lines are drawn through as the writing runs.

Q. Well, it was the intention to erase paragraph two?

A. Yes, sir.

Q. That was with your consent?

A. I did that under instructions.
Q. Well, you consented to it, didn't you?
A. Yes, sir.
Q. You don't remember when that was?
1200 A. Some time in 1900 or 1901.
Q. Well, now, wasn't it in 1900?
A. I could not tell you definitely.
Q. In April, 1900?
A. No, I could not get down to those details; I don't remember; unfortunately, I lost all my—my papers and documents that I saved for ten years last Fall.
Q. Well, who do you say spoke to you about erasing that paragraph in the contract?
A. I received a letter of instructions from St. Louis to carry this contract to Mr. Fries.
Q. Well, you did it?
A. I did so and he erased it in my presence, or I did so, I don't remember.
Q. Now, where were you at the time—in San Antonio?
A. In his office in San Antonio, if I remember correctly.
Q. Now, you carried the contract to Mr. Fries immediately after you received the instructions?
A. Oh, the same day, I presume.
Q. The same day. Do you remember whether you went to his office, or whether it was done at your office?
A. Yes.
Q. Where was it?
A. His office—I am quite satisfied it was.
Q. Well, now, have you a distinct recollection of that?
A. Well, my impression, sir, would lead me to say that I have. I might be mistaken.
Q. Who do you think you received this letter from?
A. Arthur Finlay, I think I received it from Arthur Finlay.
1201 Q. Well, now, isn't it a fact that Fries received the letter and showed it to you?
A. Well, that might be.
Q. Very well.
A. I won't say definitely; I am under the impression, however, that I received a letter to carry this contract to Mr. Fries for these erasures.
Q. Yes, but you won't be certain about that?
A. No, sir, I would not say; I feel reluctant to say that it didn't happen that way, and I am under the impression that it happened as I have stated, a while ago, that I received a letter, and Mr. Fries did also about the same time.
Q. You spoke about the reorganization of the Waters-Pierce Oil Company. When was it reorganized?
A. I don't remember, sir.
Q. Do you remember what year it was?
A. No, I don't know that; I think, however, it was in 1900.

Q. But you are not even certain about that?
A. Well, pretty certain, yes, sir.
Q. How do you fix the time when you changed the contract with reference to the time of the reorganization?
A. By the receipt of my discharge and another letter hiring me over again.
Q. Well, now, about how long before or after the receipt of your discharge and hiring you over again was it that you changed the contract?
A. I think that question was asked me once by the State.
Q. Well, I am asking it.
A. And I said that I thought it was—well, I was rather indefinite, but I would say it was afterwards, and I still am just as indefinite on that point.
Q. Would you say about how long afterwards?
1202 A. No, sir, within six months.
Q. Well, can you undertake to say that that contract was changed after the reorganization of this company?
A. I have already given that as my impression.
Q. Well, do you just give it as an impression?
A. I could not do otherwise, because I have said that I could not definitely mention or name the date when the Waters-Pierce Oil Company was reorganized, but I am quite certain that the erasure was made after I received my discharge and also my reinstatement; I base it on that.
Q. Yes, on that circumstance alone, do you?
A. Yes, sir—not the date of the reorganization of the company.
Q. Now, who wrote this contract?
A. H. Naudain.
Q. Well, the other one, who wrote it?
A. Arthur M. Finlay—the first one, the Synopsis of Contract?
Q. Yes.
A. Arthur M. Finlay.
Q. They were both written in San Antonio?
A. No, sir.
Q. Where?
A. The Synopsis was written in Galveston.
Q. Well, the contract, where was it written?
A. San Antonio.
Q. You kept a copy of it?
A. Yes, sir.
Q. Have you it now?
A. Yes, sir.
Q. Had it all these years in San Antonio?
A. Yes, sir.
Q. The agreement between you and Finlay and Naudain, that was embodied in the contract?
1203 A. Yes, sir.
Q. Now, after the contract was executed you delivered to the Waters-Pierce Oil Company the property of your company and

you continued in the service of the Waters-Pierce Oil Company under that contract?

A. Yes, sir.

Q. You say you sometimes sold oil cheaper than the Waters-Pierce Oil Company?

A. Yes, sir.

Q. You sent your requisitions to St. Louis?

A. Yes, sir, always under their instructions; I never had authority to raise or lower prices half a cent a gallon.

Q. In other words, they told you what they wanted their oil sold for?

A. Yes, sir.

Q. It belonged to them?

A. Yes, sir; there was no discretion left to me at all with regard to raising or lowering prices.

Q. They gave you instructions from St. Louis?

A. Yes, sir.

Q. And you followed them?

A. Yes, sir, to the letter.

Q. Now, you say you gave rebates to some one in San Antonio?

A. Yes, sir.

Q. What year was that?

A. I think up to within a year and a half or two years of the closing out of the business.

Q. Well, was it then about 1902?

A. Yes, sir, I think so.

Q. Now, who was it you gave those rebates to?

A. C. Horan & Company.

Q. What business are they in?

1204 A. They are general merchandisers.

Q. Wholesalers?

A. No, sir, they are retailers, and they have a sort of a railroad supply—supply section houses with material.

Q. They are very large dealers in oil, ain't they?

A. Well, I would not say they are very large, but they are good customers, bang up—not the biggest in town, but they rank along there—used to.

Q. You gave them rebates of half a cent or quarter of a cent?

A. Never run as little as a quarter—half to a cent, or something like that. They would turn them in to our drivers as cash, on the 31st or first or second, figure up their rebate due them and they would turn in their voucher, and he would turn it in to me as cash—they would use it as part payment.

Q. The driver would turn it in to Horan & Company?

A. No, sir, Horan would turn in the voucher to him, and he would accept it as cash and turn it in to me.

Q. But you had many different drivers?

A. Yes, sir; for a long time I used to pay those rebates myself.

Q. You had, first and last, I guess, fifteen to twenty different drivers?

A. No, sir, I will say I had ten.

Q. All right. The drivers knew what it was for?
A. Oh, yes; they didn't for a long time.
Q. Well, they did get the information?
A. Yes, sir, naturally they would.
Q. Well, now, about when did the drivers get the information as to what those vouchers were for?
A. About the time the Waters-Pierce Oil Company sign was put up on my warehouse.

1205 Q. Well, when was that?
A. Some time in 1900 or 1901.
Q. Yes. Well, now, wasn't it in 1900, Mr. Campbell?
A. I don't remember.
Q. It was about the time of the reorganization, wasn't it?
A. Yes, sir, about the same time that the cancellation of that paragraph occurred.
Q. All right. Then, on your warehouse you put up a sign, "Waters-Pierce Oil Company"?
A. Yes, sir.
Q. To give notice to the world that the warehouse was the property of the Waters-Pierce Oil Company?
A. Yes, sir—and we put it up under the eaves where nobody could see it.
Q. Where nobody could see it?
A. Except they went in our yard they could not see it, no, sir.
Q. Well, when they got in your yard they could see it?
A. We didn't allow them in there—we had a high fence there.
Q. Allowed nobody in there?
A. Nobody but interested parties.
Q. Who do you mean by "interested parties"?
A. Drivers and employés.
Q. Who put the sign up?
A. One of the drivers.
Q. Who told him to?
A. I did.
Q. Was that the only sign you had anywhere?
A. Yes, sir, only one reading "Waters-Pierce Oil Company."
Q. Who was present when the sign was put up?
A. John Rothner.

1206 Q. Were you there?
A. No, I don't think I was.
Q. You gave instructions where to put it?
A. That sign was shipped from St. Louis.
Q. All right. You gave instructions where to put it?
A. Yes, sir.
Q. Did you get instructions from any one about it?
A. Yes, sir.
Q. Who from?
A. From some St. Louis official; I think it was Arthur Finlay.
Q. In writing?
A. Sure; yes, sir.
Q. That you lost?
A. Yes, sir; I lost all the papers.

Q. Now, when did you leave the service of the company?
A. Either the first of March or the first of April, 1904.
Q. March, 1904?
A. March or April, 1904.
Q. When did you sue the company?
A. Last year some time—don't remember just the month.
Q. 1906?
A. Yes, sir.
Q. You waited about two years after you were discharged?
A. Yes, sir.
Q. Do you know J. P. Gruet?
A. Yes, sir.
Q. When did you get acquainted with him personally?
A. About ten years ago.
Q. When did you see him the last time?
1207 A. During the Bailey investigation.
Q. When did you see him with reference to bringing this suit against the company?
A. Never saw him with reference—about the suit.
Q. Didn't you talk to him about the suit?
A. I brought it before I saw him.
Q. Didn't you talk to him about it before?
A. I think I did afterwards.
Q. Didn't you write to him about it before?
A. Yes, sir.
Q. You are certain of that?
A. Yes.
Q. Did he write to you about it?
A. If he did, he was mighty guarded in what he said. I don't remember; I think he did.
Q. You think he did? Now, don't you remember he did?
A. No, I don't know that he did. I know this, that I felt more or less disgruntled at him because he didn't write, and jacked him up about it when he came to San Antonio during the Bailey Investigation.
Q. Because he didn't write, you say?
A. Yes, sir; I don't think he ever did answer, except to say that he expected to be in Texas soon and would talk to me then.
Q. Did you have any understanding with him about furnishing testimony in your suit?
A. No, sir; I tell you I filed my suit before I saw Mr. Gruet.
Q. Yes, sir; but hadn't you heard from Mr. Gruet?
A. I had not.
Q. But didn't you have an understanding with him about furnishing testimony?
A. No, sir, most positively not.
1208 Q. Mr. Campbell, did you go to St. Louis to see Gruet?
A. No, I didn't go to see Mr. Gruet; happened to see him while I was there—saw him in his office.
Q. Yes. When was that?
A. I was trying to locate the month; it has been about a year ago; no, it is over—a little over a year ago, or a little less, because I never

leave this country at this time of the year; that must have been in the Winter, about two years ago this coming Winter.

Q. When was it with reference to the time your suit was brought?

A. Before.

Q. Did you see Hurley in St. Louis?

A. Yes, sir.

Q. What are his initials?

A. I don't know.

Q. Talked to him about the case, didn't you?

A. He was listening.

Q. Knew Gruet had been secretary of the company?

A. Me?

Q. Yes, sir.

A. Oh, yes—yes, sir.

Q. Did you know at that time that he had a contract for a part of the penalties in this case?

A. I did not.

Q. When did you get that information?

A. Saw it in the newspapers.

Q. Didn't Gruet tell you about it?

A. No, sir.

Q. Didn't you arrange to testify in this case, and Gruet in your case?

1209 A. Most positively not.

Q. Didn't he talk to you about testifying in this case, coming here to Austin?

A. I happened to meet Mr. Gruet in Austin; I don't remember just when it was, but I was over here, if I remember correctly, as a witness before the Railroad Commission and Mr. Gruet was in the Driskill Hotel; and the way I happened to meet Mr. Lightfoot, Mr. Gruet took me over and introduced me to him.

Q. Mr. Campbell, didn't he talk to you about testifying in this case?

A. Why, naturally, we discussed it.

Q. Didn't he directly solicit your testimony in this case, and promise to help you in your suit in San Antonio?

A. If you cut that right in two, yes, sir. He didn't promise to help me in my suit in San Antonio, and I never asked him to. I took his deposition. Had no arrangement whatever for the exchange of testimony—none whatever.

Q. Now, you said a minute ago for me to cut it in two. What was it you wanted cut out?

A. I wanted the latter part cut out.

Q. That he solicited your——

A. No, you couldn't use that word; that's too strong. He didn't solicit my——

Q. Well, what did he say about it, Mr. Campbell?

A. I think he said, "You would be a valuable witness"—referring to me—"in the prosecution of the State in this ouster case." I can't remember. If there is anything direct or definite you want and will state it, I will answer it.

Q. Did he tell you he was interested in this case and wanted your testimony?

A. No.

1210 Q. Didn't he tell you he was interested in it?

A. No, I don't think he did that. I quizzed him to find out if he had any other motive than—than just a grievance against the company, and I couldn't get anything out of him, and I never knew what the motive was until I read in the papers that came out in the recent investigation that he was interested in a part of the penalties.

Q. Now, was it after that that he took you around to see Mr. Lightfoot?

A. After I read this in the papers?

Q. Oh, no.

A. Well, what?

Q. After you had this conversation with him.

A. It was the same day.

Q. Then he asked you to come around and see Mr. Lightfoot?

A. Yes, sir.

Q. And that was about how long ago?

A. I don't remember that; I think it was last Fall some time, wasn't it? I think it was last Fall.

Q. Wasn't it before the suit was brought?

A. Before my suit?

Q. No, this suit.

A. I don't know when this suit was brought. Tell me the date and I can come closer to it. Would Mr. Gruet's deposition be taken before the suit was brought, or after? Then I can answer.

Q. Ordinarily taken after a suit was brought.

A. Then I saw him after the suit was brought, because he signed the deposition the day I was with him.

Q. Now, didn't he write you to come to St. Louis and see him before bringing your suit?

A. Mr. Gruet and I never had any correspondence amounting to anything in regard to my suit?

1211 Q. Now, Mr. Campbell, didn't Gruet write you to come to St. Louis before you went there, or telegraph you?

A. In other words, for me to come—he sent for me, and that's the reason I went to St. Louis?

Q. Now, that's what I am getting at.

A. No, sir, he did not. No.

Q. Didn't he write to you, though?

A. To come to St. Louis?

Q. Yes, sir.

A. No, sir.

Q. Telegraph you?

A. No, sir.

Q. Didn't Hurley write you?

A. No, sir. I think I saw Gruet when I was on my way to Ohio to visit my father, who was sick, and it was on my way coming back. Naturally, I wouldn't stop longer than necessary going up.

Q. Now, after seeing Gruet and Hurley in St. Louis, you returned to San Antonio and brought suit?

A. No, I didn't right away.

Q. Well, a few days?

A. Well, a few weeks, I guess.

Q. Well, a few weeks?

A. Now, I couldn't say whether I had brought that suit before. Yes, sir, it was, I think it was after that.

Q. Now, didn't you bring the suit as the result of the conversation you had with Gruet and Hurley in St. Louis?

A. No.

Q. You say that you didn't talk to him about bringing this suit there? Didn't Gruet advise you there in St. Louis, Mr. Campbell, to bring this San Antonio suit?

1212 A. No, I don't think he did. If I had known it was going to be this important I would have remembered all these details.

Q. I didn't understand what you said about the importance.

A. I said if I thought it was going to be this important and that I would have been on the stand to testify, I would have made mental or written notes and given you definite dates, but I can't do it now.

Q. All right. Now, you were entirely friendly with the company and wanted re-employment up to the time you saw Gruet in St. Louis?

A. No, my feet got cold on the company before that.

Q. How long before?

A. Some time.

Q. Now, for two years or more you wanted to be re-employed?

A. No, not two years.

Q. Well, a year and a half?

A. I made over ten thousand dollars last year and didn't want any Waters-Pierce job.

Q. Out of selling onions?

A. No, not only onions; out of selling wheat and watermelons and the general run of my business.

Q. Then, for at least a year you were friendly and wanted re-employment?

A. Very friendly, and wanted re-employment.

Q. No grievance?

A. Yes, had a grievance, but didn't have it right away. When they fired me I wanted it then.

Q. Didn't get a grievance right away?

A. Yes, that was my grievance,—for not getting re-employment after firing me. I was figuring on going to Mexico for them. That's one reason I didn't file suit right away.

Q. What reason?

1213 A. I figured on getting a good job in Mexico. They are dissatisfied down there and all mixed up, and I thought they needed a good man and figured on it.

Q. But they didn't think they needed you?

A. No, they didn't think they needed me; some of them did, I learned later on, but my alleged friend C. L. Ackert didn't.

Q. And they are getting along all right without you?
A. Yes, sir, and I am getting along all right without them.
Q. I want to get back to this sign a minute. About this sign,—what instructions did they give you about this sign?
A. Put it up on the warehouse.

Mr. ODELL: That's all.
Mr. LIGHTFOOT: That's all, Mr. Campbell.

1214 Mr. LIGHTFOOT: We next offer a portion of the deposition of H. J. COHN.

Interrogatory 1. What is your name, residence and business?
Answer. H. J. Cohn,—residence, 4156 McPherson, St. Louis; business, oil salesman.
Interrogatory No. 2. State whether or not you ever had any connection with the Waters Pierce Oil Company. If so, state when it began, how long it continued, and the character of your employment.
Answer. I can't give you those dates except by referring to—I was connected with the Waters Pierce Oil Company, off and on, for about ten years,—I filled various positions, from office-boy to division auditor and salesman.
Interrogatory 3. State whether or not you have worked for the Waters Pierce Oil Company in St. Louis. If so, state the time covered by your employment there, and state under whom you worked.
Answer. I have—I worked from April, 1900, until September 30, 1902; I worked under Mr. C. L. Ackert.
Interrogatory 4. If you have said that you worked under Mr. Ackert, state what his connection with the Waters Pierce Oil Company was, and state what you did under him.
Answer. I first worked under him when he was assistant manager of the Missouri Division, and he was later made manager for Missouri division. I was division auditor and salesman in Missouri under him.

Mr. LIGHTFOOT: There is no No. 5. There is a typographical error here. The next Interrogatory is No. 6; it skips from 4 to 6.

Interrogatory 6. Were you familiar with the territory in which the Waters Pierce Oil Company did business? If so, state how you became familiar with it, and state what it was.
1215 Answer. I was. The territory was bounded by Moberly, Missouri, on the west and an imaginary line was drawn south, which took in Joplin and Carthage on the south.
Interrogatory 7. During the time you were with the Waters Pierce Oil Company, state whether or not the Standard Oil Company sold oil in the territory you have designated as Waters Pierce territory.
Answer. They did not.
Interrogatory 8. During the time you were connected with the Waters Pierce Oil Company, state whether or not the Waters Pierce Oil Company sold, or undertook to sell, any oil outside of the territory designated by you as Waters Pierce territory.
Answer. To my knowledge, they did not.

(Interrogatory 9 and answer were omitted.)

Interrogatory 10. During the time that you were connected with the Waters Pierce Oil Company, state whether you had any knowledge of the firm of Scofield, Shurmer & Teagle. If so, state what became of the business of that firm.

Answer. I knew of them, in a business way, as being a strictly independent oil company and they were absorbed by the Republic Oil Company, who took over plants at St. Louis and Springfield, which were the only plants I came in contact with.

(Interrogatories 11, 12, 13, 14, 15 and 16, and answers, were omitted.)

Interrogatory 17. Please state whether or not during the time you were employed by the Waters Pierce Oil Company you were ever stationed in Texas; if so, where were you stationed, how long did you remain in Texas, and what was the nature and character of the duties you performed in Texas for the Waters Pierce Oil Company?

1216 Answer. I was stationed at Marshall, Texas, for a period of about eight years, filling positions from office-boy to salesman and division auditor.

Interrogatory 18. If in answer to the foregoing question you have stated, or if it be a fact, that you were stationed at Marshall, Texas, then state whether or not you have any information as to the source from which the Waters Pierce Oil Company obtained its supplies for use in Texas.

Answer. At that time it received the greater part of its supplies from the Standard Oil Company refinery at Whiting, Indiana, and a refinery at Corsicana, Texas, in addition to receiving its railroad oil, which originally came from the Galena Signal Oil Company, at Franklin, Pennsylvania; these railroad oils were sometimes loaded with other oils in mixed car-lots from St. Louis.

Interrogatory 19. What kind of a station did the Waters Pierce Oil Company have at Marshall? Please state whether or not it was a division point for any territory; if so, what territory was embraced in that division, and whether or not the requisitions for supplies from local stations in its territory were handled through that office.

Answer. At Marshall they had division headquarters for the East Texas and Louisiana division. It was a division point and controlled quite a large number of stations in eastern Texas, and all of north Louisiana and part of southern Louisiana, almost as far south as Morgan City; and bounded on the east by the Mississippi river. And all requisitions were sent to Marshall for all supplies for all stations in the east Texas and Louisiana division.

Interrogatory 20. Please state whether or not during the time you were located in Texas you represented the Waters Pierce Oil Company in the capacity of traveling salesman; if so, in

1217 what territory did you travel.

Answer. In the east Texas and Louisiana division.

(Interrogatory 21 and answer were omitted.)

Interrogatory 22. Please state whether or not while representing

the Waters Pierce Oil Company in Texas you ever met in competition or otherwise any representative of the Standard Oil Company of New Jersey, or the Standard Oil Company of Indiana, or the Standard Oil Company of Kentucky, or the Standard Oil Company of Ohio, or the Standard Oil Company of New York, or the Continental Oil Company of Denver, or the Standard Oil Company of Chicago, or the Standard Oil Company of Baltimore, or the Republic Oil Company of Ohio.

Answer. I did not.

Interrogatory 23. Please state whether or not while you were employed by the Waters Pierce Oil Company in Texas, the Corsicana Refining Company of Corsicana, Texas, or the Security Oil Company of Beaumont, Texas, sold any oil to the retail trade in your territory in competition with the Waters Pierce Oil Company.

Answer. To my knowledge they did not.

Mr. LIGHTFOOT: That's all we care to offer of that.

Mr. LIGHTFOOT: We next offer a portion of the deposition of H. C. ARNOLD.

Interrogatory 1. What is your name, what is your business, and where do you reside?

Answer. H. C. Arnold; accountant; New York City.

Interrogatory 2. If you say you are an accountant, state by whom you are employed, and where your office is.

Answer. Standard Oil Company of New Jersey; 26 Broadway, New York City.

1218 Interrogatory 3. How long have you been an accountant for the Standard Oil Company?

Answer. Two years.

Interrogatory 4. Before that time, what did you do?

Answer. I was assistant in the same department.

Interrogatory 5. If you say that you were an assistant accountant, state to whom you were an assistant.

Answer. R. P. Tinsley.

Interrogatory 6. If you have said, or if it be a fact, that you are an accountant and were formerly an assistant accountant for the Standard Oil Company, state what Standard Oil Company you are connected with, and if you have connections with more than one company, state each of them.

Answer. Standard Oil Company of New Jersey, Standard Oil Company of New York, the Atlantic Refining Company.

Interrogatory 7. State specifically and in detail your present duties, and state specifically the companies for which you are doing accounting, and define the duties performed by you with reference to each company.

Answer. Well, I am the accountant, receiving reports of sales. Standard Oil Company of New Jersey, Standard Oil Company of New York, the Atlantic Refining Company. My duties are as stated in the former answer. Receiving the sales.

Interrogatory 8. Do you in your capacity of employment by the

Standard Oil Company or otherwise know of the Waters Pierce Oil Company?

—. Yes, in a general way.

Interrogatory 9. Do you know R. H. McNall? If so, state how long you have known him, and what position he had when you first knew him.

Answer. Yes, I know him, about 25 years. A general clerk, I should say.

1219 Interrogatory 10. If you say he was connected with the Pratt Works, state whether or not this concern was connected with the Standard Oil Company.

Answer. It was Charles Pratt and Company at that time. It was not connected with the Standard Oil Company at that time.

(Interrogatories 11, 12 and 13, and answers were omitted.)

Interrogatory 14. Do you know a Mr. King, whose office is in 26 Broadway? If so, what is his position, and state if you have any business relations with him.

Answer. Yes. I don't know that he has any official position. My business relations with him,—I furnish him with reports of sales.

Interrogatory 15. If you have said that you make up figures for or furnish statements to Mr. King, or if it be the fact, then state what these figures and statements are with reference to, and if you say they are for sales, then state what company or companies they are sales of.

Answer. Well, they are reports of sales and of the Standard Oil Company of New York.

(Interrogatory 16 and answer were omitted).

Interrogatory 17. State whether or not you are acquainted with R. P. Tinsley.

Answer. Yes.

Interrogatory 18. Where did he reside in October, 1904, and with what company was he connected?

Answer. New York City; Standard Oil Company of New York.

Interrogatory 19. I copy a letter, purporting to be signed by you and addressed to R. P. Tinsley at St. Louis. State whether or not this letter was signed and sent by you, and explain what cor-

1220 respondence was referred to in the last two paragraphs of the letter, and explain the transaction referred to in the second paragraph of

"DEAR SIR: We beg to acknowledge your personal favor of the 8th inst., and note with very much gratification the statement you make with regard to Mr. Preston's services while with you. We are very glad to hear that he will soon be with us again, and while we have not heard from him direct as to his movements, we suppose he will leave on or about the 12th.

As per recent correspondence, please find enclosed a charge for the two-tank wagon sales records sent you in September, which kindly pass to our credit.

If there are any copies of letters, circulars, etc., that you still desire, please let us know and we shall be pleased to favor you.

Yours truly,

(Signed) H. C. ARNOLD."

Encl. 1.

Judge STEDMAN: May it please Your Honor, we object to the interrogation concerning that letter and the witness's answer in respect thereto, for the reason that there is no date given and we are unable to tell whether it had anything to do with this matter or not.

Mr. BRADY: If the Court please,—we suggest that in a former interrogatory, namely, Interrogatory 3, in answer to that interrogatory he says that he has been in the employ of this company for two years, and, of course, it must have been within that time, as it was done by him.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

1221 Answer. Yes, this letter was signed and sent by me. Well, the answer to that is the recent correspondence was in connection with the book referrel to in the question, and with regard to letters he asked for, that was for instructions as to an accounting office. The phrase "tank wagon sales records" are blank books only. That was a bill for those two books.

Interrogatory 20. State whether or not it was your custom when you *were* sent books and records to the Waters Pierce Oil Company in Missouri, to make a charge against that company.

Answer. We did not send any books, except blank books, and no records. We rendered a bil to that company for those two books. We sent no books or records.

Interrogatory 21. What was the reason or occasion for sending books and records to the Waters Pierce Oil Company at St. Louis?

Answer. We did not send any.

Interrogatory 22. In writing letters to R. P. Tinsley with reference to sales and with regard to books and records which you charged to the Waters Pierce Oil Company, state in what capacity you were acting, and in what department of the Standard Oil Company of New Jersey.

Answer. We did not write—I did not write to Mr. R. P. Tinsley about sales and books and records. I did write about blank books only.

Interrogatory 23. Explain the first paragraph of your letter heretofore copied to Mr. Tinsley concerning Mr. Preston.

Answer. Mr. Preston was there to assist in straightening out accounting matters, in which he is considered an expert.

Interrogatory 24. State whether or not you sent Mr. Preston to Mr. Tinsley; and if so, state for what purpose Mr. Preston was sent, and in what capacity.

Answer. I sent Mr. Preston there, and the answer to the
1222 previous question answers that question. His capacity was statistical.

Mr. LIGHTFOOT: That's all we offer of that.

The COURT: We will adjourn until half past nine o'clock to-morrow morning.

TUESDAY, *May* 28, 1907.

Court opened at 9.30 a. m.

A. W. CLEM, a witness for the Plaintiff, testified as follows:

(Examination by Mr. BRADY:)

Q. What is your name, please?
A. A. W. Clem.
Q. Where do you reside, Mr. Clem?
A. Dallas.
Q. How long have you lived in Dallas?
A. About seventeen years.
Q. How long?
A. Seventeen years.
Q. Seventeen years. What business are you engaged in at Dallas, Mr. Clem?
A. Oil business.
Q. At the present you are?
A. Yes, sir.
Q. Well, for whom are you working, if anybody, or are you in the business for yourself?
A. I am in the business for myself now.

1223 Q. What character of business are you doing, with reference to whether it is supplying the trade or supplying consumers?
A. At present?
Q. Yes, sir.
A. I am supplying the trade.
Q. I will ask you to state, Mr. Clem, whether or not you were in the oil business at Dallas about the year 1890?
A. I began the oil business, I think, in '90,—1890.
Q. In what name did you do business there at that time?
A. In the name of the Eagle Refining Company.
Q. State whether or not there was a concern by that name in Cleveland, Ohio.
A. There was; it was a corporation, at Cleveland, Ohio.
Q. I will ask you whether or not you know that that concern was affiliated with the Standard Oil Company or the Waters Pierce Oil Company at that time?

Mr. ODELL: We object to that for the reason that the inquiry is directed to the year 1890,—ten years before the organization of this company, and is about matters not shown to be acquiesced in by the defendant in this case, and therefore is prejudicial.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. Why, I was always of the opinion——

Mr. ODELL: Now, we object to his stating what was his opinion——

The COURT: The question is whether you know.

Q. In 1890?

A. Well, I can't,—I actually couldn't answer that; I do not know.

Q. Well, you don't know. All right. Will you state what equipment you had in Dallas for the supplying of the trade in 1890 and up until 1894?

1224 A. We had storage tanks and iron barrel delivery; I don't think we had any tank wagons at the time.

Q. How many storage tanks did you have?

A. We had three.

Q. The capacity of those tanks, please.

A. They held about 6,000 gallons each.

Q. The iron barrel trade, about what did that amount to?

Mr. ODELL: We object to this testimony as being wholly irrelevant and immaterial, in detailing by the witness his business in 1890, or 1894, six years before the organization of this company. It is an inquiry that could throw no possible light on this case, as to whether the business was a large or a small one, or whether he was a large or small dealer, or the capacity to do business.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. About what was the extent of your iron barrel trade?

A. You mean the amount of iron barrels?

Q. Yes.

A. We did practically the bulk of our business in iron barrels; we were shipping about 40,000 barrels a month.

Q. Including your shipment sales?

A. Yes, sir, we did some.

Q. Now, where did you get your supply of oil?

A. Well, it was shipped us from the Eagle Refining Company, of Cleveland, Ohio. I would send my orders to them and it would come to me part of the time from there, and then they had a little refinery at Lima, Ohio, but they discontinued that, I think, and began shipping us then from Toledo, Ohio, from the Craig Oil Company and S. Y. Ramage, of Oil City, Pennsylvania.

1225 Q. These supplies came on requisition through Cleveland, from Cleveland, Oil City,——

A. Yes, sir.

Q. What character of shipments did they make; tank-cars or otherwise?

A. It was come in tank cars practically——

Q. What character of tank cars; whose tank cars?

A. They had their own tank cars, but sometimes they would come in outside cars. S. Y. Ramage would ship us in his cars, may be——

Q. Now, what territory did you operate in, and in what counties? In what territory did you supply the trade from Dallas?

A. Well, I covered pretty much the whole State of Texas, but, of course, I was limited to a small area around Dallas; in car-load business, though, I would ship oil in car-loads to all towns in the Indian Territory, and I would do quite a local business. I would ship iron

barrels to Pecos or Midland, out on the Midland road, and Ada, New Mexico,—I believe they call it Carlsbad now.

Q. State whether or not you did any business out at Seymour.

A. Well, I remember putting in a carload of oil at Seymour.

Q. Now, I will ask you, Mr. Clem, to state at what prices you were selling oil at at Seymour?

Mr. ODELL: We object to that, Your Honor, as being immaterial and irrelevant,—the prices he was selling oil at at Seymour or *wlse*-where. It throws no light on anything in this case; it is a manner of conducting his business unknown to the defendant, not acquiesced in by the defendant or in any manner illustrating the method of the defendant's doing business at that time.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. At what prices were you selling this oil at Seymour?

1226 A. Well, I went to Seymour, working car-load lot business, and putting in a carload there and shipping it direct from the refinery——

Q. Well, at what price?

A. I sold it in car-lots at 16¢, delivered.

Q. Was the Waters Pierce Oil Company selling any oil at Seymour at that time?

A. They were selling all the oil there at the time.

Q. Now, what experience did you have at Seymour with reference to prices with the Waters Pierce Oil Company oil? In what year were you selling this oil at Seymour?

A. It was in 1891, as well as I remember.

Mr. ODELL: We object to that, Your Honor, because it is shown to be nine years before the organization of this company, and is immaterial and irrelevant.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. You say you think it was in the year 1891?

A. Yes, sir.

Q. Now, the question I asked you was, What experience you had with the Waters Pierce Oil Company, in person, in competition, as to prices at Seymour when you put that oil in?

A. Well, I was informed by the railroad agent at Seymour,——

Mr. ODELL: We object to what the railroad agent told him, as being hearsay.

The COURT: The objection is sustained.

Q. You need not state what the railroad agent told you. You should tell what happened with reference to prices.

A. Well, I went up to make the delivery of the car, and I found that most of my merchants refused to take the oil they had bought; I made this car up from various merchants, in fact, all the merchants in the town.

1227 Mr. ODELL: We object to that your Honor, and ask that the answer of the witness be excluded, because it suggests the

independent action of merchants made in the absence of the defendant, and an act that——

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. Well, what did you find about these merchants when you came to deliver the oil?

A. Well, the merchants, practically all, refused to take the oil. One merchant, he was retailing oil at 15¢, a cent less than they had paid me for their oil, and they refused to take the oil unless I would meet competition.

Q. Well, did you meet the competition?

A. Well, I had ten barrels of oil consigned in that car, and I told them I would give them a barrel a piece of that oil, if they would meet competition with it.

Q. Well, did you dispose of your car there or not?

A. Why, some of the merchants afterwards *taken* their oil, and some of it I stored, and some leaked out—a good deal of it did.

Q. Now, of the competition you spoke of, whose competition was that, Mr. Clem?

A. Well, the Waters Pierce Oil Company was selling the oil to the merchants.

Q Q. What cut did they make in the prices that you were to reach; what minimum did it reach?

A. Five cents a gallon.

Q. What was the price of their oil at the time you brought that oil into Seymour?

A. They were charging the merchants 35¢ for Eupion, so I was told by the merchants.

1228 Mr. ODELL: We object to the statement that he was told by the merchants.

The COURT: The objection is sustained.

Q. What price did you find prevailing there at the time you were there with the car of oil? The Eupion Oil,—what prices were prevailing?

A. At the time I went to make the delivery?

Q. Yes, sir.

A. Fifteen cents—that was the retail——

Q. Well, when you went there to take the orders,—what price did you find prevailing?

A. Thirty-five cents a gallon, wholesale.

Q. And what was the minimum price the oil reached there?

A. Five cents.

Q. Dropped to five cents. Did you do any more business at Seymour?

A. Never tried.

Q. That was your last experience at Seymour?

A. Yes, sir.

Q. Now, what per cent. of the business, Mr. Clem, was the Waters Pierce Oil Company doing, including your business, at the time they took over your plant in 1894; if they did so?

A. After they taken over my business?
Q. Yes; about what per cent. of the business did they do in that territory?
A. Well, including my business, which they had bought out, they were doing all the business in my territory.
Q. Did they have any competition there at all?
A. None at that time.
Q. Do you remember what price was prevailing in 1894, when they took over your plant; I mean contemporaneously with it,—within a few days of it?
1229 A. Why, the price in Dallas was nine and a half cents a gallon for Pennsylvania Water White.
Q. Do you remember the price of Eupion at that time?
A. About the same.
Q. What change, if any, in the way of advance or reduction of prices at the time your plant was taken over by the Waters Pierce Oil Company, took place?

Mr. ODELL: We object, for the reason that it is shown that the inquiry is directed at methods prevailing in 1894, six years prior to the organization of this company, and for many years prior to the enactment of the anti-trust act of 1899 or of 1903, under which this suit was brought.
The COURT: The objection is overruled.
Mr. ODELL: We except.

A. Well, prices advanced after that.
Q. Now, to what extent did they advance from nine and one half cents, then prevailing?
A. They went up to about twenty-two cents, on the basis of Eupion, that is gradually,——
Q. Now, what space of time intervened during which that rise was accomplished, from nine and one half cents to twenty-two cents?
A. What space of time?
Q. Yes.
A. As well as I can remember, it was four or five months.
Q. It was a gradual rise, you say?
A. Gradual rise; about a cent at the time.
Q. Now, state to the Jury, if, during that four or five months—what competition, if any, prevailed in Dallas and that territory, against the Waters Pierce Oil Company after their purchase of your plant?
1230 A. No competition that I know of; the Waters Pierce Oil company and the Eagle Refining Company were the only ones doing business there.
Q. When they absorbed your plant, there was no competition left?
A. No competition.
Q. How long was it before any competition came into Dallas, after your plant was absorbed?
A. It may have been a year or two years.
Q. I will ask you whether or not the price of 22¢ per gallon prevailed during that year or two, or not?

A. Well, of course, prices gradually came down a little after competition began to move around.

Q. Well, I mean before the competition came in; during the year before the competition came, how did they range as to prices?

Q. As well as I remember,—I don't think there was any decline. I think it got up to 17¢ and 22¢,—17 for Brilliant and 22 for Eupion.

Q. There is a difference of five cents a gallon in those two oils to the trade?

A. They make about that, yes.

Q. Now I will ask you to state whether or not your plant, from the years 1890 to 1894, constituted any considerable competition to the Waters Pierce Oil Company, or not?

Judge PENN: We object to that as calling for a conclusion of the witness, Your Honor. We think if the testimony is admissible, he should be required to state the facts.

The COURT: The objection is sustained.

Q. Well, about what per cent. of the business did you do, as compared with the Waters Pierce Oil Company, in Dallas and surrounding territory, during those four years?

1231 A. Well, of course, I don't know exactly the percentage. You take the oil business as a whole, I couldn't figure out what per cent. I did in that territory.

Q. Well, can you approximate it?

A. Well, I should think about three per cent. would be a fair average; three or four per cent.

Q. Well, you were the only active competitor they had at that time?

A. Well, when was that?

Q. Between 1890 and 1894?

A. Yes, sir; I was the only active competitor they had in that territory.

Q. Did you have an office and plant there, or not?

A. Yes, I had an office, plant and warehouse.

Q. Warehouse, or not?

A. Yes, sir.

Q. Just describe your equipment to the Jury; about what you had and the number of employees, and your expenses per month during those four years.

A. Well, I had three storage tanks, of about eighteen or twenty thousand capacity; I had about 350 iron barrels; I had a couple of wagons; myself, a bookkeeper and two drivers.

Q. Did you have a regular bookkeeper employed?

A. Yes, sir.

Q. Gave your personal attention to the business?

A. Yes, sir.

Q. And had two drivers?

A. Yes, sir.

Q. Did you pay office rent, or not, or did you own the property?

A. Well, it was on leased property; I paid ten dollars a month on the leased property.

1232 Q. Ten dollars a month on the leased property?
A. I put the building on it—a two-story, 40x50, iron-clad, with a gravel roof.
Q. That was put on after you rented the unimproved property?
A. Yes, sir.
Q. What was the value of your property after the improvements were put on, Mr. Clem?
A. Why, $25.00 per month, I suppose.
Q. Now, I will ask you to state to the Jury, whether after the purchase of your plant by the Waters Pierce Oil Company, the Eagle Refining Company's business was transacted at the same place, or whether the equipment was moved over to the Waters Pierce Company's oil plant, and the office rent saved there, or whether you performed the business at the same old place?
A. I performed the business at the same old place.
Q. Did you keep your two drivers?
A. Yes. Now, one of those men acted part of the time as driver and part of the time as warehouseman.
Q. Did they remain in your employ?
A. Yes, sir.
Q. Did the bookkeeper remain?
A. Yes, sir, I always kept the bookkeeper.
Q. How many years did you remain with the Waters Pierce Oil Company, running the Eagle Refining plant?
A. About nine years; from 1894 to 1904.
Q. This warehouse and office equipment was kept at the same old place during that time?
A. Yes, sir.
Q. I will ask you to state where this plant was,—whether in the heart of the city or an isolated place?
1233 A. Well, at the time I built this plant, it was a kind of an isolated place, but it grew to be rather public property, or has grown at least at this time, to very public property.
Q. Well, where was it situated?
A. Why, it was located in what we call South Dallas, near Katy, near the Katy and the Dallas Rapid Transit terminal——
Q. Well, how close to any creeks or streams?
A. Well, it was like on a creek, that is, a branch, with a big bluff to it.
Q. Like on a branch?
A. Branch, yes.
Q. Was the front or the back fronting that creek?
A. Well, the warehouse fronted out on the level, but the back of it fronted on the creek; it was built on the edge of a bank.
Q. How many years did that remain a rather isolated place?
A. Well, that—really up to some three or four years ago, it was practically isolated.
Q. When they got up the 150,000 Club?
A. Yes.
Q. Well, now, Mr. Clem, you say that you were in business there four years under the name of Eagle Refining Company for yourself.

I will ask you to state whether you knew the manager of the Waters Pierce Oil Company during those four years.

A. Yes, I knew him.

Q. Who was he?

A. Mr. Grice was manager at that time.

Q. Did you know C. W. Cahoon?

A. I didn't know Mr. Cahoon at the time; I wasn't personally acquainted with him, you might say.

Q. Did you know whether he was in the employ of the office at that time?

1234 A. No, I don't know; it occurs to me that he came there about that time.

Q. Now, I wish you would state to the Jury what methods the Waters Pierce Oil Company employed in meeting your competition during the four years that you were in business for yourself, and what conversations you had with Mr. Grice, the substance of the conversations you had with Mr. Grice, in reference to your business,—the general conduct of the Waters Pierce Oil Company towards your competition.

Mr. ODELL: We object, Your Honor, to this particular question, for the reason, in addition to those heretofore given, that it calls for conversations with a local agent of the company at Dallas, who is not shown to be in such a position of authority with reference to the company as that he was authorized to bind the company or prejudice the company by any statement, that he might make, and that it is hearsay as to the defendant, for the reason that he occupied no such official position with reference to the company as that he might prejudice or bind it by his statements.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Judge PENN: We wish it to be understood, Your Honor, I think it is covered by the previous rulings,—that we are objecting to all testimony of Mr. Clem with reference to transactions prior to the organization of the present company,—as being irrelevant and immaterial to any issue in this case, as occurring before the enactment of the present anti-trust laws, or the act of 1899, and on the ground that this company could not be bound by anything done by a former company, and that the acts are not shown to be unlawful. We consider, and so understand Your Honor, that our previous objections have covered this as to this testimony, but we wish it now to affirmatively appear in the record that all of these objections

1235 were made to this testimony.

The COURT: You may have your bill so showing.

Mr. BRADY: Please read the question, Mr. Stenographer. (Question was re-read).

A. Well, of course, to begin, I will state that their manner of competition is generally known——

Q. Well, Mr. Clem, we prefer instead of what the generally known methods are, just what your experience was.

Mr. ODELL: We ask that the answer be excluded?

The COURT: What is the answer you want excluded?

Mr. BRADY: I think he was just leading up to his answer.

The COURT (to witness): The question, Mr. Clem, is—what character of competition you met with there, and what conversations you had with the manager of the Waters Pierce Oil Company on the subject of competition?

A. Well, I understand, and I am going to answer. Well, when I first began the oil business in Dallas, I began by shipping carloads into Texas; the first carload I sold was in Dallas. The merchants there were paying 23 cents for Eupion and 17 for Brilliant in bulk, and they were paying 2.40, or 24 cents a gallon in 2-5 cases for Brilliant, and 37½ cents a gallon in 2-5 cases for Eupion. Now, I made up a carload of oil with some two or three merchants in Dallas. I think I charged them, delivered there in wood barrels, about 17 cents a barrel——

Mr. ODELL: Please state the year.

A. That was in 1890, I think, because it was the first carload I sold. Well, I then went down to Terrell, and the merchants were paying there about the same price. I put in a carload, and came back to Dallas. That night I went to McKinney and put in a car; and I had, I suppose, some 15 or 20 carloads on the road here at one time. For instance, at the little town of Lancaster, 16
1236 miles from Dallas, I put in a carload to one man, M. B. Johnson. He told me he would take a car if I would not sell anybody else in the town. Then when Mr. Johnson's oil arrived, as well as at other places, why the Waters Pierce Oil Company's agent went out there and made arrangements with the other merchants to retail oil at ten cents a gallon, and they retailed it as long as Mr. Johnson had any. That was about the condition at Lancaster; and it was about like it at other places, whenever the oil arrived.

Mr. ODELL: We object to that as the conclusion of the witness, and not a statement of facts.

The WITNESS: It was no conclusion at all, because I would be out there and see the merchants selling it at ten cents a gallon, when my oil arrived. That was about the condition, you know, wherever I put in a carload of oil. The carload business soon played out, from the fact that the merchants were afraid to buy——

Mr. ODELL: Now, we object to that as being a conclusion and hearsay.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. I then put in storage tanks and iron barrel equipments and localed my oil out to various merchants where I had been putting in carloads; but the carload business didn't last long.

Q. Now, give your experience with reference to the iron-barrel business, which succeeded the carload business.

A. Well, whenever I put in iron-barrel shipments, of course, they would keep track of them; they had men to look after every barrel I shipped out.

Mr. ODELL: Your Honor, we object to that and ask that it be excluded, because it is evident the answer of the witness is hearsay and is a conclusion and opinion, rather than the statement of any fact.

1237 The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. Well, what became of your iron-barrel business, what effect did it have?

A. Why, the prices were reduced; in fact, the prices came all to pieces when I began selling oil, and we never did get prices back to where they were, where there was any profit in the oil business.

Q. Now, the prices that were made in competition with you,—reduced down all to pieces; what effect did it have on your profits and your business as a going concern?

Mr. ODELL: We object to that, Your Honor, because the effect that it had on his profits is not a subject of material inquiry, and calls for the conclusion and opinion of the witness; as to whether he made a profit, does not indicate as to whether or not the Waters Pierce Oil Company made a profit.

The COURT: The objection is overruled.

Mr. ODELL: We except.

A. Why, it cut my profit down, as a matter of course. Where I was really entitled to three cents a gallon on oil, why a great many places I would sell as low as a cent a gallon—fifty cents a barrel—profit; even in some cases for less.

Q. Well, state whether or not you had occasion to sell at a loss at places, or not.

A. I had opportunity to sell at a loss, but I don't remember that I ever sold at a loss.

Q. Well, what was the result, as to whether or not you got the business?

A. I pegged out.

Q. Did you get the business?

A. No, I quit it.

1238 Q. Now, in 1894, I understand you to say that there was a contract made; well, before—I will withdraw that question for the present. I will ask you if you know Mr. A. M. Finlay, that is to say, A. M. Finlay who was once vice-president of the Waters Pierce Oil Company?

A. Yes, I know him.

Q. Are you familiar with his signature?

A. Yes, I know his signature.

Q. I will ask you to examine this letter and examine particularly the signature, and the entire letter, and then I will ask you a further question. (Hands paper to witness).

A. That's his signature.

Q. I will ask you whose signature that is to that instrument.

A. That is Andrew M. Finlay's.

Q. Former vice-president of the Waters Pierce Oil Company?

A. Yes, sir.

Q. Where did you get this instrument, Mr. Clem?
A. Why, I got that from H. A. Dennett.
Q. Who was he?
A. He was at one time the cashier of the Waters Pierce Oil Company; in 1891 or '92.
Q. At what time?
A. 1891 or '92,—somewhere——
Q. Do you know whether or not Mr. Dennett was the cashier of the Waters Pierce Oil Company at Dallas at the time you engaged in business for yourself there?
A. I don't know whether he was at the time I engaged or not, but during the four years I was in business for myself, he was.
Q. Well, was he the cashier at the date of this letter,—April 28, 1901?
A. Yes, sir.

1239 Mr. BRADY: Well, we offer this letter.
Mr. ODELL: I would like to ask a preliminary question:

Q. You were asked a minute ago by Mr. Brady, if this man Dennett was cashier of the Waters Pierce Oil Company in 1901.

Mr. BRADY: I meant 1891.
Mr. ODELL: What you meant to say was 1891, not 1901?

A. That's the way I understood it, in 1891. I get those dates confused sometimes.

Mr. ODELL: We make the same general objection, Your Honor, that it relates to the Waters Pierce Oil Company in 1891, nine years prior to the organization of the present company, in the first place; in the second place, that the letter is wholly immaterial and irrelevant, and serves no useful purpose in the case, other than that of the possible prejudice to the defendant.
The COURT: The objection is overruled.
Mr. ODELL: We except.
Mr. BRADY (to the jury): Gentlemen, I will read this letter to you at this juncture. (Reads letter dated April 28, 1891, written by A. M. Finlay, Vice President, to H. A. Dennett, Cashier, subject, Eagle Refining Company, Dallas).
Mr. BRADY: There is a stamp here on the corner. (Reads stamped endorsement).

Q. Now, Mr. Clem, there was a contract entered into on the 5th day of October, 1894, between some parties in Ohio, yourself and the Waters Pierce Oil Company, for the purchase of the plant at Dallas, was there not?
A. Yes, sir.
Q. I notice a clause in there binding the Eagle Refining Company and all the other parties—persons—parties to the contract, prohibiting them, directly or indirectly, to "manufacture," etc.,
1240 down to and including "for a term of fifteen years," was read to the Jury.

Mr. ODELL: We object to the question and to the statement, because the contract is the best evidence of its contents.

The COURT: No question has been asked yet.

Q. I will ask you, Mr. Clem, whether or not that clause in the contract, as well as all other terms of the contract, have or have not been carried out?

Mr. ODELL: We object to his statement as to what is in the contract, for the purpose of predicating his statement, because the contract is the best evidence of its contents.

Mr. BRADY: I suggest that the contract has not only been read and admitted——

Judge PENN: We object to the question further, Your Honor, as leading, as calling for a conclusion or opinion of the witness. As to whether or not the contract has been carried out, depends upon the facts,—what was done under it; and we insist that the witness should be required to state the facts and not his conclusion.

Mr. BRADY: Well, I withdraw the question.

Q. Now, I will ask you Mr. Clem, what business, if any, the Eagle Refining Company did in Dallas and the surrounding territory, or in any of the territories or states, or the Republic of Mexico, during the time, fifteen years, beginning on the first day of October, 1894?

A. That is the old Eagle Refining Company that they bought out?

Q. Well, that included the Dallas plant?

A. They bought their Texas business.

Q. Now, I ask you what business that corporation did, or any of the individuals did, in that territory?

1241 A. Well, the Eagle Refining Company only lasted in business, I think, about six months, or a year after; I think they failed or went into the hands of a Receiver.

Q. That is, the Cleveland concern?

A. Yes, sir.

Q. Well, what did the Dallas Eagle Refining Company do, which was engaged in business and which you ran for four years; what business did that concern or any of the other individuals do in those States or in Texas, or in the Republic of Mexico, for fifteen years——?

Mr. ODELL: Now, we object to the question, because it calls for the conclusion and opinion of the witness, in the first place; and, in the second place, it is shown by the answer of the witness that this particular concern failed and went out of business some six or twelve months after the making of this contract, and if they failed it naturally follows that they could not do any business, because its corporate capacity ceased.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. The Eagle Refining Company at Dallas?

A. Yes, sir, that was owned by the Waters Pierce Oil Company and managed by me. Is that the one you have reference to?

Q. Yes, sir.

A. Well, that was continued up until December 31, 1903.
Q. December 31, 1903?
A. 1903, yes, sir.
Q. Now, I will ask you to state to the Jury whether or not that business was continued up to December 31, 1903, independent of, or as a part of the Waters Pierce Oil Company?
A. Why, it was a part of the Waters Pierce Oil Company, as a matter of course,—they owned it.
1242 Q. Then, did it perform any business or engage in any business independent of the Waters Pierce Oil Company?
A. What do you mean by "independent of"?
Q. I mean independent of. Did you, as an individual, do any business in this territory named in the contract, on your own account?
A. No, I didn't do any business.
Q. And the Eagle Refining Company at that time,—was it operated as part of the Waters Pierce Oil Company, not in name, but as a fact?
A. Yes, I understood; yes, sir.
Q. Was it operated as a part of the Waters Pierce Oil Company?
A. Yes, sir.
Q. Who paid the expenses of the management?
A. They paid the expenses.
Q. The Waters Pierce Oil Company?
A. Yes, sir.
Q. Who paid your salary?
A. The Waters Pierce Oil Company.
Q. Now, in what name did the Eagle Refining Company continue business until December 31, 1903, in the city of Dallas and surrounding territory?

Mr. ODELL: We object, Your Honor, to the question, for the reason that it assumes that the Eagle Refining Company continued in business, when the facts are shown to be that it was owned by the Waters Pierce Oil Company; they had bought it and this witness was an employé of the Waters Pierce Oil Company.
The COURT: The objection is overruled.
Mr. ODELL: We except.

Q. In what name? Now, answer so the Jury can understand you.
A. That business, you mean?
1243 Q. Yes, sir.
A. It ran in the name of the Eagle Refining Company, that is, all of our stationery and matter was of that nature.
Q. Well, how about the equipment, the warehouse and the tank wagons,—what name was on that?
A. Eagle Refining Company.
Q. Did you pay any taxes during that period of time,—up to December 31, 1903, for the Company?
A. Yes, I paid taxes.
Q. Do you know in whose name those taxes were paid up to and including 1903?

A. Why, the Eagle Refining Company.
Q. That is, upon the property of that company?
A. Yes.
Q. That was taken over by the Waters Pierce Oil Company?
A. Yes, sir.
Q. Did you make any reports to anybody in person, or any corporation after the Waters Pierce Oil Company took over your plant in Dallas?
A. After they taken over my plant in 1894?
Q. Yes, sir.
A. Yes, I made daily reports, and weekly reports, and monthly reports, and semi-annual reports, and all kinds of reports.
Q. Now, who did you make these reports to?
A. Well, my sales-report would go to J. P. Gruet, St. Louis.
Q. Now, the other reports?
A. My cash report would go to C. M. Adams, St. Louis; in fact, most of my reports went to J. P. Gruet.
Q. Well, who was J. P. Gruet, and who was C. M. Adams?
A. J. P. Gruet was at that time Secretary of the Waters Pierce Oil Company.
1244 Q. What connection, if any, did Mr. Adams have?
A. He was cashier.
Q. Have you any of those reports with you, or copies of them?
A. I have some copies of the last reports that I sent.
Q. Let me see them please.
A. It was unfinished business and I preserved those; they are the only ones I have, however.
Q. Were those reports for the period of time just before the close of your business, or not; you stated it was "unfinished business"?
A. It may be the last two or three days; it was the winding up; the round-up, you might say, of the Eagle Refining Company; the transfer to the Waters Pierce Oil Company, when they taken the business of the Eagle Refining Company over?
Q. There is one of December 29, 1903,—is that your signature there at the bottom, A. W. Clem?
A. Yes.
Q. There's one of the 31st?
A. That's the last day we did business.
Q. The last day of the company's business. There's one of December 31st——

Mr. ODELL: What year?
Mr. BRADY: All these are of the year 1903.

Q. There is one of December 31, 1903?
A. That is the last cash statement I made.
Q. There is a letter dated January 2nd. What year is that, Mr. Clem?
A. That is 1894.
Q. That is your remittance?
A. Well, yes, that was my remittance.

Q. Enclosing New York draft for the balance of account?
1245 A. Yes, my last remittance; we did no business after the 31st day of December.

Q. I will ask you to examine each of these and see if that is your signature at the bottom of each of those reports, or at the proper place?

A. Those are all my signatures.

Q. Are those correct impression copies of letters that you sent to those officers?

A. Yes, sir, statements—they are not letters.

Q. I mean documents?

A. Yes, sir.

Q. You sent them to the officers to whom they are directed?

A. Yes, sir.

Q. I will ask you where you got these from?

A. Where I got the blank forms, you mean?

Q. Where did you get these, I mean. (Exhibiting copies).

A. I taken them out of a private letter-book I have at home.

Q. What did you keep these copies for?

A. Well, that was the wind-up of the business and the final reports of the business, and in order to kinder protect myself, I kept them.

Q. These are in the nature of receipts?

A. Yes, they are in the nature of receipts.

Q. I notice you addressed some of those "Home Office". Mr. Clem, what kind of stationery did you use in corresponding with the Waters Pierce Oil Company?

A. Why, our stationery was all blank; of course, those were printed forms, but the "Home Office" is blank there, perhaps.

Q. Yes, I notice it just says "Home Office". Now, did you have any address stamped on the back of your envelopes, indi-
1246 cating from whom this correspondence was coming, that you sent to St. Louis?

A. On the envelope?

Q. Yes.

A. No, I used plain envelopes all the time.

Q. What character of envelopes would they use from the Home Office in transacting business with you?

A. Plain.

Q. Now, I will ask you, Mr. Clem, what became of the equipment and the property of the Eagle Refining Company plant at Dallas after the 31st day of December, 1903, when it closed—when business was closed up, as far as you were concerned?

A. It was transferred to the Waters Pierce Oil Company.

Q. What became of you in a business way?

A. Why, they were taking care of me.

Q. Well, where did they put you?

A. They gave me a position over in the office with them, as City Salesman, I believe. I didn't stay long enough to find out what my capacity was; I think, though, it was city salesman, but about the only thing I did was to do some collecting for them.

Q. How long did you stay in their employment?
A. Why, it taken me until the 5th of January to wind up the old Eagle business, and I went in and staid just about a month.
Q. What did you do?
A. What did I do?
Q. Yes, what did you do outside of that?
A. While I was in their employ?
Q. Yes.
A. Why, I didn't do much of anything; I was kinder laying around waiting for instructions.
Q. What finally came of your employment?
A. Why, I resigned,—sent in my resignation and quit.
1247 Q. I will ask you whether or not the drivers you had for your tank wagons went into the employ of the Waters Pierce Oil Company at Dallas?
A. Yes; there was only one driver at the time.
Q. Well, your warehouseman,—the man who was acting as both?
A. Well, at the time we closed, we had only one driver; he acted as both. He went in with them.
Q. What became of your bookkeeper?
A. Why, he was out of a position for two or three weeks, but they give him a position in the general office under Mr. Cahoon, as stock clerk, or something.
Q. Well, he went in the employ of this company on salary?
A. Yes. Now, I understand he went out at the time the Eagle went out, and they give him no employment right then, but they did take him in in about thirty days.
Q. Shortly afterwards?
A. Yes, sir; and the tank-wagon man went over there with me.
Q. How did the Eagle Refining Company come to close up at Dallas on December 31, 1903?
A. Well, Mr. Ackert and Mr. Pierce came through, I think in October; they came to Dallas, and——
Q. What Pierce do you refer to?
A. Well, that's the young Mr. Pierce.
Q. Arthur Clay Pierce?
A. Yes, Arthur Clay Pierce.
Q. And Mr. C. P. Ackert?
A. Yes, sir; and they phoned me to come up to the general office of the Waters Pierce Oil Company, and Mr. Ackert had a talk with me, and they told me they had decided to close up the Eagle Refining Company, because they were making no money, and decided to close up.
1248 Q. Did he give any other reason beside that?
A. I don't think he did. Said they were losing money, and I said I thought so myself; and they said they would give me a position in the office as city salesman, or something to that effect, and said, "You go ahead and wind up the business, preparatory to discontinuing on the first of January;" that was in October, I am pretty sure.

Q. Now, how were the wagons painted after that; do you know whether they were changed after that, or not?

A. Really, I don't know; I guess they was.

Q. Was the business run any more in the name of Eagle Refining Company after that?

A. No, sir.

Q. Any business done at all in that way?

A. None; no, sir.

Q. Mr. Clem, I will ask you how long that business had been a losing business at Dallas before they actually closed it down?

A. Well, as to being a losing business,—I didn't keep any tab on the profits and loss; that was kept in St. Louis.

Q. Well, you made daily reports by which they knew those facts?

A. Yes.

Q. I understood you a while ago to say that Mr. Ackert said to you they concluded to close this plant, because "It is losing money," and you said, "I think so too." On what did you base your statement?

A. Well, as to the amount of business they were doing, of course. We sold, may be, fourteen hundred dollars worth of oil a month, and we had an expense of some five hundred dollars a month; I couldn't see any profit in the business at that.

Q. How long had that condition lasted before Ackert concluded to close it down, and did close it down?

A. Well, it existed for some two or three years, anyway.

1249 Q. Had your expenses been about that ratio, or less or more, for those two or three years?

A. It had been about the same; may be, reduced some.

Q. I will ask you to state, Mr. Clem, whether or not in your reports to the Home Office at St. Louis, or any of the officers to whom you have made—you made reports of the loss of business, or the poor condition of business—what your reports were in that respect, and what reply you received from up there as to whether it was your business or their business.

A. Well, I would get to feeling awful blue, sitting around doing practically nothing, and I would kick, and I said I wanted to do a little more business, and they wrote back that as long as they were satisfied, I ought to be.

Q. Now, I will ask you what trades your business was peculiarly directing to securing during the time they operated the Eagle Refining Company after they purchased it; what trade you were directing your energies towards securing and holding?

A. Well, of course, at the time they bought the Eagle Refining Company out, I had quite a nice trade, and that trade I always tried to hold, but on account of competition and cut prices in the latter part of the year, why I lost a good deal of that trade.

Q. Now, I will ask you the question that I was particularly asking about,—without endeavoring to lead you,—was in reference to the Waters Pierce Oil Company trade and the trade you had previous to that change. Did you use the greater efforts to hold and secure their business, or the business you had had before you sold out?

A. Why, I didn't make any efforts to secure their business.

Q. That's the point I am getting at. You didn't make any efforts to secure their business, but hold your old trade?

A. Yes.

1250 Q. Do you remember when the Division Headquarters were established at Dallas?

A. Division headquarters?

Q. Yes, sir.

A. I think they have had a division headquarters there since I have—that is, what they called the North Texas Division—since I have known them.

Q. What I want to get at, is whether Mr. Grice was the division manager at that time?

A. He was the division manager up until 1898.

Q. Mr. Cahoon succeeded him, didn't he?

A. Mr. Cahoon succeeded him.

Q. I will return to the question I was asking you a while ago, in reference to why you were directing your attention to the old trade and didn't attempt to secure any of the Waters Pierce Oil Company trade. I will ask you why that was; upon what you proceeded there?

Mr. ODELL: That calls for a conclusion and opinion, Your Honor, and we object to it for that reason. We ask that he be required to state the fact.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. I will ask you upon what you proceeded in not attempting to get the Waters Pierce Oil Company's business?

A. Why, I assumed they were selling, and it was no use in my making an effort to sell them.

Q. Did you have any other reason?

A. Well, in fact, I was told—I was given to understand that wherever they were selling oil from their tank wagon, they would prefer for me not to.

Q. Now, by whom were you given to understand that as their wishes?

1251 A. By Mr. Pierce himself.

Q. Which Mr. Pierce?

A. Henry Clay Pierce. In our conversation at the time he bought us out, he told me, and also Mr. Finlay told me, wherever I was shipping oil out to points where they had an agent, or delivering oil, why for me to raise my prices, in order to cut me off, in order to save the local freight between those points. For instance, I had customers in Ada, New Mexico, at the time. It cost me six dollars a barrel. I say Ada, New Mexico; Pecos and all up there the rate would be high. Well, they had an agency at Pecos, a station there——

Q. A tank station?

A. Tank station, I presume, or nearby at least. Now, then, it is to their interest to have this agent at Pecos, or some nearby station, to sell this oil and save that local freight from Dallas out there, and I was instructed by Mr. Finlay to raise my prices or something like that, and try to drive this fellow off.

Q. Try to lose the trade you had out there?

A. Try to lose the trade; that's why.

Q. Now, did you carry out this policy in reference to holding the same old trade and not soliciting any of the Waters Pierce Oil Company's, up to the time the company went out of business in 1903?

A. Yes, sir, that was my policy.

Q. Continuously?

A. Yes, sir.

Q. Mr. Clem, I will ask you to give the Jury your judgment about the percentage of business that the Waters Pierce Oil Company did before it acquired your property in 1894, and what percentage of business it did after it acquired your business, with reference to the total oil business it did in that territory.

1252 Judge PENN: We object to that, Your Honor, because the witness has heretofore stated that he was unable to give the percentage done in that territory before they bought out the business.

The COURT: My recollection is that he said it was three or four per cent.

A. That's what I said.

Judge PENN: I understood him——

A. The remainder was the Waters Pierce Oil Company's. That is the way I meant it.

Q. Now, take the total amount after they purchased your business, up to the time they sold the Eagle Refining Company out,—what was the percentage of total after they acquired your plant,—take the first two years.

Judge PENN: We would like to cross-examine the witness to ascertain whether or not he is competent to answer this question.

(Examination by Judge PENN:)

Q. Well, take it after the Waters Pierce Oil Company——

Mr. BRADY: We object to that, Your Honor, this witness has already testified that the business done by the Waters Pierce Oil Company was all but three or four per cent., and the last question I asked him relates to the time since 1894, and we object to his going back, when the witness has twice answered that he knew the percentage.

The COURT: The objection is overruled.

Q. Isn't it a mere impression on your part, Mr. Clem, that you are undertaking to give, without knowledge of the facts?

A. That the per cent. of business we did was about four, you mean?

Q. Yes, sir.

1253 A. Well, now, I have some reason to believe that our business was somewhere about three per cent. in the entire State up to the time that the Waters Pierce Oil Company bought the Eagle out.

Q. Now, confine it to after the Waters Pierce Oil Company bought the business of the Eagle Refining Company—do you know what amount of oil was sold in Dallas?

A. No, I don't know.

Q. Have you any approximate idea of it?
A. No, sir; I didn't keep statistics.
Q. In Lancaster?
A. No.
Q. Terrell?
A. No.
Q. Do you know anything about the amount of oil sold in any town around Dallas?
A. No, I don't know anything about the number of gallons.
Q. Were you in any of the towns around there?
A. Was I?
Q. Yes, sir.
A. You mean my business?
Q. Yes, sir; outside of Dallas.
A. Yes, we did business in most all of the towns outside of Dallas.
Q. Were you there personally?
A. Why, I made trips on the road.
Q. Was that done occasionally or frequently?
A. Why, I wasn't on the road all the time.
Q. Do you know anything personally about what amount of oil came into Dallas and surrounding towns in carload shipments at that time, of your own knowledge?
A. Percentage, you mean?
Q. Carloads, shipped in by others than the Waters Pierce Oil Company and the Eagle Refining Company?
1254 A. No, I don't know how many carloads they shipped in. I knew we were taking about forty or fifty thousand gallons——
Q. Isn't it a fact, that you know nothing about what amount of oil was sold in that territory outside of the Waters Pierce Oil Company?
A. I know that there was no other company doing any business to amount to anything; may be sometimes a stray barrel from Houston——
Q. Do you know anything about the carload shipments that came to Dallas and the other territory?
A. There was no carloads coming in about that time.
Q. How do you know?
A. Why, I kept a pretty good tab on the trade, that is, my immediate territory. The fact is, I was doing no carload shipments close around at that time; I had three carloads going to Ardmore, Indian Territory.

Judge PENN: We object, Your Honor; the witness is not shown to have had a sufficient knowledge of the facts to have a——
The COURT: Mr. Clem, you answered a while ago that at the time the Waters Pierce Oil Company bought out the Eagle Refining Company, the Eagle Refining Company was doing three or four per cent. of the business in the Territory named, and the Waters Pierce Oil Company the balance. How did you know those facts?
A. Well, now, as to its being a fact, I couldn't say; I don't know

that I stated it to be a fact. It was my opinion, though, that we were doing four per cent. of the business.

The COURT: On what do you base that opinion?

A. On the amount of business that we done.

The COURT: On the amount of the business the Eagle Refining Company did?

A. Yes, sir, at the time that they bought it out.

1255 The COURT: What basis have you for making the comparison between what the Eagle Refining Company did, and what the Waters Pierce Oil Company did; in other words, what information have you as to what the Waters Pierce Oil Company did?

A. I can tell you about what I base my opinion on, if you want to know,—upon what Mr. Pierce told me himself in St. Louis, how much oil I had sold in the State of Texas?

Q. How much oil who had sold?

A. The Eagle Refining Company.

The COURT: Did he tell you how much the Eagle Refining Company sold?

A. He was talking about the business at the time the trade was made. "Now", he says, "you have sold a good deal of oil down there, compared to other companies"; and he went ahead and told me more about my business than I knew myself. He says, "You have sold 2-6/10 per cent. of all the oil sold in Texas in the last two years", or whatever it might be.

Mr. BRADY: What did he say with reference to George Rice, of Ohio?

A. I think he said George Rice, of Ohio, had sold 60/100 per cent., or something like that.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

(Mr. BRADY resumes examination:)

Q. Where did he call for that, in St. Louis?

A. That was in St. Louis the time the trade was made.

Q. He called for a tabulation of the data?

A. He wanted to know how much I had done and was doing now. "To prove this to you", he said, "I will show it to you", and he punched a bell and a boy came in, and he told the boy to get him the tabulations, and the boy brought in the tabulations, and he showed it to me. He had it figured out to a gnat's heel.

1256 Q. What Pierce was that?

A. Mr. H. C. Pierce himself.

Q. Mr. Henry Clay Pierce?

A. Yes, sir. Now, right there upon that statement from him, is what I based my three per cent. business in Dallas on.

Q. From 1894 to 1903 you were in the employ of the Waters Pierce Oil Company during all that time at Dallas, were you not?

A. Yes.

Q. Were you familiar with the business of the Waters Pierce Oil

Company as a competitor, not then as a competitor, but as a former competitor, in a general way?

A. Well, yes. I did my correspondence, however, with the Home Office, but I had no business relations with the local company.

Q. Well, you were an active oil business man at that time, in the employ of the Waters Pierce Oil Company?

A. Yes.

Q. Now, we don't ask you for accurate figures, Mr. Clem, but state whether or not you have a general knowledge of the conditions in Texas after 1894, and up to 1903, with reference to the oil business, the amount of competition going on, and the approximate amount of business done by the Waters Pierce Oil Company for the entire State.

A. You mean up to date, right up to date?

Q. Up to 1903,—during those nine years; if it varied any, why state it, if you know.

A. Well, after they bought the Eagle Refining Company out in 1904, in 1894, that cleaned up all the competition, you might say, in North Texas.

Q. For about what period of time?

A. Well, one year after that, or about that time, the Wyse Oil Company sprang up at Greenville,—an independent concern.

Q. Yes.

1257 A. And shortly after they had run at Greenville a while, they put in storage tanks at Dallas; then they scattered out pretty much over the State; at Austin, I believe; Ardmore, Indian Territory, and a lot of other towns,—that is, the Wyse Oil Company. I think it was about 1900 that the Southwestern Oil Company came into the field; may be, a little earlier; the Southwestern Oil Company,—they became quite active competitors of the Waters Pierce Oil Company.

Q. The Southwestern Oil Company?

A. Yes, sir. They erected storage tanks in almost every town of any size in the State.

Q. Do you have any information as to who the Southwestern was owned by?

A. Well, I can't say that I do. Their home office was in Houston, and they were quite active competitors of the Waters Pierce Oil Company for the last three years I was in business.

Q. That is, from 1900 to 1903?

A. Yes, sir; from 1900 to 1903.

Q. Now, what other competition was there—What other competition was there, Mr. Clem?

A. Well, the Richardson-Gay Oil Company sprang up,—a refinery at Corsicana. I believe that was about the first of 1893, they began business.

Q. 1903?

A. 1903,—a year before we quit business, perhaps.

Q. Where are they located,—at Corsicana?

A. Yes, sir, at Corsicana.

Q. Do they have any refinery of their own?

A. They don't own a refinery; they have it leased, but are operating a refinery, however, and are doing quite a nice business.

Q. I will ask you with reference to the Southwestern Oil
1258 Company; are they doing any business?

A. No, sir; they quit.

Q. Recently sold out?

A. Yes, sir.

Q. Do you know to whom they sold out?

A. I don't know they sold out to anybody; they just dismantled, that is, their property.

Q. How about their storage tanks in Dallas and other equipment there?

A. That has been standing idle for three or four months, but they sold it out about a month ago.

Q. But for several months they did no business?

A. Yes, they did no business.

Q. And how about the Ira O. Wyse Oil Company; are they any factors in the oil business?

A. None, practically; they have gone into the paint business.

Q. How about the Richardson-Gay; what is their experience, do you know?

A. Why, I don't know that I do; they seem to be doing business.

Q. Well, how much have they done recently?

A. I couldn't tell you how much; but they are doing quite a business.

Q. Now, take all the competition that you have mentioned during the nine years,—state to the Jury what percentage of the business the Waters Pierce Oil Company was doing in Texas during that time.

Judge PENN: I object, Your Honor, that the witness is not qualified to express an opinion on that; he certainly would not be able to express an opinion without he knew the total amount of oil sold in Texas and the amount sold by others than the Waters Pierce Oil Company; that would be necessary for him to arrive at a percentage, and he shows no such knowledge.

1259 The COURT: The objection is sustained.

Q. Well, I will ask you this about the Dallas and the North Texas business; You were in the employ of that company during those nine years. I will ask you if there was any decrease in their business?

A. North Texas and what?

Q. North Texas and around Dallas. You were in the employ of the Waters Pierce Oil Company, or the Central Texas Division, the division in which Dallas is located. I will ask you whether or not there was any decrease in the business, from your knowledge of the affairs of the business?

Judge PENN: We object to that, because the witness has testified that he was not in the general office of the Waters Pierce Oil Company there, and he is not shown to know what amount of business was done by the Waters Pierce Oil Company.

The COURT: The objection is overruled.

The COURT (to the witness): If you don't know, state you don't know.

A. Why, I don't know, of course.

Q. You remember the reorganization, Mr. Clem, of the Waters Pierce Oil Company in the year 1900?

A. Yes, sir.

Q. I will ask you to state to the Jury whether or not—what change in the manner of doing business there was, if any, on your part, conducting the Eagle Refining Company after the reorganization of the new company?

A. There was no change at all.

Q. How about the salary that you received, any change in that?

A. None at all.

Q. How about the character of stationery that you used, corresponding to and the correspondence from the St. Louis office?

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A. Why, it was the same. Now, I don't know; there may have been some blank reports sent out or something, about re-incorporating or something, but I don't think there was any change in it.

Q. Did you receive any information or instructions from St. Louis in reference to the reorganization, any information about that?

A. No, sir. Well, now I got a little alarmed at the decision in the Supreme Court——

Mr. ODELL: We object to any alarm he had.

The WITNESS: Anyway, I didn't open my door. I talked to my lawyer and he said, better not; and I wired to St. Louis to know what to do and I had a telegram from Mr. Johnson to go ahead.

Q. Which Johnson was that?

A. Mr. Johnson, Judge Johnson.

Q. John D. Johnson?

A. Yes, sir.

Q. Wired you to go ahead?

A. Yes, sir.

Q. Now, was there any change in the character of business that was done in reference to the trade, after 1900? I asked you the first general question if there was any change in the manner of doing business and you said there was no change. Then I asked you about your stationery, and now I ask you about the trade?

A. Why, there was none; in fact, I received no instructions.

Q. Was there any change in the method of doing business?

A. I didn't see any.

Q. Did you make the same old reports to the company at St. Louis?

A. Yes, sir.

Q. Now, where did you get your supplies of oil before they bought you out? I believe you answered that?

A. Yes, sir, I answered that.

Q. Now, after they bought you out——?

1261

A. Well, my oil would come from St. Louis, that is, I would make requisition on Mr. A. M. Finlay, of St. Louis.

Q. Well, how would it come?

A. He would ship it to me in tank cars.
Q. Whose tank cars, what character of cars?
A. The International Tank Cars from St. Louis.
Q. Any others?
A. I don't remember any others.
Q. Did you ever receive any W. P. O. tank cars?
A. I don't think I ever received one.
Q. You know what character of tank cars the Waters Pierce Oil Company was getting at Dallas, the company that was running in that name there?
A. They were getting W. P. O. cars, and Union Tank Line, too, I think.
Q. You know your source of supply with reference to the refinery; you know where it came from, the oil?
A. It was billed out from St. Louis.
Q. How about any change in your source of supply with reference to any refinery in Texas?
A. After the Corsicana refinery finally got in operation, we received our oil from Corsicana.
Q. About when was that, the year, you remember?
A. Really I don't remember right now; I can't tell; somewhere in '96 or '97.
Q. Something like two or three years after they bought you out?
A. Yes, sir.
Q. Do you know who the manager of that business was at Corsicana, who the person was?
A. We would get our bills of lading from A. Angus; he
1262 was agent of the Waters Pierce Oil Company.
Q. He was agent at Corsicana?
A. Yes, sir.
Q. Did you get your entire supply from the Corsicana refinery?
A. I think so, after that; I don't remember ever getting a tank car from anywhere else.
Q. What kind of tank cars was it shipped in?
A. U. T. L. tank cars.
Q. What do you mean by U. T. L.?
A. Union Tank Line.
Q. Union Tank Line cars?
A. Yes, sir.
Q. You have been in business for the last couple of years for yourself, haven't you?
A. Last three years.
Q. Mr. Clem, I will ask you to state to the jury whether or not in your oil experience, operating the Eagle Refining Company for them previous to their purchase or since you have been in the business yourself, alone or for yourself, you have met in competition the Security Oil Company or the Corsicana Oil Refining Company, in dealing with the trade?
A. I never met with them at all. Now, in reference to the Security Oil Company, I might say that they have quoted me prices that I asked for.

Q. Well, to whom did you send the request for prices?

A. Which request for prices—why, I wrote to the Security Company to quote me prices on oil. Of course, I didn't expect any favorable answer much.

Q. Well, when was that?

A. That was in '94.

Q. '94?

1263 A. 1904.

Q. That was after the Eagle Refining Company had gone out of business?

A. Yes, sir; I wrote the Security Oil Company, and they wrote me back that they didn't have any tank car equipments and couldn't wuote us prices. I wrote them I would furnish our own tank cars, and they didn't answer that letter. And last year I wrote them for prices on naphtha, and they quoted me about market price I was selling in Dallas.

Q. When was that?

A. Last year.

Q. You remember whether that was before this suit was filed or after this suit was filed?

A. I don't remember, no sir.

Q. You remember what price they quoted you with reference to the prevailing price at Dallas?

Judge PENN: We object to that as irrelevant and immaterial, the act of a third party not a party to this suit and not a party that this defendant is shown to have any connection with.

The COURT: The objection is overruled.

Judge PENN: We except.

Q. (Question read). On naphtha?

A. Well, they quoted me two cents above other refineries.

Q. Above the Corsicana refinery?

A. No, sir, at two cents above the Gulf Refinery, from whom I had been getting our naphtha.

Q. Did you buy any oil or naphtha or lubricating oils from the Security Oil Company?

A. No, sir, they were two cents above the market.

1264 Q. Mr. Clem, what knowledge have you in reference to the number of refineries doing business in Texas and the extent of the product that they turn out at their refineries?

A. I have no knowledge of the extent of their product.

Q. What is the capacity of these refineries that are operating in Texas, do you know?

A. I don't know the capacity of them.

Q. Do you know the comparative amount of oil that they turn out and the nature of refined oils in Texas outside of the Security and Corsicana refineries, their production and their capacity, compared to the capacity of the others?

A. No, sir, I couldn't answer that correctly.

Q. You have no information in the course of your business that you could give an answer fairly accurate on that?

A. No, sir, I don't think I have.

Mr. BRADY: Gentlemen, we offer in evidence all of these copies of letters and reports. (Hands counsel for defendant tissue paper press copies of letters and reports.

Judge PENN: If the Court please, we object to these reports, statements, etc., that are offered here, on the ground that they are irrelevant and immaterial and uselessly encumber the record in this case, the witness having testified that during this time he was in the employ of the Waters Pierce Oil Company he made reports to them of the business transacted by him, as an agent ordinarily would do, and these reports I can't see shed any light on any subject under investigation in this case. We think that the whole matter shown by these reports has been briefly stated by the witness, a shorthand rendition of the facts with reference to them, and we think this will unnecessarily encumber the record to that extent. It is rather a large record anyway.

1265 Mr. BRADY: We don't regard them, in view of Mr. Clem's testimony identifying them, and the statement of counsel that they have sent these reports to St. Louis, that there is any special importance to them, and we will, in the interest of economy and time, with-draw them ourselves.

Cross-examination.

(By Mr. ODELL:)

Q. Where was the home office of the Eagle Refining Company, Mr. Clem? At the date of the execution of this contract about which you have testified?

A. Cleveland, Ohio.

Q. You know when that company was organized?

A. No, sir, I don't.

Q. Well, how long had you been connected with them?

A. Well, I had been connected with them five years, four or five.

Q. Were you an officer of the company?

A. No, sir, I was no way connected with them; I mean connected; I was connected with them in a business way.

Q. In other words, you were an agent for them in the State of Texas?

A. Well, an agent you might say; I was really buying my oil from them and selling it, but running it in their name.

Q. That is to say, you were a marketing agent for them?

A. Yes, sir, I was a marketing agent for them.

Q. You did business in their name in Texas and bought all of your oil from them?

A. Yes, sir, that is correct.

Q. Now, in '94 you sold your marketing agency to the Waters Pierce Oil Company, didn't you?

A. Yes, sir.

Q. And went out of business?

A. Went out of business?

1266 Q. Yes.

A. Well, I continued business, you know.

Q. I understand.

A. Of course, I went out of business and went on a salary; I went out of my own business.

Q. After the execution of this contract you ceased to do business on your own account and entered the service of the Waters Pierce Oil Company on a salary, didn't you?

A. Yes, sir.

Q. And sold oil for the Waters Pierce Oil Company?

A. Yes, sir.

Q. You received your oil from them?

A. Yes, sir.

Q. And under instructions from them you sold the oil?

A. Yes, sir.

Q. As I understand your testimony, the name of the concern was continued; in other words, it was used for the Waters Pierce Oil Company?

A. Yes, sir, it was continued,—the name was, and the business.

Q. And instead of getting oil from Cleveland, Ohio, or sending requisitions there for oil, you made requisition direct on the Waters Pierce Oil Company, at St. Louis?

A. Yes, on Mr. A. M. Finlay.

Q. On Mr. A. M. Finlay; well, he was with the Waters Pierce Oil Company?

A. Yes, sir.

Q. They filled the requisition?

A. Yes, sir.

Q. I understand from your testimony that you didn't undertake to secure the trade of those people who were dealing with the Waters Pierce Oil Company's agency in Dallas?

1267 A. No, sir, I made no effort to secure that at all.

Q. You made an effort to hold the trade of your old customers?

A. Yes, sir, I tried to hold them.

Q. And you continued that for several years?

A. Yes, sir.

Q. Now, in 1903, I believe you say Mr. Ackert came down to see you?

A. Yes, sir.

Q. And suggested to you the business wasn't profitable?

A. Yes, sir.

Q. And arranged to close it out?

A. Yes, sir.

Q. You proceeded to do so?

A. Yes, sir.

Q. Mr. Ackert told you that when the business was closed he would give you employment as city salesman?

A. Yes, sir.

Q. And he did so?

A. Yes, sir.

Q. What did they pay you from '94 to 1903, Mr. Clem?

A. '94?

Q. From 1894 up to 1903, what was your salary?

A. Why, I had an original contract with them for three years at $250.00 a month: when that contract expired, I wrote to them voluntarily reducing my salary $500.00 a year. They wrote me back that they hadn't been thinking of closing the business, or something, but they had been thinking of reducing the expenses, and they, of course, accepted my reduction of $500.00 a year, and said they would just go ahead that way until they otherwise advised or something. I remained there on a salary of $2500.00 up until the 31st of December '93.

Q. 1903, you mean?

1268 A. Yes, sir, I get those mixed. They cut it down $500.00 as salesman.

Q. Now, under your original contract, made in 1894, you received $3000.00 a year for three years?

A. Yes, sir.

Q. After that you received $2500.00 a year until the 31st of December, 1903?

A. Yes, sir, that is correct.

Q. And when you accepted employment as city salesman, they reduced that to $2000.00 a year?

A. Yes, sir.

Q. You remained with them about a month?

A. Yes, sir.

Q. And left the service of the company?

A. Yes, sir.

Q. Now, you remember the suit against the Waters Pierce Oil Company in '97?

A. At Waco?

Q. Waco and Austin.

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

Q. Did you testify at Austin?

A. When?

Q. In 1897.

A. No, I didn't come to Austin in '97.

Q. You- deposition was taken?

A. Well, my deposition, I think so, taken probably in Dallas.

Q. Well, I know, but it was taken for this case at Austin?

A. Yes, sir, I think so.

Q. You testified at Waco in 1896, didn't you, Mr. Clem, or '95?

1269 A. 1906, I think.

Q. Oh, you mean 1896, don't you?

A. I remember that time, yes, sir; I testified there.

Q. Very well, you testified fully about the Eagle Refining Company, didn't you?

A. Why, I think I answered such questions as were asked me; I don't think I went into details.

Q. You testified to your contract, didn't you?

A. I think so, yes, sir.

Q. Then, there has been no concealment of the relations between

the Waters Pierce Oil Company and the Eagle Refining Company, as evidenced in this contract, since your testimony at Waco in the Hathaway case, has there?

A. I don't think there has, no, sir.

Q. Of course, that was known; it was published in the newspapers?

A. Of course, and at the same time there are a great many people that don't read the newspapers, and I didn't make it my duty to go out and tell them of this.

Q. Well, everybody that did read the newspapers and wanted to know who owned your business there, they knew it, didn't they?

A. Yes, sir.

Q. Who you were carrying on that business for?

A. Yes, sir.

Q. Long prior to the organization of this present company?

A. Organization of 1900, you refer to?

Q. Yes.

A. Yes, sir; that was in 1896, I think.

Q. Four years before the organization of this company; and now, how long did you say that it was your opinion that your business at Dallas was being conducted at a loss?

A. That my business was being conducted at a loss?

1270 Q. Yes, business that you were conducting there?

A. Really, now, as to the business being conducted at a loss, I would assume that it was; I didn't know that the business was conducted at a loss. I had no way of telling what their oils cost them. I knew what the expenses there was. It may be that they could have sold 10,000 gallons of oil and made something, and, of course, I kept no record of profit and loss of the business.

Q. Then, as a matter of fact, you don't undertake to say the business was conducted at a loss, do you?

A. I wouldn't say it was; I didn't know.

Q. Now, you spoke of selling a carload of oil at Lancaster shortly before this contract was made, before you sold out to the Waters Pierce Oil Company?

A. That was three years before I sold; that was in '90, '91, may be, '90 or '91.

Q. Who did you sell to?

A. Sold that to a merchant by the name of Johnson, M. B. Johnson.

Q. You entered into a contract with M. B. Johnson, by which he would take a carload of oil and you wouldn't sell to any one else at Lancaster?

A. Well, that was his request; it wasn't a contract, don't know as it was a contract.

Q. Well, you acceded to it, didn't you?

A. Yes, sir; I went in there, and Mr. Johnson says——

Q. I don't want to argue the question with you, just answer the question.

Mr. BRADY: We submit the witness has a right to explain it now at this time; he was starting to give an explanation.

The COURT: Just answer the questions. Any explanations you desire to make, counsel can call for it.

1271 A. Well, there are only two or three merchants in the town, and he asked me not to sell to anybody else there.

Q. And you didn't do it?

A. No, sir; I just taken his order and went on to Waxahachie.

Q. Now, the Waters Pierce Oil Company they came in and sold to the other merchants that you wouldn't sell to; that is what you stated, isn't it?

A. Yes, sir, I suppose they did.

Q. Well, didn't you state so?

A. I know they did.

Q. You testified you knew they did?

A. Yes, sir, they sold it.

Q. Well, they couldn't get oil from you, could they?

A. They couldn't get oil at the price they were selling it for.

Q. Couldn't get it from you at all?

A. No, sir, because I didn't have a storage in Dallas.

Q. Well, you had an agreement with Mr. Johnson not to sell to anybody else there, didn't you?

A. I would have sold to other people in town, if I had a storage at Dallas.

Q. Well, you agreed not to do it?

A. Well, that was the understanding between Mr. Johnson and I, that he would take a carload of the oil.

Q. Then the other merchants couldn't get any unless they bought it from the Waters Pierce Oil Company, could they?

A. Well, I don't know where they could have bought it from, unless they bought it from Johnson.

Q. Yes, they either had to buy it from Johnson, or the Waters Pierce Oil Company?

A. They might have bought it from Johnson, because that was Johnson's idea in buying it, so he told me, that he was buy-

1272 ing it to supply the rest of them.

Q. He was buying it from you and going into the wholesale business to supply the other fellow, but in the meantime the Waters Pierce Oil Company they came in and they sold to the other people?

A. Well, they were selling them anyway, had been selling them all the time.

Q. I understand. Now, I want to go back to the Eagle Refining Company a minute. When this contract was made for the sale of your business to the Waters Pierce Oil Company, the Eagle Refining Company went out of business in about six months, didn't it?

A. I don't remember the time exactly; I know it went out of business; I think though in about six months, may be in the spring or summer of '95.

Q. They failed in business?

A. I understood that they failed.

Q. And the corporation ceased to exist?

A. Yes.

Q. And there was no such thing then in fact as the Eagle Refining Company after 1895, was there?

A. No, sir.

Q. You just simply retained the name of the Eagle Refining Company as a marketing agent for the Waters Pierce Oil Company, didn't you?

A. Yes, sir.

Q. Now, this cashier that you testified about this morning, what was his name?

A. Dennett.

Q. Where does he live?

A. Lived in Dallas; I don't know where he lives now. He was in Houston last I heard from him.

Q. When did you hear from him last?

A. Been a couple of months ago, I suppose, about that; I
1273 met him in Dallas, and he told me he was working in Houston,—was going to Houston that night.

Q. When did you get this letter from him?

A. I got that letter some time last winter, I think.

Q. Where was he at the time?

A. He first showed me that letter in my office.

Q. Last winter?

A. Yes, sir.

Q. What was his business at that time?

A. He was kinder of a car clerk at the T. & P.—at the M. K. & T.; he wasn't car clerk, but he was—anyway, some position, he walks on the track and takes the numbers of the cars.

Q. Call him "number grabber", don't they?

A. Number tramp or something, and my office is right on the M. K. & T., and he come up the track one cold morning and showed me that letter.

Q. What was he showing you the letter for?

A. Well, he thought it might interest me, and it would, because I could get up quite a collection of those, if I had kept things of that kind, and I don't know but what I might want to write a book some day.

Q. Did you ever write one?

A. No, sir; I am no author at all.

Q. Not trying to be a Lawson in the book business, are you?

A. No, sir.

Q. Is that the only letter he showed you?

A. He told me he had some other good ones, but I didn't insist on them. He give me that to frame, he said.

Q. And he had some others?

A. Yes, sir, he had others.

Q. He told you that he stole them from the company?
1274 A. He didn't tell me how he got them.

Q. You knew he stole them from his employer?

A. It is addressed to him, I think, personally,—Mr. H. A. Dennett; I think it is a personal letter to Mr. Dennett; that is the way I construed it.

Q. Didn't you construe it to be in the course of his employment?
A. Yes, sir, that is the meaning of it.
Q. Did he want you to pay him something for the letter?
A. Yes, sir; I gave him $2.50, I think, for the letter.
Q. Two dollars and a half?
A. Yes, sir.
Q. Well, what was the rate of the others that he had?
A. Well, he said that he had some other good ones.
Q. Have any price on them?
A. No, sir.
Q. He just wanted $2.50 for this?
A. Two and a half or five dollars; I don't remember what the price was.
Q. Two and a half or five dollars, you say?
A. Yes, sir, one or the other.
Q. Wasn't it five dollars.
A. I don't know if you aren't about right; believe it was five dollars I paid him for it.
Q. Five dollars instead or two and a half?
A. I wanted it for my files.
Q. He didn't name any price for the others?
A. Oh, I don't know about that.
Q. Well now, Mr. Clem, didn't he put a price on the others?
A. No, he told me he had a lot of other letters.
Q. Would like to sell them?
A. Said he had some other good ones or something; I never told him I wanted to look over them at all.
1275 Q. And he never brought them to you?
A. No, sir.
Q. Never did show you a one of them?
A. I don't think he ever did, no, sir; he walked by my office every morning taking his car numbers and he happened to have the letter in his pocket; in fact, I overtaken him on the road and he pulled this letter out and says, "Here's a rich thing; you ought to have this to frame"; and I didn't pay much attention to it, but a day or two afterwards he dropped in, and I asked him for the letter, and he says, "It is worth money to you", and finally I bought it from him. I think he owed me something anyway; I think he owed me $2.50 borrowed money, and I gave him $2.50 in cash.
Q. And canceled the debt?
A. Yes, sir, and he owes me something yet; I guess I will take the rest of the letters.
Q. Take the rest of the debt out in letters?
A. Yes, sir.
Q. You say he dropped into your office on a cold morning?
A. Yes, sir.
Q. Didn't you state a minute ago that you caught up with him out grabbing the numbers?
A. Well, I did overtake him on the road and he showed me this letter; I don't think he dropped in that day, but he would drop in every morning and get warm; we would have a good fire in my

office by his trail, and he would drop in, and I believe about the second morning after he showed me this letter he dropped in again, and there was someone in the office, and I asked him, I says, "Let's see that letter".

Q. Did you read it when he showed it to you?

A. I think so, yes, sir.

Q. Out on the track?

A. I think I read it.

1276 Q. Did you suppose he was carrying it around in his pocket when you asked him to let you see it again when he dropped in?

A. Well, he had it in his pocket.

Q. Did he tell you he had it, or did you just suppose he had it?

A. Well, he dropped in to get warm, and there was another man interested with me in the business and I said, "Dennett, have you got that letter with you," I says, "here is another man wants to read it."

Q. Who was the other man interested?

A. His name was Brown.

Q. Interested in what business?

A. Interested in my business, Clem Oil Company. And he showed Mr. Brown and I the letter, but I had seen the letter the morning—a day or two or week before in Dennett's hands when I was walking with him up the track.

Q. Who did you show the letter to first?

A. I don't know; I taken it home and put it in a little tin box there where I keep a lot of important letters, etc.; don't know as I showed it to anyone.

Q. Well, did you ever show it to any one?

A. Yes, sir, I have shown it.

Q. Well, who to first?

A. I don't know who first; one or two of my oil friends, Oriental Oil Company, have read it, that is, Smith; I remember showing it to him?

Q. Anyone else?

A. I may have shown it to a dozen people; I don't think, though, I have.

Q. When did you come to town, Mr. Clem,—Austin?

A. I dropped in here this morning about eight o'clock, I think.

Q. First time you have been here during the trial of this case?

1277 A. Yes, sir.

Q. Who requested you to come?

A. Mr. Lightfoot; Mr. Lightfoot requested me, that is, he asked me if I would come without being brought down here.

Q. You knew you couldn't be brought here in a civil case, didn't you?

A. No, I didn't.

Q. You didn't know that?

A. No, that is news to me. I thought I would have to come if they summoned me.

Q. And you live in Dallas?

A. Yes, sir. I don't know much about the law and lawyers, but he asked me if I would come.

Q. How much you being paid?

A. Me?

Q. Yes, you.

A. I haven't got nothing yet.

Q. How much you going to get?

A. I think he ought to give me my car fare.

Q. That all?

A. Well, I believe I get a dollar a day here as a witness.

Q. That is all you are going to get?

A. Yes, sir, that is all; I ain't going to get another penny, and I don't know whether I will get that or not.

Q. Now, in carrying on the business of this company at Dallas you had letter impression books, didn't you?

A. Yes, sir.

Q. You kept in those books your requisitions that you sent to the company?

A. Yes, sir.

Q. What did you tear these leaves out of that book for
1278 when you left the service of this company; they had paid you everything they owed you, hadn't they?

A. Well, I will tell you; I didn't tear them out of their book. If you will look at that, that is the reports that the Eagle Refining Company made to the home office. For instance, on December 31st, there is a transfer of the iron barrels. I was responsible for them, and we were bound by it and I kept those copies in case of anything that might come up afterwards.

Q. You had a receipt for what property you turned over, didn't you?

A. Receipts may have come later; I don't know about that; I don't remember.

Q. Didn't you check the property over to the man who received them?

A. Well, I checked it, but there is the inventory of the iron barrels.

Q. Didn't you get a receipt for that property when you turned it over?

A. I may, but I don't know whether I have or not; if I have, it isn't itemized like this is.

Q. Now, you tore those pages out of that copy book, didn't you?

A. I cut these out of the book Sunday morning; I have got that book at home. It is a personal book of my own, you might say.

Q. You say that it is a personal book of yours?

A. There is some of the company business in it, but half of it is personal letters of my own.

Q. Why, the company bought the book, didn't they?

A. I don't know about that.

Q. Don't you know you charged it up to them?

A. No, I don't think that I did; I think that is a book of my own.

Q. Why didn't you copy those reports in the book that you ordinarily copied them in?

A. Because I wanted to keep all these reports, because the
1279 last reports that I made acted as a voucher and receipt against anything that might come up.

Q. When you left the service of this company you deliberately kept this book for the purpose of some future use, isn't that the truth?

A. No, sir, it is not, except as stated,—to protect me against anything that might come up.

Q. What were you expecting to come up?

A. Well, if you will notice on that, you will notice about two or three hundred iron barrels that I am responsible for; that is itemized; it gives the number of the barrel, the date it went, who owned it at that time; now, something might come up in future years about that, maybe two or three years. Now, turn here, this barrel, No. 202, I have my records here and can tell who had that barrel.

Q. You can tell what became of iron barrel No. 202, which you have a receipt for?

A. Yes, sir.

Q. Now, you still say that this book was a book in which you recorded your personal business as distinguished from the company's?

A. Yes, sir, part of it is, and in fact, half of it or more.

Q. There isn't a letter in the book that you didn't write to the company, is there?

A. Not a letter in that book?

Q. Yes.

A. Yes, sir; there is only one or two letters in there to the company.

Q. You didn't have any other business except the company's business, did you?

A. I had some personal letters; I correspond with other people sometime outside of the company.

Q. And keep copies of your letters?

A. Yes, sir.

1280 Q. Put them in the same book with the company's letters?

A. I had put these in my book, not the company's book; put them in my book; I consider that personal business, those last reports, because when the Eagle Refining Company taken its flight all business relations or correspondence ceased between the home office and the A. W. Clem Company. Now, I preserved those there in case the auditor should come around and say that here is seven or eight hundred dollars which you ought to have on June 30th; what have you done with it. I have got those to show I sent it in. It is the only pay records that I kept there because I was responsible to the company for everything, and in that, if you will examine it, you will find it is a general inventory of everything turned over, and I kept it to protect myself.

Q. Well, if you kept it for that purpose, what did you cut it out and bring it down here for?

A. Well, I knew I would be questioned about the character of reports I made up there and the question has been asked me what character of reports we made to St. Louis.

Q. You knew what was going to be asked you?

A. Well, I supposed it would be; it has been asked me.

Q. Why didn't you bring the book and not mutilate it?

A. The book is too large to carry in my pocket, and I didn't think it amounted to much, and in fact as evidence it hasn't, as far as that is concerned. That is why, and now if you want to know the character of reports that we made to the home office, there they are right there, every one of them.

Q. Well, you just made reports of the business, did you?

A. Cash sales and cash sales reports.

Q. I understood you to say this morning that you were entitled to a profit of three cents a gallon on your oil?

A. Entitled to it?

Q. Yes, that is the very language you used.

1281 A. I may have said that a man can't market oil for less than three cents unless he does an enormous business.

Q. Didn't you say you were entitled to a profit of three cents a gallon?

A. Yes, I think I did. I ought to have that.

Q. And you got mad at the Waters Pierce Oil Company because you were not getting it, didn't you?

A. Because I wasn't doing what?

Q. Not getting three cents a gallon profit.

A. You mean originally, way back yonder?

Q. Yes, that is what you first got mad about?

A. No, I didn't get mad at them about that; of course, their manner of competition made me hot, or whatever you want to call it; don't know that I got mad.

Q. Just got hot?

A. Well, whenever you go into a town and sell a carload of oil at their prices and come back and find the merchants all kicking at the price and backing out, and they are retailing five cents less than you are selling it, it is enough to make a man feel hot.

Q. Well, you did have that kind of feeling toward them?

A. I guess I did, of course, in those days.

Q. You have sorter kept it up, haven't you?

A. I don't know; I left the Waters Pierce Oil Company with a kind feeling toward them, when I quit them; I sent my resignation to them and left them with the intention of being good.

Q. Being good?

A. And I have been pretty good to them.

Q. You still have a kind feeling toward them, have you?

A. Kind feeling toward them?

Q. Yes.

A. I don't know about that. I sympathize with them when they get into trouble, of course.

1282 Q. You went around helping work this case up, didn't you?

A. This case here?

Q. Yes.

A. I don't think I did.

Q. You went to see a lawyer in Dallas, didn't you, Etheridge?

A. No, sir.

Q. You didn't go to see him?
A. No, sir.
Q. Certain of that?
A. No, sir, I didn't.
Q. Who was it, then, that you went to see, which lawyer?
A. I didn't go to see any lawyer about working up this suit against the Waters Pierce Oil Company. When I resigned my position with the Waters Pierce Oil Company and left there, I left with a kind feeling towards all of them.
Q. Didn't you go to see Etheridge and tell him what you knew about this case?
A. You are thinking about the Bailey business.
Q. I am asking about what you told him about this Waters Pierce Oil Company business?
A. Well, Etheridge told them about me in a speech over there at Waxahachie, that is all; only he didn't know what he was talking about, because he used my name in a way that there was evidently a mistake.
Q. Well, you talked to him?
A. Well, he came to see me and had an interview with me.
Q. Did you show him any letter?
A. I was just thinking; I don't remember showing him any letters. Now, let's see——
Q. Did you show him this Dennett letter?
A. No, I didn't show him the Dennett letter; I don't think I did; there was some newspaper clippings I showed Etheridge.
1283 Q. You told us why you made a copy of these reports. Now, what did you bring that letter along for?
A. Why, Mr. Lightfoot had that letter for some time.
Q. When did you give it to him?
A. I think I mailed it to him some time ago.
Q. About how long ago?
A. Why, some two or three months ago.
Q. What did you mail it to him for?
A. Why, Mr. Lightfoot was up there to see me and he asked me for information, and I gave him what I knew.
Q. I thought you said you hadn't had any interest in this case, but had a very kind feeling toward the company and sympathized with it.
A. I said I left them with a kind feeling.
Q. Didn't you say you still had it and sympathized with it? Well, now the truth of the matter is, you gave him that letter, hoping it would have some effect in this case, didn't you?
A. Well, I guess I did, yes.
Q. All right; how many oil companies you say are doing business in Dallas now?
A. Why, there is about four or five.
Q. What are they?
A. Independent Oil Company.
Q. How long has it been there?

A. About a month, I think; that is lubricating business only. Ira O. Wyse Oil Company.

Q. How long has it been in business there?

A. For seven or eight years, may be ten years; ten years, I guess. They are not doing much in their refined or lubricating oils; they sell paint mostly.

Q. What other company?

A. Oriental Oil Company.

Q. How long have they been in business there?

1284 A. They have been in business about five years.

Q. They are lubricating and refined oils?

A. They don't do much refined oil business in the city.

Q. They lubricate a good deal?

A. They lubricate a good deal, yes; they do a good lubricating business, and refined oils, they are doing quite a refined oil business outside of the city, but they run no wagons.

Q. Now, the next company?

A. Let's see; why the Clem Oil Company you know; they are doing some business there yet.

Q. How long have you been in business there?

A. In February, 1894, I believe we went in business,—1904, I mean; I get those things mixed, confused.

Q. Now, let's see, there is the Ira O. Wyse Oil Company, Independent Oil Company; the Clem Oil Company, and the Oriental Oil Company; four companies that have been operating in Dallas independently of the Waters Pierce Oil Company, and most of them for several years?

Mr. ALLEN: We object to that; he hasn't said they operate independently of the Waters Pierce Oil Company. No witness has testified they are operating independently of the Waters Pierce Oil Company. They may run under an alias, just like these others.

The COURT: The attorney may ask the question.

Q. They are operating independently, aren't they?

A. Of course, I only have an opinion.

Q. Well, that is your opinion?

Mr. BRADY: We object to his stating his opinion.

A. So far as I am concerned, I know I am independent; but the others,—they would have to speak for themselves.

Q. Most of your testimony has been an opinion, hasn't it?

A. Well, I think most of my opinions have been ruled out.

1285 Q. Well, who is president of the Oriental Oil Company?

A. Man by the name of Coppish.

Q. He lives in Dallas?

A. Yes, sir, in the drug business there.

Q. Richardson & Gay, don't they do business in Dallas?

A. We buy quite a lot of oil from Richardson & Gay in tank cars; they are doing no business in Dallas; they do some business there, some lubricating business.

Q. The Gulf Refining Company, they do business there, don't they?

A. Yes, sir.
Q. Haven't they a plant there?
A. They have no plant in Dallas.
Q. The Richardson-Gay people have?
A. No, sir; not in Dallas.
Q. How many of those companies have plants there?
A. All of those that I have mentioned have warehouses and storage tanks; that is what you have reference to when you say plants?
Q. Yes; have tank wagons?
A. We are the only ones that are operating tank wagons.
Q. How many tank wagons have you?
A. We have two and sometimes three; sometimes run three.
Q. The Southwestern Oil Company operated there for a long time didn't it?
A. Yes, sir, they operated there up until about the first of the year, that is, they closed down about the first.
Q. Well, they operated there for several years in Dallas, didn't they?
A. Yes, sir, they operated there for several years.
Q. Where was your office in Dallas from 1900 up until December, 1903, Mr. Clem?
A. From 1900?
Q. Yes, sir.
A. To 1903?
Q. Yes.
1286 A. Why, I was in the south part of town, South Dallas.
Q. Have any sign?
A. Yes, we had a sign.
Q. What was it?
A. Part of the time,—well all of the time.
Q. What was it?
A. "A. W. Clem, Agent of the Waters Pierce Oil Company."

Redirect examination.

(By Mr. BRADY:)

Q. You say you had a sign, Mr. Clem?
A. Yes, sir.
Q. Just tell the Jury how big that sign was?
A. Why, it was about six by thirty, I guess; two and a half long, about that long (indicating), six inches wide, six or eight inches.
Q. And two and a half or three feet long?
A. Yes, sir.
Q. Where did you hang that sign?
A. Well, that was put——
Q. Where was it hung with reference to the creek?
A. That was first put on the back of the office and somebody knocked it down or it got tore away some way another, and then it was put up back of the warehouse.
Q. Now, back of the office where it was first hung, was there any public street running along there?

A. No, there was no public street there; I believe there was a railroad.

Q. Railroad track?

A. Yes, sir.

Q. That was over in South Dallas?

A. Yes, sir.

Q. Near that creek that you spoke about this morning?

A. Yes, sir.

1287 Q. On your direct examination; now, in that isolated place; don't the back of the warehouse and office front on that creek?

A. The back of it backs down into a hollow, yes.

Q. And you hung that sign back there after it was knocked down from the front office, you hung it back there on the creek?

A. Yes, sir.

Q. Two and a half inches wide and two and a half feet long or three feet long?

A. Yes, sir. There is a street car there that this sign could have been read from.

Q. How far is that?

A. About a block.

Q. How large are those letters on that sign; can you designate on that paper about the size of them? Fold it so as to make it about the size. (Handing witness blank sheet of paper, which witness folds.)

A. The "A. W. Clem" was in two inch letters, I should guess.

Q. How large was the "Agent W. P. O."?

A. That was about one inch letters.

Q. Very nicely ornamented?

A. Yes, sir.

Q. The "A. W. Clem" was in two inch letters and the "Agent Waters Pierce Oil Company" about an inch?

A. Yes, sir.

Q. And that street car ran a block off?

A. It was hardly a block; half a block, may be three fourths of a block; they could see the "A. W. Clem" I think, from the car all right; I don't know about the other.

Q. You were asked the question, Mr. Clem, whether you helped get up this case. I will ask you whether or not you testified with reference to this contract with the Waters Pierce Oil Company in '97, nine years before this suit was filed?

1288 A. Yes, sir, I testified; I know they swore me all the way from Austin to Washington. I hope they will get through with it.

Q. You talked to Mr. Lightfoot when he came to Dallas to see you about this matter?

A. Yes, sir.

Q. I will ask you whether you hunted Mr. Lightfoot up, or he hunted you up, about this matter?

A. He hunted me up.

Q. You were question- about your expenses down here and about what interest you had in this case. You stated you hoped to get

your traveling expenses back. I will ask you in addition to that, to state whether or not you have been promised anything, directly or indirectly in connection with this case?

A. No, sir; nothing whatever.

Q. In the result of this suit you have any direct or indirect interest in a money way?

A. No, sir, I have not.

Q. Now, you stated there were one or two company letters in that copy book that you have there at home, letters of the Waters Pierce Oil Company. Have you ever used that book in connection with this case at all, except to bring those copies down here?

A. No, sir; I have not.

Recross examination.

(By Mr. ODELL:)

Q. This sign you spoke of, Mr. Clem, who did you get instructions from about that sign?

A. That was sent me by instructions from St. Louis. Mr. H. C. Pierce sent it; wrote me a letter himself.

Q. You remember the date of the letter?

A. I do not, no, sir; I turned over all my letters and everything to the company when I quit business.

Q. Wrote you a letter to put the sign up?

A. Yes, sir.

Q. And you did it?

A. Yes, sir.

1289 C. W. CAHOON, a witness for the State, testified as follows:

Examination by Mr. BRADY:

Q. Your name is C. W. Cahoon?

A. Yes, sir.

Q. Where do you reside, Mr. Cahoon?

A. Dallas, Texas.

Q. What position, if any, do you occupy with the Waters Pierce Oil Company?

A. Manager of the Central Texas Division.

Q. How long have you been employed by the Company in that capacity?

A. Since January 1, 1903, I think.

Q. January 1, 1903?

A. In that capacity, yes, sir.

Q. How long have you been with the company altogether?

A. About nineteen years.

Q. Previous to 1903, what positions did you occupy, and where?

A. I entered the service of the company in 1888 as a stenographer, at Galveston, and remained there a year; and then spent four years in Houston as agent. From there I was transferred to Dallas and held the position of chief clerk, traveling salesman, assistant manager, and manager.

Q. And since 1903 you have been occupying the position of manager of the Division?

A. That is my recollection, yes sir.

Q. How long have you been at the Dallas office?

A. Since April '93, as I recollect it.

Q. April, 1893?

A. Yes sir.

Q. What territory does the Central Texas Division extend through?

A. North, Central and a great part of West Texas.

1290 Q. No regular uniform line dividing that Division from the others?

A. Hardly, no sir; it would be rather difficult to——

Q. Well, what other Divisions are there in Texas?

A. South Texas Division, headquarters at Houston.

Q. There are now only two Divisions in the State?

A. Yes sir.

Q. The Central and South Texas Divisions?

A. Yes, sir. I would state that there is a small part of East Texas that is handled through Shreveport.

Q. That is known as the Louisiana and East Texas Division, isn't it?

A. Yes sir.

Q. Mr. Littlefield the manager?

A. He was, yes sir.

Q. Is he now?

A. No sir.

Q. How long since he ceased to be manager of the Louisiana and East Texas Division?

A. I don't know the date.

Q. He is present in the city now, isn't he?

A. Yes sir.

Q. I will ask you, Mr. *Clem*, to what extent you gather statistics of information for the home office in St. Louis, of your own and competitors' business?

A. I don't understand what you mean.

Q. I say to what extent do you gather statistics of the business of your own company and competing companies for the use of the St. Louis office?

A. I keep an absolutely correct record of our own sales, and as much information as our agents and salesmen provide me with in regard to the others.

1291 Q. How often do you report and in what manner do you report your own business to the St. Louis office?

A. We report daily.

Q. Daily sales?

A. No, we report our sales monthly.

Q. Well, what character of daily reports do you make to the St. Louis office?

A. At the present time, a daily cash report; there are some other minor reports that I don't recall.

Q. Now, to what extent do your agents and employés, subordi-

nates, I think you use the term, furnish you with information of competitive companies, competitive shipments or competitive receipts, in your territory?

A. They furnish me with all the information they gather as they cover their territory.

Q. Is that a frequent matter or infrequent, daily or otherwise?

A. Receive daily reports from all of them.

Q. In reference to competitive shipments?

A. Not necessarily; principally in regard to their own sales.

Q. Well, I mean with reference to competitive shipments, how often do you receive information in regard to competitive sales?

A. The information in regard to competitive sales are mailed inside of their reports; that is a secondary matter, however.

Q. Well, whatever information you require, is acquired by them; as they acquire it, then send it or report it to you?

A. Yes, sir; they report it on their daily reports as they acquire it.

Q. How often do you send in a report to the Company of the competitive sales, shipments, and conditions over your territory with reference to competition?

1292 A. We send a monthly report.

Q. To whom do you send that?

A. C. P. Ackert, General Manager.

Q. How often does he reply to them, to your report and suggestions made in that report?

A. Sometimes he does, and sometimes not.

Q. Do you recall any instances since 1903 where you have made a monthly report, competitive report, and have not received any advice or answer from the St. Louis office?

A. Yes sir.

Q. How often?

A. Two thirds of the reports are not replied to.

Q. Where do you copy those reports, copies of them, or do you keep copies?

A. In my books.

Q. Are the originals returned to you or left at the St. Louis office, do you know?

A. They are not returned to me.

Q. Mr. Cahoon, what is the source of the supply principally of the Waters Pierce Oil Company in its North Texas Division?

A. In Central Texas Division?

Q. Yes, I mean Central Texas Division; I call it North Texas.

A. Corsicana, at the present time.

Q. How long has Corsicana been your principal supply-center?

A. Well, up to within two months ago, Corsicana was not our principal supply.

Q. Well, previous to two months ago, where was your principal supply?

A. Neodesha.

Q. Where is that?

A. Kansas.

1293 Q. Neodesha, Kansas?

A. Yes sir.

Q. Do you know what company or concern owns the Neodesha refinery?

A. No sir.

Q. What is your information in the course of your dealings, your business at Dallas, Texas?

A. I have no information in regard to it.

Q. You mean to say that in the conduct of your business at Dallas, you don't know who is the owner?

A. I know absolutely nothing about it.

Q. From your correspondence and the details of your business, you have not gathered any information as to who owns the Neodesha, Kansas, refinery?

A. I never passed a letter with the Neodesha refinery.

Q. Well, how do you come to be getting your shipments from Neodesha instead of some other point in the United States?

A. I presume because the orders are placed there.

Q. Where do you place your requisitions for oil?

A. The St. Louis office.

Q. Upon whom are the requisitions made?

A. Waters Pierce Oil Company.

Q. What officer?

A. They are forwarded to A. M. Finlay, Vice President.

Q. Who advises you, that is to say, what officer advises you of the source of supply on your orders and the routing of the shipments?

A. Why, I don't know that I get any advice as to the routing until the shipment is made.

Q. Well, I mean after it is made,—what officer of the Company advises you of the routing of the shipments?

1294 A. I don't recall; I haven't seen any of those advice cards in so long, I don't remember who they come from now.

Q. What other sources of supply do you have besides Neodesha, or did you have previous to two months ago?

A. Chaison, Texas.

Q. That is the Security Oil Company's refinery?

A. Yes, sir.

Q. From which of the two refineries, Neodesha and the Security Oil Company, do you receive, did you receive the greater amount of oils?

A. I say Security; we received possibly as much from the Gulf Refining Company as we did from the Security Oil Company at Beaumont.

Q. How?

A. I say we received probably as much or more supply from the Gulf Refining Company than we did from the Security Company.

Q. When is the last oil you received from the Gulf Refining Company in your division?

A. I don't recall.

Q. Well, about how long ago?

A. I wouldn't know; the shipments are made by a local representative, and I don't know.

Q. Upon requisitions to St. Louis?
A. Yes sir.
Q. Well, did you make your requisitions direct to St. Louis for oil that came from the Security Oil Company?
A. Yes sir.
Q. And likewise the Neodesha refinery?
A. Yes sir.

Q. You can't give us approximately the last date when you
1295 received any oil for use in your Division from the Gulf Refining Company?

A. I wouldn't know the date; I wouldn't know who they came from, because the shipments are made by a local representative of the company.
Q. Well, I understand you to say that a few months ago you got as much oil perhaps from the Gulf Refining Company as you did from the Security Oil Company?
A. That is my understanding, sir.
Q. Well, at what time do you refer to?
A. The present time.
Q. Up to within a couple of months ago?
A. Well up to the present time.

Thereupon Court adjourned until 2.30 p. m.

Court opened at 2.30 p. m.

A. W. CAHOON on the witness-stand.

Direct Examination resumed.

By Mr. BRADY:

Q. Mr. Cahoon, what position did you say you occupied just previous to becoming Division Manager?
A. Assistant Manager.
Q. How long had you been Assistant Manager.
A. Why, I should say two years.
Q. About two years?

A. Two or three years; as a matter of fact, I was assistant
1296 to the Manager from the time I went to Dallas.

Q. Then your title was either Assistant Manager or Division Manager during all of the time since the reorganization of the Company?
A. Well, I rather think I was given the title of Assistant Manager in 1901.
Q. 1901?
A. I would not be sure about that, however; prior to that I was Assistant, without a title.
Q. You were in effect Assistant to the Manager?
A. Yes, sir.
Q. Now, Mr. Cahoon, do you know the parties in charge of and managing the Corsicana refinery?
A. Yes sir.

Q. How long has that refinery been there in Corsicana, do you know?

A. I could not say; I think probably six years or seven years—six or seven years.

Q. Well, it was about 1901 when it was established, wasn't it?

A. That's my recollection; I am not sure about it, however.

Q. Who is the superintendent and active manager of the concern?

A. Mr. Brown.

Q. Mr. Brown?

A. Yes sir.

Q. Who is the—what position or employment has Mr. Angus with that company?

A. He is not connected with that company.

Q. Mr. A. Angus, I refer to.

A. He is not connected with the refinery.

Q. Is he the local agent of the Waters Pierce Oil Company at Corsicana?

A. Yes sir.

1297 Q. And he is in no wise connected with the refinery, so far as you know?

A. No sir, I know he isn't.

Q. Has he ever been connected with the Corsicana refinery that you know of?

A. Not to my knowledge, no sir.

Q. Is there another Mr. Angus at Corsicana that you know of?

A. No sir, not that I know of.

Q. How often do you have occasion, or have you had occasion, to visit Corsicana on business with the local agent and the Corsicana refinery, or either, since the reorganization of the Company?

A. Why, an average of once every sixty or ninety days.

Q. Upon what business would you go there, as nearly as you can state it?

A. With who?

Q. With the local agent and also with the Corsicana refinery people?

A. With the local agent I would go over the situation generally. With the refinery company I have had very little occasion to take up matters. I have called on them a few times with reference to the grades of oil they were giving us, and so forth.

Q. Now, I will ask you whether or not you have taken a greater amount of oil from the Corsicana refinery within the last year than you have in previous years since the reorganization of the company?

A. We have not; no, sir.

Q. About the same percentage?

A. No, we haven't taken as much during the past year as we have previous years.

Q. You have not?

1298 A. No sir.

Q. To what is that fact due, Mr. Cahoon?

A. Inability to give us the quantity.

Q. It's on account of the fact that they have not had the output?

A. Of the grade that we wanted.

Q. Now, during all that time I wish you would state to the jury what percentage of the output and production of the Corsicana refinery has the Waters Pierce Oil Company taken?

A. I don't know.

Q. Taken it all, hasn't it?

A. I don't know that.

Q. Well, what is your judgment, from the amount of oil that you handle in your Division and the amount of oil that is taken from that refinery by the South Texas Division, of the production of the refinery as known to you?—what do you think is the amount produced?

Mr. ODELL: We object, because it calls for a conclusion of the witness about it, Your Honor. Of course, if he has facts within his knowledge with reference to it, or if he knows what the output was, he may say. It is just a straight opinion and conclusion that is sought from the witness.

The COURT: The objection that it calls for the opinion of the witness is sustained.

Q. Mr. Cahoon, what knowledge have you had, or occasion to find out and inform yourself about the production of the Corsicana refinery since you have been Assistant Manager and Manager?

A. Only so far as one grade is concerned, I have kept myself posted as to what they were able to give us.

Q. What grade is that?

A. That's high grade oil.

Q. Well, in the market as Eupion?

A. Yes, sir.

1299 Q. What is that called at the Corsicana refinery?

A. Well, it is billed to us as Eupion.

Q. Well, don't you know what it is called as their product?

A. It is called Water White Oil.

Q. Water White?

A. Yes, sir.

Q. What is P. W. Oil?

A. Prime White.

Q. Is that an inferior or high grade?

A. It's a low grade oil.

Q. Have you had occasion to investigate and inform yourself about their production of P. W. Oil—Prime White?

A. Well, to a more or less extent, yes sir: not as far as my territory is concerned, though, because I don't sell it.

Q. Well, with regard to the other Divisions?

A. I have discussed it with them; yes, sir.

Q. Now, do they put out any other grades?

A. They put out what they call Standard White.

Q. That is known as S. W.?

A. Yes, sir.

Q. Now, what is that?

A. That's a still lower grade than Prime White.

Q. Have you had occasion to investigate the output as to that oil?
A. No, sir.
Q. Do you know to what extent they make that oil?
A. No, sir, I don't; they have some considerable stock of it, however.
Q. Now, from the information that you have, can you give us an approximate estimate of the production of the Corsicana refinery for the last five or six years of P. W. and W. W.?
1300 A. I could not give you even an approximate idea.
Q. Haven't you had occasion to investigate that in the last six months?
A. Not the total output; no, sir.
Q. You have not had any occasion, then, to inform the St. Louis office about what the probable output was?
A. Of Eupion, I have; yes, sir.
Q. Well, what is that?
A. Well, I don't recall—I should say from a thousand to fifteen hundred barrels a week.
Q. Well, has that been about the average or not, at least that, during the existence of the refinery?
A. That is a very low average; yes, sir.
Q. Well, you said a while ago it had gotten less on account of the output, but that is the least average?
A. Yes, sir
Q. What proportion, or about to what extent do you make purchases through the requisitions on St. Louis or otherwise, make purchases from the Corsicana refinery of that grade of oil—about how many barrels a week?
A. Why, I couldn't say: I don't know; I can give you an approximate idea.
Q. Well, give us approximately.
A. Eight hundred to a thousand barrels.
Q. Eight hundred to a thousand barrels a week?
A. I should judge so; yes, sir.
Q. Out of the production of twelve thousand or fifteen thousand?
A. Hundred.
Q. Oh! twelve hundred?
A. Yes, sir.
1301 Q. Well, I will ask you if it is or is not a fact that the Waters Pierce Oil Company, either the Central Texas Division or the South Texas Division, or both, have taken the entire output of the Corsicana refinery in high grade oil?
A. I don't know whether they have or not.
Q. Well, what is your information on that subject from your dealings with it and handling it?

Mr. ODELL: We object to his information, because it is hearsay, Your Honor.
The COURT: The objection is sustained. He may have information that is not hearsay, but the question is not limited to that.

Q. Well, I will ask you, Mr. Cahoon, what information you have in the course of your dealings, course of your business at Dallas,

handling one of the Divisions in Texas for this company, as to whether or not you handle in Texas the entire output, practically the entire output, of the Corsicana refinery on high grade oil?

Mr. ODELL: We renew the objection, Your Honor, that that calls for hearsay testimony, and that any information that he may have had is necessarily hearsay as to the company, unless it was communicated to them. Declarations that might have been made or statements that might have been made do not necessarily put the company on notice, especially if it is not shown that it was communicated to the company.

The COURT: The objection is overruled.

Mr. ODELL: We except.

Q. I am asking you what information you got in the conduct of your business.

A. Well, I should say that we have handled a very large percentage of the output.

1302 Q. Well, are you willing to state anything further than that? I am speaking now of its best grade of oil.

A. Well, I don't know whether we have handled the entire output or not; I don't know what disposition those people are making of it.

Q. Well, you think you have handled the greater part of it?

A. Yes, sir.

Q. Now, I will ask you if it is a fact that South Texas has called on the Corsicana refinery for the larger part of their production?

A. No, sir; only in a limited way.

Q. I will ask you, Mr. Cahoon, if it is not a fact that you have endeavored to take the entire output of the Corsicana refinery in the last year?

A. So far as high grade is concerned, yes.

Q. As far as high grade oil?

A. Yes, sir.

Q. That's the oil you market as Eupion?

A. Principally; yes, sir.

Q. Under whose direction, or did you have any direction, with reference to taking as much of the output of that refinery as you could?

A. Why, in a general way I was supposed to take—to use that oil to as great an extent as I could, yes, sir.

Q. Well, in a specific way, have you had instructions from the St. Louis office in that respect?

A. I have not consulted on the placing of those orders.

Q. You have not been written to in reference to placing it?

A. The home office placed orders wherever they saw fit. I might have suggested to them shipping from Corsicana, but——

1303 Q. Do you know approximately what you marketed in Central Texas Division in January a year ago?

A. No, sir; I don't remember. January, 1906?

Q. Yes, sir.

A. I don't remember; no sir.

Q. Well, can you approximate it?
A. Possibly fifteen thousand barrels.
Q. Fifteen thousand barrels a week?
A. No, a month—in the month of January.
Q. That's what you marketed?
A. Oil and gasoline together—I should judge so, yes, sir.
Q. Fifteen thousand barrels?
A. I don't recall—don't remember what we did, but I should say possibly that's about it.
Q. Well, how many gallons would that make?
A. Between seven hundred and seven hundred and fifty thousand.
Q. Do you know what the production of the Corsicana refinery was, or approximately, in that month of both S.W., W.W., and P.W., all three grades?
A. No, sir, I don't remember; possibly I knew at that time, but I don't recall it now.
Q. I wish you would examine this letter here, Mr. Cahoon (handing witness paper).
A. I think these figures in the letter are wrong. This letter refers to fifty-two thousand barrels. I should say that should have read fifty-two hundred barrels. I don't recall writing this letter, however.
Q. It estimates it in gallons, however. Well, look through the several grades of oil there.
A. I have no recollection of writing the letter at all.
1304 Q. Well, I wish you would read the last paragraph.

Mr. ODELL: It is not the original, Your Honor; it is a copy. The witness does not have any distinct recollection of writing it, and we object, from an unidentified, purported copy——
The COURT: Do you object to his reading it?
Mr. ODELL: Yes, sir; to reading it aloud.
Mr. BRADY: I didn't mean to read it aloud.
Mr. ODELL: Oh, well, that's my mistake.

A. I don't recall getting any of that information, it is so far back; I probably did, however.
Q. That letter is dated January 13, 1906. I will ask you if you recall my being in Dallas some time last month to make an investigation at your office?
A. Yes, sir.
Q. I will ask you whether or not you furnished me copies of a number of letters and documents at my request?
A. I did.
Q. I will ask you whether or not they were prepared by the stenographer in the office?
A. They were.
Q. For which courtesy I was very thankful to you. You furnished copies of those likewise to counsel for defendant in this case?
A. Yes, sir.
Q. Now, after reading this letter or independent of this letter, can you recall the statement, Mr. Cahoon, that your Division contemplated taking only one grade of oil from the Corsicana refinery?

A. Low grades of oil referred to there are not handled to any extent in my territory.

Q. Well, you know these several grades are referred to?

A. Yes, sir.

1305 Q. I will ask you if this copy of letter refreshes your memory as to the output of the Corsicana refinery, or approximately, at that time, January a year ago?

A. Why, I presume the figures given in there are approximately correct.

Q. Well, you sent that information to the home office, did you not?

A. Yes, sir.

Q. That includes three different grades of oil?

A. Yes, sir.

Q. That estimate was about eight hundred thousand gallons, approximately?

A. Yes, sir.

Q. And you say you presume that is approximately correct?

A. At that time, I suppose it was.

Q. Now, that was only about two hundred thousand more gallons than you were using in your Division—only fifty thousand more than you have estimated?

A. Yes, sir, taking all the grades together.

Q. You have no recollection of writing that letter?

A. I don't remember it, no sir. I would state, however, that I probably wrote the letter.

Q. Well, I will ask you to state whether or not it is a fact that at that time you, together with the South Texas Division, were taking practically the entire output of the Corsicana refinery of all grades, including the South Texas Division, now, taking its entire output?

A. No, sir, the two Divisions were not taking it, by any means.

Q. Well, how about the East Texas Division then?

A. They took some of it.

Q. They took some also?

A. Yes, sir.

1306 Q. Now, Mr. Cahoon, I will ask you, since you have no independent recollection of this matter, if this is a copy of a letter from your office purporting to have been written by you and taken from your records, if that is an exact copy, then will you or not state whether the figures stated in here are approximately correct, and the statement here that it was probable that the entire stock of all grades of refined oils in Corsicana will be exhausted in February?

A. Yes, sir, I think so.

Q. That was your judgment when you wrote it?

A. Yes, sir.

Q. While we are on this subject, I will ask you to examine each of these letters. I wish you would examine each and all of those letters, please, sir, and see if you have any independent recollection of them?

Judge PENN: I would suggest, to save taking up time—these letters you are offering are the ones you got in Dallas?

Mr. BRADY: Yes, sir.

Judge PENN: Well, just submit them to us, and if they are the same as we have we will admit them.

Mr. BRADY: All right. Do you wish to make that comparison now?

Judge PENN: Well, I don't suppose Mr. Cahoon will be able to identify your copy.

(Counsel for defendant inspected the copies.)

Judge PENN: We admit that these are copies made from the originals on file in Mr. Cahoon's office.

Q. Now, Mr. Cahoon, I will ask you if letters on file in your office from which these copies are made—it is admitted they are copies—
1307 where they purport to be from A. M. Finlay, Vice President, or C. P. Ackert, General Manager, or any of the officers in St. Louis, were received by you in due course of business and were on file there in that way?

A. I should say they were, yes, sir.

Q. And the copies of letters, impression copies or other character of copies, on file in your office from which these copies were made, they purport to have been sent by you to St. Louis and were made by you in due course of business and sent to them?

A. I should say so, yes, sir.

Q. Now, when you wrote these letters of which these are copies, you gave the facts at that time as you understood them, did you not?

A. Yes, sir.

Q. And they were true and correct, as you understood it then?

A. Yes, sir.

Mr. BRADY: If the Court please, we offer these letters that have just been examined by counsel.

Mr ODELL: We object, if the Court please, to the letters offered, as follows: Letter of December 4, 1905, addressed to Charles P. Ackert, General Manager, and signed blank, Manager; January 13, 1906, letter to C. P. Ackert, General Manager, signed by blank Manager; letter of October 30, 1906, addressed to C. W. Cahoon, Manager, Dallas, Texas, and signed by A. M. Finlay; letter of January 10, 1906, addressed to C. P. Ackert, General Manager, and signed blank Manager; February 15, 1906, addressed to C. P. Ackert, General Manager, St. Louis, signed Manager blank; February 17, 1906, addressed to Ackert, General Manager, and signed in blank; a letter
of date February 17, 1902, addressed to C. P. Ackert, General
1308 Manager, St. Louis, signed by blank—for the reason that they are immaterial and irrelevant; they throw no light on any issue in this case and are only indicative of the company's method of doing business; it is private correspondence of the company, and it does not illustrate or tend to illustrate any legitimate issue in this case. For that reason they are immaterial and irrelevant and will unnecessarily incumber the record; and in the next place, there is no suggestion in the letters of a violation of any law,

and if they serve any purpose at all it could only be the possible one of prejudicing the jury by some method of the company in doing its business, as outlined in the correspondence.

(The papers were handed to the Court for inspection.)

The COURT: What is the purpose of these letters?

Mr. BRADY: They are offered to show the extent to which the Waters Pierce Oil Company obtained its supply from the Corsicana Refining Company. There is some testimony introduced in the case—I don't recall by whom—in reference to the ownership of this Corsicana refinery, tending to show that it is the property of the Standard Oil Company system and one of their refineries in Texas, and we have an allegation in the petition that that is a fact. We have an allegation in the petition that they are not engaged in the retail business or marketing of oils in the State except by sale from the refinery itself—substantially that allegation—and we offer the circumstances in connection with the allegation in the petition about the ownership of this refinery.

The COURT: Let me see the letters again.

(The letters were again handed to the Court.)

1309 The COURT: The objection to the letter of date February 17, 1906, addressed to Mr. C. P. Ackert, General Manager, and to the letter of December 4, 1905, addressed to Mr. Charles P. Ackert, General Manager, is sustained; otherwise, the objection is overruled.

Mr. ODELL: We except, Your Honor.

Judge PENN: If the Court please, there are two of February 17th; did you specify which?

The COURT: The one on the bottom.

Mr. BATTS: Will the Court permit me to suggest that this particular one was in the batch, but I think that this is admissible upon yet another ground. The letter of December 4, 1905, excluded by Your Honor. If you will see what it is, I will discuss the proposition. (Hands letter to the Court).

Mr. BATTS: The suggestion made in the petition, and which we have undertaken to establish, is that among the—that the Waters Pierce Oil Company undertakes by unfair methods and underhand schemes to absolutely destroy all character of competition, and this letter shows that——

Judge PENN: Now, if the Court please, we object to Mr. Batts' undertaking to discuss in the presence of the Jury what the letter says.

The COURT: The Court has passed on the objection that the letter is immaterial and irrelevant upon the question of the output of the oil of the Corsicana Refinery. Counsel for the State says it is admissible on another theory——

Judge PENN: But we say that they can't do that without expressing what is in the letter——

The COURT: The Court was about to remark, when interrupted, that the Sheriff could withdraw the Jury. Retire the Jury, Mr. Sheriff.

(Thereupon the Sheriff retires the Jury.)

1310 Mr. BATTS: Now, Your Honor, the evidence already introduced is to the effect that the business—to follow out the line of argument already started, that was to the effect that the Waters Pierce Oil Company, by its underhand method of doing business, of taking advantage everywhere by misleading people and for the purpose of absolutely destroying competition of every character,—we made allegations covering that idea and we have introduced some evidence on that subject. We have also established by this witness that its highest grade of oil is Eupion Oil, and the evidence all along has indicated that this was one of the bases of the business of the Waters Pierce Oil Company. For instance, in the testimony of Mr. Pierce, he lays great stress upon the circumstance of the fine quality of this Eupion Oil, and the circumstance that he gets business by virtue of that Eupion Oil. This high grade, now, we want to show, and this letter will show, with a number of others, that wherever it could be done, that an inferior quality of oil was put in and sold as Eupion Oil; and especially where they were compelled, by reason of competition, to reduce the price of oil, that they immediately sold an inferior grade of oil as Eupion Oil. Now, of course, I would not make the proposition that this should,—oh, I don't know what you call it exactly; I would hate to designate it as swindling, but it is certainly very sharp practice; and that this sharp practice is a part of the general business of destroying competition, we will also show that there is a very great deal of difference in the cost of this Corsicana S. W. 112 and Corsicana W. W. 150, or whatever it is that constitutes Eupion Oil, and by using inferior grades and paying a great deal less for it and putting it off on the people and dealers as a high grade oil, that they are able to absolutely destroy competition, because nobody can meet them on that basis. It is
1311 just one of those circumstances that go to make up their business,—all of their business being directed to the absolute destruction of competition.

The COURT: The letter simply contains a question as to whether he would be allowed to sell an inferior grade as Eupion Oil. Does it go to show that it was consented to, or that he was permitted to sell it as Eupion Oil.

Mr. BATTS: Yes, sir. The Manager at Dallas is now asking for authority to do this, and it will be shown that ordinarily whatever recommendations are made by the Manager at Dallas, are acquiesced in by the Manager at St. Louis. Now, whether this letter shows that, I can't recall, but that was the course of business, and I introduce this letter as indicating that course of business in regard to that particular matter.

The COURT: Gentlemen, I think the letter is more calculated to arouse the prejudice of the Jury on an immaterial matter, than on the question as to whether or not the anti-trust law has been violated. The objection is sustained.

Mr. BATTS: We except. Of course, this will cover a great many letters of the same kind.

(Jury returns.)

Mr. BRADY (to the Jury): Gentlemen, I will read you these letters introduced in evidence. (Reads following letters:)

Letter dated January 10, 1906, addressed to Mr. C. P. Ackert, General Manager, St. Louis, Missouri; signed "Yours truly, blank Manager."

These letters are admitted to be copies taken from the Dallas office of this Company; they are copies taken by me some two or three weeks ago.

1312 The next letter is January 13, 1906, relating to subject, Corsicana oil. "Mr. C. P. Ackert, General Manager, St. Louis, Mo."

The next letter is February 15, 1906, relates to Orders Nos. 294 and 304.

Letter of February 17, 1906; estimated output of refinery.

Letter of October 30, 1906, to C. W. Cahoon, signed A. M. Finlay.

Letter of December 18, 1905. (This was not read.)

Mr. BRADY: If the Court please, I was a little uncertain whether this letter was included with the, or not.

Judge PENN: No sir, it was not. Do you offer this, Mr. Brady?

Mr. BRADY: No, we haven't offered it yet.

The COURT: The objection will be sustained.

Mr. BRADY (to the Stenographer): Will you please take this down: Letter of December 18, 1905, to C. P. Ackert, excluded, and ruling excepted to by State.

Q. Now, Mr. Cahoon, I notice certain figures after these grades of oil. I wish you would explain what they mean. W. W. 120; that 120, what does that refer to?

A. That is a refinery term for fire test. It does not necessarily mean that the oil is 120 Fire Test; it is simply approximately that.

Q. They classify it as that test——

A. It might be 130 or 135, but it is referred to as 120.

Q. Well, P. W., Prime White 150,—that also refers to the fire test as classified by the refinery?

A. Yes, sir.

Q. And 112, also refers to the classification?

A. Yes, sir.

1313 Q. Now, I will ask you, Mr. Cahoon, whether or not you have in the course of your business in Dallas, as Manager of the Division there, placed any orders directly with the Corsicana refinery?

A. No, sir; never.

Q. Don't recall having placed any orders direct?

A. To the best of my recollection, no.

Q. Where are all your orders on that refinery placed?

A. All of our orders are placed with our St. Louis office.

Q. Whose business is it in your Divison to gather statistics, if it is the business of any one, in reference to the percentage of business that your Company is doing in that territory, and your competitors are doing in that territory?

A. It is the duty of the agents and salesmen; all of them.

Q. Well, whose duty is it to furnish that information to the Missouri office?

A. I do it personally.

Q. It goes through the Division office, and through you personally, and the Central Texas Division?

A. Yes, sir.

Q. Have you been familiar with those details, and with the particular work, as part of your duties, since you were Assistant Manager and also while Division Manager?

A. Yes, sir.

Q. You have a more or less, or fairly accurate knowledge of the percentage of business your Company has been doing since 1900?

A. Reasonably so, yes, sir.

Q. I wish you would state what percentage of the business your Company has done since 1900 to the time of the filing of this suit.

A. I could not give you anything but an approximate idea.

Q. Well, give us the best idea you can.

1314 A. I should say possibly eighty per cent.

Q. Possibly eighty per cent. Do you mean possibly as low as eighty or as high as eighty?

A. Within five per cent. either way; it is merely an estimate.

Q. Well, are you trying to average it during those years?

A. Why, I am basing my estimate on the past year. I don't recall the conditions prior to that.

Q. Well, your competition has been a little more active last year than previously?

A. No; not any more than the year before.

Q. Well, within the last two or three years your competition has been more active than previously?

A. Yes, sir; I expect it has.

Q. From 1900, say, until 1903, when you became the Division Manager, are you willing to state that your percentage was as low as eighty per cent., or will you place it higher?

A. I don't know; I don't recall what it was at that time.

Q. Your Division, of course, is the Central Texas Division. I will ask you, as a matter of refreshing your memory, whether or not, in the year 1903 your percentage of the business in refined oils was not eighty-eight per cent., or approximately that?

A. I do not know; I have no recollection of the matter.

Q. Well, will you say it was not as great as eighty-eight per cent.?

A. I do not know; I have no idea what it was.

Q. In the year 1904, I will ask you if your percentage of refined oil was not eighty-two per cent.?

A. I do not know, sir.

Q. Well, will you say it was not as great as eighty-two per cent.?

A. I have no recellection of it.

Q. Well, coming to gasoline, in the Central Texas Division for 1903, was not your percentage in gasoline over ninety-five per cent.?

1315 A. Where?

Q. In the Central Texas Division, entire Division for the year 1903,—didn't you do ninety-five per cent. of the business on gasoline?

A. I don't know.

Q. On the two,—gasoline and refined oils,—did you not do eighty-

nine per cent. of the total business, according to your statistics furnished by you?

A. I don't know; I do not remember.

Q. Well, will you say that that is not approximately correct,—eighty-nine per cent. of the total gasoline and refined oils for 1903?

A. I would not think it was as large as that; as high a percentage as that.

Q. Do you know, Mr. Cahoon, whether anybody else has been furnishing the St. Louis office with statistics and data about that?

A. I think not.

Q. You have never heard of any one else?

A. No, sir, unless——

Q. Have you any information as to the extent of business in the South Texas and Louisiana Division?

A. No, sir. Do you mean do I know anything about the business down there?

Q. Yes.

A. No, sir.

Q. Well, through talking with the agent, Louis Fries, of the South Texas Division,—do you know anything about that?

A. No, sir; don't recall of his ever having mentioned how much business he was doing.

Q. Understand you to say, Mr. Cahoon, that you will not deny that the percentage of the business done by your Company for the last five or six years has not been in the neighborhood of eighty or ninety per cent.

1316 A. I have no recollection as to what the percentage was over a year back. I should say it was approximately eighty per cent. during the past twelve months.

Q. And your competition has been greater during the past two years than previously?

A. Yes, sir, somewhat greater.

Q. Whose business was it in the Central Texas Division to look after competition, and to meet the competition, and keep up your end of the business to the best advantage for the company, generally, over the entire territory?

A. Every employee connected with the company.

Q. Under whose supervision and whose direct attention was given to this matter; who was held responsible in Texas for those matters?

A. I am, in my territory.

Q. Well, that's what I am speaking of,—the Central Texas Division. You are held responsible for taking care of that?

A. Yes, sir.

Q. I understand you to say that your agents were required to give you information as often as required and as often as they got it, concerning competitive shipments and receipts.

A. In a general way, yes, sir. They keep us posted, or are expected to keep us posted, not only on the business that we are doing, but in the business that they are losing.

Q. In other words, the business that your competitors are getting; isn't that a fact?

A. Yes, sir.

Q. How about the prices that your competitors are obtaining in the territory they are doing business in? Are you informed on that subject?

A. Yes, sir, reasonably well.

1317 Q. Well, as frequently as the agents could get the information to you?

A. Yes, sir.

Q. Did you transmit that information to the St. Louis office?

A. Yes, sir.

Q. The prevailing business that your competitors were getting and the prices they were selling?

A. Yes, sir.

Q. Now, did you make that in a general way, or did you make specific reports concerning merchants in any town?

A. I rarely ever mentioned any particular merchant; just mentioned conditions as a whole.

Q. You say it was unusual to furnish information of that character to the St. Louis office and the conditions with reference to certain particular merchants and dealers?

A. Why, I expect I referred to some merchants quite frequently, but taking the business as a whole, or the correspondence as a whole, very little reference was made to the individual merchant.

Q. You mean compared with the volume of correspondence?

A. I mean to say that my letters had reference to conditions as a whole, generally.

Q. But you did frequently write them with reference to individual merchants, respecting prices made to them?

A. I did at times, yes, sir.

Q. I will ask you what method the Company pursued in meeting competition throughout your Division since you have been Assistant and Division Manager?

A. Well, we don't make a practice to meet the competitors' prices as a rule.

Q. Well, in what way would you get rid of the competition, or try to get hold of the business?

1318 A. We would depend on good service and a high grade of goods to regain and hold the trade.

Q. Now, was that all you depended on?

A. As a general proposition, yes, sir; occasionally we had to meet the competitors' prices.

Q. Made it a special proposition. Wasn't it a frequent thing for you to reduce your prices to meet competition?

A. Why, no, sir; I would say that at very few of the points the competitors' prices were below ours.

Q. That your competitors' prices were below yours?

A. Were below, and are to-day, yes, sir.

Q. Were they furnishing the same grade of oil?

A. I do not know.

Q. Wasn't it a frequent thing for you to reduce the price of your oils to meet competition?

A. Not a frequent thing; we did it at times.

Q. Did you give rebates or discounts to special merchants?
A. In a very limited way we have done such things, yes, sir.
Q. About how many letters are there in your office referring to special rates and discounts during the last few years?
A. I have no idea.
Q. There are hundreds of such letters, aren't there?
A. In the last three or four years?
Q. Yes, sir.
A. There may be; I haven't any idea.
Q. What two grades of oil did you market, or what different grades of refined oils did you market, Mr. Cahoon, and are you now marketing?
A. Under what brands?
Q. Yes, sir, I mean the brands.
A. Eupion and Brilliant.
1319 Q. What difference in the selling price is there of these oils?
A. Approximately three cents.
Q. That's the retail business or wholesale?
A. Wholesale.
Q. What difference is usually made with the retail trade?
A. I don't know; I should say five cents, though, on an average.
Q. What difference in the cost at the refinery, or as purchased from the refinery?
A. I do not know.
Q. You don't know the difference in the cost to the company?
A. No, sir.
Q. But about three cents wholesale and five cents retail, approximately?
A. I should say so, yes, sir.
Q. Now, you say that you market a high-grade oil. From the Corsicana refinery you handle the Water White as your Eupion brand?
A. That is the refinery term for the oil they furnish us.
Q. I believe your answer to me in the beginning of your examination was that you market Water White 112, wasn't that correct?
A. The refinery term of 120.
Q. 120 instead of 112 as the Eupion Oil that you were marketing?
A. As a general proposition, yes, sir.
Q. You say that you were handling a high grade oil. Isn't it true that you used considerable of the P.W. and S.W. oil, and marketed it as Eupion?
A. Now——

Mr. ODELL: I object, because it is not a violation of law, and can only be used for the purpose of basing inflammatory arguments.
The COURT: The objection is overruled.
Mr. ODELL: We except.

1320 Q. Isn't it a fact that you used considerable P.W. and some S.W., that is Prime White and Standard White, production of the Corsicana refinery, under the name of Eupion oil, and marketed it in Texas?

A. At the present time?
Q. No, during the last seven years,—since 1900.

Mr. ODELL: We renew the same objection.
The COURT: The objection is overruled.
Mr. ODELL: We except.

A. To the best of my recollection, that was never done, except possibly for sixty days.
Q. When was that sixty days?
A. As near as I can remember, the first of last year.
Q. Why did you do it?
A. Because we couldn't get a supply of the other oil.
Q. Where did you do it?
A. I presume at a dozen or two places, possibly twenty.
Q. You sold it at Stephenville, didn't you.
A. I don't remember.
Q. Then it was on account of the fact that you couldn't get the higher grade of oil, that you marketed it as Eupion; that you used that oil for sixty days.
A. Yes, sir.
Q. Competition had nothing to do with it?
A. No, sir.
Q. Positive of that?
A. Yes, sir.
Q. You are positive that in no instance you marketed Prime White or Standard White, as Eupion, to meet competition?
A. Not to my knowledge.
Q. I will ask you if you ever found the condition such as to ask authority from the St. Louis office?
1321 A. On account of competition?
Q. Yes, sir.
A. I don't recall ever doing it; I might possibly have made reference to it in regard to some competitive proposition, but I don't recall it.
Q. Mr. Cahoon, you were with the company, of course, in 1900, as Assistant Manager, that is to say, that you were actually performing the duties of Assistant Manager, although not having received the title?
A. Yes, sir.
Q. I will ask you what change, if any, was made in the Company's method of doing business, and what change occurred in its business in any way, that you can recall after the dissolution in 1900, and the reorganization?

Mr. ODELL: We object to that, if the Court please, for the reason that it is immaterial and irrelevant, as to whether this company did business as the former company had been doing business. The issue in the case is as to whether this company had been doing business in violation of law, and not as to whether it was pursuing its business along the same lines some company theretofore had been carrying on its business.
The COURT: The objection is overruled.

Mr. ODELL: We except.

A. I don't remember any material change in the manner of doing business.

Q. How about the office force and employees?

A. I don't recall any changes.

Q. Recall any changes?

A. None that I remember of, no, sir.

Q. Any change in the property of the company?

1322 A. The property was transferred to the new company.

Q. To the new company. Do you remember some property out at Oak Cliff that stood in the name of John D. Johnson?

A. I have heard of it.

Q. Any change made in that after the new company was organized?

A. Not that I know of.

Q. Do you or not render that property for taxes at Dallas?

A. I think our local man at Dallas does.

Q. I will ask you if that property stood in the name before and stood in the name of John D. Johnson after the reorganization of the company?

A. I have no knowledge.

Q. Your local agent made the tax rendition?

A. Yes, sir.

Q. I will ask you if you know of any change in the status of the title of that property at Dallas?

A. I don't recall any, but I would not have known it had there been a change.

Q. I will ask you if there isn't some correspondence in your office relating to that very matter, reminding you that that property was in Mr. Johnson's name and would so remain after the company was re-incorporated?

A. I don't remember such a letter.

Q. Do you deny that there is such a letter?

A. I do not know; I do not know anything about it.

Q. Well, in any other respects, has there been a change or any change in the company or in the methods of the company after the reorganization of the company, than what existed before?

A. Well, our general method is somewhat different at the present time than it formerly was; our system of deliveries are more elaborate.

Q. Getting more active?

1323 A. Working the trade closer than we ever did, yes, sir.

Q. Was there any change in the stationery of the company?

A. Yes, sir.

Q. What was the difference?

A. The present stationery shows the date of the incorporation of the new company.

Q. Well, I mean at the time the company was reorganized? What kind of stationery did you have? Did you have a rubber stamp?

A. I don't remember.

Q. You afterwards got a supply with it printed there?

A. Possibly so; I don't remember.

Q. Well, how about your books? Did you open up a new system of books?

A. I think not, no, sir.

Q. How about your customers' accounts,—did you close them out just at the time of the dissolution and open up new accounts with the customers?

A. I don't know how that was handled.

Q. What is your best recollection?

A. I have absolutely no knowledge as to what was done: I was on the road when the change was made.

Q. Well, did you stay on the road while the company was going out and coming back in again?

A. I don't remember.

Q. Well, did they call you in, or did you keep a-traveling?

A. I don't remember; it——

Q. Well, what is your recollection about it,—whether it suspended your business operations until the change in this company on the 29th day of May, in Missouri, and then the re-introduction into Texas two days afterwards; did it suspend you in any wise at all?

A. So far as I recall, I continued to work as hard afterwards as before.

1324 Q. Did you know that the change took place?

A. Yes, sir; I was advised.

Q. Did you know when Mr. Johnson and Mr. Pierce left St. Louis and came to Austin?

A. Not that I remember of.

Q. Well, did you know when the company was actually reincorporated? Were you advised at all after it happened?

A. I don't recall when I was advised.

Q. When you got back to Dallas, did you find it out then, or on the road?

A. The probabilities are I was advised by the gentleman who was Manager at that time.

Q. And Mr. Grice was?

A. Yes, sir.

Q. Well, what change was there is your salary? Did you get a larger or a smaller, or the same salary?

A. The same salary.

Q. Any changes in the other employees' salaries?

A. Not that I know of.

Q. I asked you a while ago if it interfered with your traveling at all. Do you recall any notice of being fired, while on the road?

A. I recall receiving such a notice.

Q. Did you get it while traveling or after you got back to Dallas?

A. I don't remember when.

Q. To refresh your memory, I will ask you if you didn't open your mail and find one letter showing your discharge and another showing your re-appointment?

A. I don't remember. My recollection is that I received the notice of discharge prior to receiving the notice of re-appointment.

1325 Q. How long prior?

A. I don't recall it.

Q. Did you take the matter up with the Division Manager, to find out about it, and didn't you want to know why you were fired?

A. I don't remember.

Q. Did you have any conversation about what you would do about a new job?

A. It is possible, but I don't remember it.

Q. Well, isn't it a fact that when you left on the trip, you knew about the company being dissolved and you were not afraid about your job, and didn't pay any attention to the matter?

A. I didn't worry much; I was in hopes the company would stay in business.

Q. Are you familiar with the contracts, Mr. Cahoon, that you had; forms in your office there? Look at that Form G-707. Is that a form that you used in the office at Dallas?

A. It appears to be, yes, sir.

Q. Was that used throughout your Division?

A. Yes, sir.

Q. Do you still use that form, do you know?

A. I am not sure about that; I don't pay much attention to the contract forms. They are handled by another man in my office, and I wouldn't be positive.

Q. I wish you would look at this and see if you remember the occasion of my taking that, as a copy of your agreement?

A. I recall your taking a copy, yes, sir.

Q. It was furnished by your stenographer?

A. Yes, sir.

Q. Do you know whether that is the copy or not?

A. I don't know, but it appears to be.

Q. You are familiar with Form G-710? Did you have a form of that kind?

1326 A. I don't know; don't remember what it deals with. Is it a contract form?

Q. Yes, sir; to refresh your memory, I will show you a clause taken from it. (Shows to witness.)

A. Yes, sir, that's a railroad contract.

Q. You recognize that form, G-710?

A. Yes, sir.

Q. Do you recall, Mr. Cahoon, whether or not you have a large number of contracts on file in your office that were made during the years 1903, 1904 and 1905, on Form G-707, that contract similar to the one I had there of the Greenville Water Company?

A. We have a large number of contracts on file in the office, but as to the form, I am not certain.

Q. Do you recall submitting to me while inspecting the books and records, a large number of contracts during those years?

A. Yes, sir.

Q. You don't know how many contracts you had in force in 1903, 1904, and 1905, similar to the Greenville contract, on Form G-707?

A. No, sir, I haven't any idea.

Q. I will ask you to state whether or not the contracts you showed me while I was there and inspected by me, were regular contracts made by your company in the course of its business, and kept there as part of its records?

A. Yes, sir.

Q. I presume you have no independent recollection or memory of about how many contracts on the various forms you have on file in your office in Dallas?

A. No, I have no idea.

Q. I will ask you whether the forms you use were prepared by yourself or sent from St. Louis?

A. They were sent from St. Louis.

1327 Q. They were received by you, as Manager, from St. Louis?

A. Yes, sir.

Q. Now, do those forms,—have you any recollection of any particular clause in them, Mr. Cahoon?

A. No, sir.

Q. Well, to refresh your memory, and to impress upon you what I mean, I will call your attention to this clause: "The second party——

Judge PENN: If the Court please, we ask the Counsel just to hand that to the witness. This paper is not in evidence.

Mr. BRADY: All right. (Hands paper to witness.)

Q. You have read that clause?

A. Yes, sir.

Q. That is the last clause of that contract, is it not, on Form 707-G? That is the last clause of the contract, isn't it?

A. Yes, sir.

Q. I will ask you to state whether or not in the conduct of your business, of the North Texas Division, you made numerous contracts containing that clause, in the Central Texas Division?

A. I presume we did, yes, sir.

Q. As often as you could get contracts of that kind?

A. We got all the contracts we could, yes, sir.

Q. You recognize the pertinence of that clause, don't you?

A. Yes, sir.

Q. Did you get as many of that kind as you could?

A. I presume we did. As I stated before, I am not familiar with the form numbers; I could not say positively that that contract is in use.

Q. Just leave out the printed designation of the form, and take the substance of it,—that particular clause in that contract: did you or not, in the course of your business, get as many contracts of this kind as you could?

1328 A. I presume we did, yes, sir.

Q. Well, didn't you get them?

A. Did you ask a question?

Q. Well, did you get a great many of them?

A. Yes, sir, I should suppose so. I haven't looked at the contracts myself for some time and do not know how many we have.

Q. I believe you stated that this was one of the forms in use in your office during those years.

A. That form has been used in our office.

Q. Well, I will show you again that contract with the Greenville Water Company.

A. Yes, sir, that's the contract.

Q. That contract is commonly in use in your office?

A. Yes, sir; I presume so. I don't know——

Q. (Hands witness paper.) I will ask you to examine the contract with reference to the amount of purchase there. (Witness examines paper.) Now, I will ask you this question with reference to the contracts of this kind generally,—how did you figure out the amount of goods that these people would take and how did you fix the amount of the contract?

A. Those estimates are made by the customers themselves.

Q. Made by them?

A. Yes, sir.

Q. Intended to cover about what, Mr. Cahoon, if you know?

A. To cover their requirements for the period covered by the contract.

Q. In other words, their estimated consumption for the year?

A. Yes, sir.

Q. These contracts were all executed yearly, just annual contracts?

A. Most of them; yes, sir.

Q. Well, you recall anywhere they lasted more than one year?

A. Not many; we have had a few.

1329 Q. I wish you would examine this letter, Mr. Cahoon. (Hands letter to witness.) Do you have any independent recollection of that letter, Mr. Cahoon?

A. No, sir; it is probably a letter I wrote all right.

Q. You know whether that is a copy of a letter I got out of your office in Dallas, that you had prepared by your stenographer?

A. I presume it is.

Q. Is that the original letter or your stenographer's memorandum?

A. That refers to my initials, my dictation, and the number of the stenographer.

Mr. BRADY: I submit that letter to you as one of the letters.

(Hands letter to counsel for defendant.)

Judge PENN: We object to the introduction in evidence of this letter, first, because it is irrelevant and immaterial, and, second, because it appears that the letter embodies a proposition or suggestion from the Manager of the Waters Pierce Oil Company at Dallas, to its General Manager at St. Louis, and there isn't anything to show that his proposition or suggestion was accepted or adopted by the Manager at St. Louis. (Hands letter to the Court.)

The COURT: What is the purpose of the letter?

Mr. BATTS: The purpose is to show—we undertake to show that the entire purpose of this proposed change in price is to get competi-

tion out of particular territory in order that the price might be advanced. We will undertake to show by the General Manager that this was acted upon.

The COURT: You expect to show that the suggestion contained in that letter was adopted and authorized by the General Manager?

Mr. BATTS: I don't know what we can show; I believe that is the case, and the General Manager will be put on the stand for the purpose of showing it.

1330 Judge STEDMAN: We submit that that fact should be shown; the General Manager is present and doubtless will be introduced. That fact should be shown first; our case might be prejudiced before the jury by the suggestion that wouldn't amount to anything otherwise).

Mr. BATTS: In any event, it indicates the purpose of the Texas Manager, and why he is making the recommendations for this change.

The COURT: The letter isn't admissible in evidence against the defendant unless the State connects it as it states that it proposes to do. In view of the testimony of this witness that the defendant's success in doing business, was by reason of its superior line of goods and not by reason of any other inducement, it is admissible so far as the weight to be given his testimony. The objection is overruled.

Judge STEDMAN: We except.

Mr. ODELL: In view of the Court's ground, with reference to the ground on which this letter might be admissible, we desire to call attention to the fact that the witness is a witness for the State in this case and the State has shown no surprise at the witness' testimony, and no reluctance on his part to furnish them information. It affirmatively appears that they called on him at Dallas and obtained such information as they desired, and upon that particular suggestion of the Court as to the relevancy of the testimony, we make that suggestion.

The COURT: I don't care to comment on the testimony of the witness at all, but I understand it is proper in that character of testimony.

Mr. ODELL: We except.

Mr. BRADY: This letter is dated February 10, 1906, addressed to Mr. C. P. Ackert, General Manager, St. Louis, Mo., relating

1331 to Walker Smith's Grocery Company at Brownwood. (Counsel reads letter to Jury.)

Mr. BRADY: I handed you a letter just now, did you examine that?

Mr. ODELL: Yes, sir. (Hands letter back to State's counsel).

Mr. BRADY: We offer this letter of March 7th.

Judge STEDMAN: We object to the letter of March 7th, on exactly the same grounds we objected to the letter of February 10th. I would like for Your Honor to inspect that. (Hands letter to the Court).

The COURT: The objection is overruled.

Judge STEDMAN: We except.

Mr. BRADY: Letter dated March 7, 1906, relating to stove and gasoline, addressed to Mr. C. P. Ackert, General Manager, St. Louis, Missouri. (Reads letter to Jury.)

Mr. BRADY: We offer the letter of March 7th, relating to gasoline prices.

Judge STEDMAN: We object to this letter on the ground of irrelevancy and immateriality. (Hands letter to the Court.)

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Mr. BRADY: Letter dated March 7, 1907, relating to gasoline prices, addressed to C. P. Ackert, General Manager, St. Louis, Mo. (Reads letter to Jury.)

Mr. BRADY: We now offer this letter also, of March 7th, Rotan Grocery Company letter.

Judge STEDMAN: We object to that letter, first, because it is immaterial and irrelevant, and, second, because the letter contains a proposition or suggestion made by the Manager of the Waters Pierce Oil Company in Dallas, to its General Manager at St. Louis, and there isn't anything shown to the effect that the General Manager at
1332 St. Louis accepted the proposition or adopted the suggestion. (Letter is handed to the Court.)

The COURT: The objection is overruled.

Judge STEDMAN: To which we except.

Mr. BRADY: This letter is also dated March 7, 1905, I think it is; you make that five or six? (Hands letter to Judge Penn.)

Judge PENN: I don't know.

Mr. BRADY: Well, it is either five or six.

Mr. JOHNSON: All of those are 1906.

Mr. BRADY: Well, we will make it 1906 then,—March 7, 1905 or 6, discount Rotan Grocery Company, Waco, addressed to C. P. Ackert, General Manager, St. Louis. (Reads letter to Jury.)

Mr. BRADY: We next offer in evidence this letter in reference to the Dallas merchants,—December 9th.

Mr. BRADY: We offer the Morris letter.

(No objection from counsel for defendant.)

Mr. BRADY: March 2, 1906, discount B. L. Morris, Fort Worth, addressed to C. P. Ackert, General Manager, St. Louis, Mo.

Mr. BRADY: We offer letter of March 23, 1906.

Mr. ODELL: We have the same general objection to that one, that it is irrelevant and immaterial; that is the letter dated March 23, 1906,—"Discounts Snider Brokerage & Storage Co., San Angelo."

The COURT: The objection is overruled.

Mr. ODELL: Defendant excepts.

(Mr. BRADY reads letter to Jury.)

Q. Now Mr. Cahoon, I will ask you to state whether or not it is a fact that prices on your oils at points where there is no competition are less than those points where there is competition in your Division?

Mr. ODELL: We object to that for the reason that it is
1333 wholly irrelevant and immaterial, the comparative prices asked for at competitive and non-competitive points, and is calculated to prejudice our case, and it is not in violation of the law to meet competition, even to the extent of reducing prices.

The COURT: The objection is overruled.
Mr. ODELL: We except.

Q. (Question read by Stenographer.)
A. In some cases there are and others there are not.
Q. Well, isn't it a general rule that where the railroad rate is the same, that the prices are lower where there is competition than where there is no competition?
A. We have competition at practically every agency in my territory.
Q. Well, then, I will ask you if it isn't a fact that the prices are less at those points where you have active and vigorous competition than they are where your competition is not active and aggressive?
A. I will answer that as I did the other; at some places they are and others not.
Q. Then I will ask you to state where you meet aggressive competition, what points in your territory, and have been recently?
A. Well, Paris is a very strong competition.
Q. Well, what price had you on Eupion Oil,—what has been the prevailing price at Paris on Eupion?
A. Fourteen cents is my recollection.
Q. Fourteen cents on Eupion; what on Brilliant?
A. Ten and a half, I think.
Q. How long has that been the prevailing price at Paris?
A. Eupion price has been the same for a year or more.
Q. For a year or more.
A. Yes, sir.

1334 Q. Now, I will ask you to state some other point in your Division which has the same freight rate as Paris, all the points in your Division that have the same freight rate as Paris, every one of them from Corsicana up.

A. Bonham, Honey Grove, Clarksville—there is a hundred of them practically all the same freight rate.
Q. Well, all right, what are the rates for Eupion and Brilliant at Bonham, Honey Grove and Clarksville,—have been for the past year?
A. Bonham is fourteen cents; Honey Grove is fourteen, as I recall it, I am not positive about that; Clarksville is fourteen.
Q. Some difference as to Brilliant?
A. Approximately, there may be half a cent difference on the Brilliant; I am not positive about that; we sell very little of it.
Q. Well, what is the difference between the freight rate to Paris and the freight rate to Greenville?
A. Just the same, I think.
Q. Well, have the prices been for the last year at Greenville fourteen cents?
A. No, sir.
Q. What difference?
A. Well, the price is thirteen and a half, my recollection, or possibly thirteen; now, I am not sure about that.
Q. To what do you attribute the difference between the price at Greenville and at Paris, both having the same freight rate?

A. The change at Greenville was brought about by a competitor cutting our price.

Q. Then, as a matter of fact, in that instance where the same freight rate obtains, the only reason why Eupion oil is half a cent or one cent less than at Paris, is on account of competition, isn't it?

A. Not necessarily; the larger gallonage we market at a town the less it costs per gallon to market it, and that cuts some figure.

1335 Q. Well, is your cost of marketing at Paris, Bonham, Honey Grove and Clarksville, the same at every one of those points?

A. Approximately; if there is any difference it costs us a little more at Paris; it is exactly the same at the other points.

Q. The cut at Greenville, you said that the cut was on account of competition, competitor cutting your price?

A. Yes, sir.

Q. What railroad line is Commerce on, from Corsicana?

A. Is on the M. K. & T., I think.

Q. You know whether the rate at Commerce is different from the rate at——

Mr. ODELL: He is mistaken about the road; it is on the Cotton Belt.

The WITNESS: On the Cotton Belt, yes, sir.

Q. Texas Midland also, isn't it. Well, is there any difference in freight rate from Corsicana to Commerce than from Corsicana to Paris, Bonham, Clarksville and Honey Grove?

A. I think not; no, sir.

Q. What is your rate at Commerce on Eupion and Brilliant, respectively, for about the last year?

A. I don't remember what our prices are; the price on Brilliant, if I remember correctly, is nine and nine and a half; Eupion trade is fourteen.

Q. Eupion fourteen?

A. I am not sure about that, though.

Q. Why was Brilliant nine and a half there at Commerce and Eupion was fourteen the same as at Paris, Bonham, Honey Grove and Clarksville?

A. Brilliant was a cent less per gallon; that was brought about by a cut on the part of the competitor.

1336 Q. That was brought about by a cut by the competitor; I will ask you whether or not in December, December 1, 1905, your price for Brilliant was twelve and a half cents at Commerce, and Eupion was fifteen cents? Do you remember about that?

A. I don't remember, no, sir.

Q. Well, will you state that it was not?

A. I wouldn't make a statement one way or another because I don't remember it. It is too far back.

Q. Well, now, that difference at Commerce is due to the cut by the competitor; you kept Brilliant over there too?

A. Yes, sir.

Q. And likewise at Greenville?

A. Yes, sir.

Q. Well, there are a great many instances, are there not, of that kind, as to Eupion and Brilliant in your Division? I will ask you if it isn't a fact that your prices are regulated in those places by the competition very largely?

A. To some extent they are, but not entirely by any means.

Q. Well, isn't it a fact that you get the best prices you can get for your product, considering competition that exists and the competition that it would probably bring into existence if you raised the prices?

A. Up to a certain point, yes, sir.

Q. Well, don't you get the best prices you can get, considering the competition and competition you will probably bring into existence?

A. We have a great many places where we had active competition in the past and don't have it now.

Q. In one of your letters you say that the St. Louis office advised, or you advised the St. Louis office to make an advance on gasoline, general advance, and general advance on your refined oil,
1337 and you say, "where it would be safe"; what did you mean by that?

A. I probably meant by that that we could hold the trade.

Q. You could make that advance and hold the trade; then your competition did have considerable to do with your prices?

A. To some extent, yes, sir, but not entirely by any means.

Q. Well, I don't guess you would put it a dollar a gallon if there was no competition, but it did have a material effect on your prices, didn't it?

A. Where competitor cuts our price, it frequently becomes necessary for us to put into effect a reduction.

Q. I will ask you to examine this letter and see if you remember that circumstance? (Hands witness a letter) Have you any independent recollection of that letter? (Letter in reference to conditions at Commerce, December 1, 1905) Have any independent recollection of that?

A. No, sir, I do not; I probably wrote the letter.

Mr. BRADY: Will you compare that, gentlemen? (Hands letter to counsel for defendant.)

Q. Did you have anything to do with the fixing of the price at which your products are sold throughout your Division?

A. Only in a limited way.

Q. Well, what do you mean by limited way?

A. I make my recommendations and they are advised me by our St. Louis office.

Q. Final control of that matter is in whom?

A. General Manager Ackert's office.

Q. General Manager Ackert, of St. Louis?

A. I presume he is; I correspond with him in regard to changes.

Q. Well, from whom do you get your authority when you make your recommendations?

A. From whom do I get my authority to make recommendations?

1338 Q. No, after you have made the recommendations, when you act upon them?

A. General Manager Ackert.

Q. That applies to advances and reductions likewise, doesn't it?

A. Yes, sir.

Mr. BRADY: We offer this letter. (Above referred to.)

(No objection by counsel for defendant.)

Mr. BRADY: "Reduction at Commerce, dated Dec. 1, 1905, to Mr. C. P. Ackert, General Manager, St. Louis, Mo."

Mr. BATTS: Mr. Cahoon, do you know the signature of Mr. A. M. Finlay?

A. I would probably recognize it, yes, sir.

Mr. BATTS: You had frequent correspondence with him?

A. Yes, sir.

Mr. BATTS: I will ask you to state whether or not this is his signature? (Hands witness paper.)

A. I should say it was, yes, sir.

Q. You think that it is his signature?

A. Yes, sir, I should say it was, yes, sir.

Thereupon Court adjourned until 8.30 p. m.

Court re-opened at 8.30 p. m.

Examination of C. W. CAHOON continued.

(By Mr. BATTS:)

Q. I note that you make a number of recommendations, Mr. McNall, Mr. Cahoon, to Mr. Acker, or other parties at the St. Louis office,—were those recommendations ordinarily acted on? The change of price, etc.

1339 A. Approved, you mean?

Q. Approved.

A. Sometimes they are and sometimes not. As a rule they are approved, yes, sir.

Q. As a rule, they are approved,—your recommendations?

A. Yes, sir.

Q. I asked you about the signature of Mr. Finlay,—do you know the signature of Mr. Pierce?

A. No, sir; I don't think I would know it.

(That's all).

Cross-examination.

(By Mr. ODELL:)

Q. Mr. Cahoon, can you give us the date—the exact date—you became District Manager for the Company's Central Division of Texas?

A. January 1, 1903.

Q. Now, can you give the date when you became the Assistant

Manager or Assistant to the Manager, or whatever your position was, in that territory?

A. I went to Dallas on April 1, 1893, as the Assistant to the Manager, and I held various positions of different titles, but I was practically his Assistant from that time on.

Q. You were then with the Company at the time the Eagle Refining Company, as conducted, that is, the oil business,—as conducted by the witness A. W. Clem, was purchased by the Waters Pierce Oil Company?

A. I don't know the date of the purchase, but I was with the Company then, yes, sir.

Q. Well, now, prior to your going to Dallas, I believe you had been with the Company many years?

A. Yes, sir; I was at Houston four years, and Galveston
1340 one year,—about one year,—prior to going to Dallas.

Q. You testified this afternoon with reference to the reorganization of the Company, the dissolution of the old company, and the organization of the new one. You were asked many questions with reference to whether there was any change in the method of doing business after the dissolution of the old company and the organization of the present company. I believe you said that the business was conducted practically as it had been before.

A. Yes, sir.

Q. The physical properties of the present company remained in the same condition that they were maintained by the old company?

A. Yes, sir.

Q. There was no change of name of the company?

A. No, sir.

Q. The new company retained the old employees,—most of them?

A. Yes, sir.

Q. Paid them the same salaries?

A. Yes, sir.

Q. The tank-wagons, the stationery, that was not changed substantially, that is, the brands or the labels on the cars and on the company's property, the tank-wagons?

A. No, sir, there was no change in the wagons or any of the physical property.

Q. Mr. Cahoon, there was no effort at any time, of concealment on the part of the new company, was there?

A. Absolutely none to my knowledge; no, sir. Everything was, so far as I could judge, open and above board.

Q. Yes, sir. There was no effort, so far as you were concerned, or the employees under you, of misleading or deceiving the public with reference to the new company, or the present company carrying on substantially the same kind of business that the old company did?

1341 A. No, sir, there was not.

Q. Well, when you were asked this afternoon about the methods,—whether they were the same or not,—in order that it may get into the record and may enlighten the Jury and the Court,—any oil company, about what are its methods of doing business, that is, a marketing company such as the Waters Pierce Oil Company is?

How does it transact its business; get its oil to the consumers and to the customers?

A. Well, the oil is shipped to the various stations in bulk in tank-cars, and the very large percentage of deliveries are made by tank-wagons; in some territory practically all by tank-wagons. We not only deliver to the local trade that way, but in many places we deliver to every little town within a radius of fifteen and sometimes twenty miles of the central station, and the oil is measured into the country merchant's tank just as in the city.

Q. Now, having in mind the questions that have been propounded to you by State's counsel, with reference to whether there had been any change in the method of doing business,—was there any change that could have been made, Mr. Cahoon, to carry on successfully an oil business?

A. I don't see how they could have made any change and successfully continued to carry the business on.

Q. It was just as necessary for the present company to use tank wagons, as for the old company to use them?

A. Yes, sir.

Q. It was necessary for them to have employees?

A. Yes, sir.

Q. Managers, District Managers, and drivers?

A. Yes, sir.

Q. Necessary for them to have tank stations and tank wagons?

A. Yes, sir.

1342 Q. Tank-wagons?

A. Yes, sir, the new company required absolutely the same kind of equipment to do a successful business, as the old company.

Q. There have been no new methods recently originated or invented with reference to the handling of oil?

A. No, sir.

Q. Of a marketing concern?

A. It is handled very much the same now as it has been, excepting that we are extending our bulk delivery service a little more than a few years ago.

Q. You mean by that, you are sending your tank-wagons further out in the rural districts?

A. Yes, sir.

Q. Delivering oil to the dealer and consumer?

A. We are not selling the consumer. The deliveries are made to the country merchants, and we are covering a much larger territory.

Q. You are using ten-gallon cans?

A. In some places ten-gallon cans are used, and in some places tank-wagons.

Q. Well, you were asked about the stationery,—whether there had been any change in the stationery. I believe you said the present company had printed on it the date of the organization?

A. Yes, sir. The letter-heads do. There may be some forms that do not have that; they are changing continually.

Q. The forms,—the kinds of reports you make to headquarters?

A. Yes, sir.

Q. Well, was there any change that could have been made in the stationery, of benefit or advantage to the new company?

A. Why, none that I know of; it was necessary for us to make reports.

1343 Q. You were required to have paper?

A. Yes, sir.

Q. And some printing on it to facilitate the business?

A. Yes, sir.

Q. Did you, as Manager of the Company, conceal from the public at any time, or the officials, public officials, the kind of stationery that you were using?

—. ——.

Q. Did you undertake at any time to conceal from them the brand on your tank-wagons?

A. No, sir.

Q. Tank-stations?

A. No, sir.

Q. Then, if I understand you correctly, Mr. Cahoon, you have been interrogated about whether the present company changed the method of doing business, you mean to say that the old company,—that the present company simply used those conveniences that made it convenient and practical for them to transact their business?

A. Yes, sir; it would have been impossible for us to have continued doing an oil business without that same equipment.

Q. Yes, sir. Now, this afternoon you were interrogated with reference to the volume of the business done by the company, that is to say, as to the per cent. of the yearly business done by this company in the territory of which you were the District Manager. I believe you said that this company did about eighty or eighty-five per cent. of the business. That was your estimate of it?

A. Yes, sir; approximately eighty per cent., I believe.

Q. Now, Mr. Cahoon, I wish you would explain to the Jury the equipment of this company; its facilities for carrying on an oil business, as distinguished from the equipment and facilities of your competitors in this same territory.

A. The competitor, with possibly one exception, depends
1344 entirely on iron or wood barrels for making the deliveries. If the town is off the railroad the barrels have to be shipped to the nearest railroad point and then hauled out, and the result is there is almost invariably a loss from leakage, while with us the oil is delivered by tank-wagons and measured to the merchant, gallon for gallon, and he pays for it and the transaction ends there. I have always figured on iron or wood barrels a loss from leakage or wastage would be from five to eight per cent., especially in the summer time. By using the tank-wagons we save that, and as a result the average merchant prefers to pay more money when getting it from us, than when getting it in iron barrels.

Q. You speak of the merchant and his tank; about what is the capacity of the average tank that the smaller dealer or merchant has in his house?

A. Approximately sixty gallons.

Q. Now, explain to the Jury the advantage to the merchants of this iron tank filled from time to time from the tank-wagon, as distinguished from the oil carried in the iron barrel or wooden barrel stored in his house.

A. Well, in the first place, where a may buying oil from a tank-wagon, he can get from five gallons up, and where a merchant sells but ten or fifteen or twenty gallons a week, he don't have to carry any stock, buying from tank-wagons as he does from us. If he buys from a competitor in barrels, he has to buy fifty gallons at a time. That's one of the numerous advantages we have over the competitor in supplying the trade.

Q. Now, the oil in barrel, where it is carried by the small dealer or merchant,—how does it ordinarily affect his business, or the goods in the house, with reference to the leakage, and the oil, not only the leakage of the oil, by reason of its being stored there, damage other goods and wares in his house?

1345 A. If the oil is permitted to stand in the house in a barrel, there is almost invariably some leakage on the floor; or in hauling the barrel oil out to the store, the average merchant objects to carrying it with other goods, for the reason that it frequently damages it, flour and sugar especially; and we have a great many cases where merchants prefer to pay two or three cents more a gallon and have it hauled out, than he would f. o. b. the railroad station, where it is shipped to him on that account; and then again, oil is bad to handle at the best,—a clerk in the store handling other goods, objects to pumping out of barrels. The idea is where they buy in barrels they have to transfer from the barrel into a tank; that takes time, and there is more or less wastage; and then the merchant has to haul the barrel back and ship it to the company *be* bought from. All of which is saved where he can buy from tank wagons.

Q. Isn't it true that the average retail merchant insists at this day and time on getting his oil delivered in one of these tanks that you have described, from the tank-wagon?

A. A large majority do, yes, sir. In fact, I have undertaken bulk deliveries where I felt later I could not afford to continue them, and the merchant, just as soon as we stopped the trips, began to insist on our making them again.

Q. Isn't it true again, Mr. Cahoon, that as a rule that you charge more for your oil delivered as you have described your deliveries, than the dealer would have to pay for the oil, if he wanted it in the old way, in an iron or wooden barrel?

A. In a large majority of cases, yes, sir.

Q. And is not that the secret of your being able to maintain your prices?

A. It is due entirely to the bulk delivery system, as I see it, and the grade of oil that we are furnishing, also.

1346 Q. Now, approximate as nearly as you can, about how many tank-wagons you have in your territory.

A. I should say we were operating in my territory eighty-five wagons, that is, tank-wagons or can-wagons, either owned by the

company or owned by the commission agent. In the latter case, we provide the cans and he provides the wagon and teams.

Q. About how long has this system prevailed,—of going to the country and supplying the merchants and dealers with tank-wagons?

A. As near as I remember, we first began spreading out the matter of making bulk deliveries some seven years ago, and we have gradually built it up.

Q. Well, are you increasing your equipment in that respect year after year,—covering more territory and reaching more dealers in remote localities?

A. Yes, sir. Our idea is to cover just as large a territory as we can possibly reach.

Q. Very well. Now you have estimated the number of tank wagons that you have in the territory that you supervise or superintend for the company. I wish you would estimate as nearly as you can about how many tank-wagons the combined opposition to the Waters Pierce Oil Company has in the same territory.

A. I would say approximately ten. They are making no country delivery, however, with the exception of a few trips out of Dallas.

Q. Now, about how many counties in Texas in your Division?

A. I declare I do not know.

Q. Well, approximate it, so as to give us an idea of the territory now.

A. My territory starts at the Red River and goes south on a line with Temple.

Q. On a line with Temple?

A. A line running East approximately; a line running East and West below Temple.

1347 Q. How far west do you go?

A. To Pecos and San Angelo.

Q. Well, you cover substantially one half of the State don't you?

A. I should judge very near one half; yes, sir. In population at least.

Q. In population?

A. Yes, sir.

Q. Now, do I understand you to say that aside from some deliveries that are made outside of the city of Dallas, that the defendant here is the only company that undertakes to cover that great territory with its tank-wagons, and to deliver to the dealers in rural districts off the railroads, oil from the tank-car——

A. From the tank-wagons.

Q. Tank-wagons, I mean?

A. Yes, sir, in my territory.

Q. Now, what is your equipment, that is, the equipment of the defendant, at the railroad centers or the distributing centers, as compared with your competitors?

A. Our plants are much larger; we carry much heavier stock.

Q. Now, very well. For instance, in your territory, where are your distributing centers?

A. Very well, take Fort Worth, for instance.

Q. What is the capacity there of your tanks?

A. As I recollect it, we have seventeen storage tanks and a large warehouse, some sixteen head of stock, and about eight men, eight or nine men; while our one,—one of our competitors has three little, very small, storage tanks.

Q. Now, the capacity of your tanks, what are they?

A. They vary, from the largest, having a capacity of about twenty thousand gallons, and the smallest will hold one tank car.

Q. What is the gross capacity, that is, of all of them?

A. All of them together?

1348 Q. Yes.

A. Approximately one hundred and seventy-five thousand gallons, I should say; I don't know exactly.

Q. Then you have a large warehouse, you say?

A. Yes, sir.

Q. Now, what do you keep in the warehouse,—the oil in cans and cases?

A. We carry a large stock of lubricating oil, candles, specialty goods and an immense variety of stock of all kinds.

Q. You have eight employees, you said?

Q. Nine or ten men I said, but I think there are nine, possibly ten.

Q. All right. Now, from your knowledge of the capacity of your competitors—competitors of this company in Fort Worth, that is, estimating all of them together,—about what is their storage capacity in Fort Worth of oil in bulk?

A. I should say about fifty thousand gallons, all of the competitors that are actively operating at the present time.

Q. Yes, sir. Well now where is another distributing point?

A. Dallas. Dallas is a large distributing point.

Q. Well, about what is your gross capacity of bulk oil in Dallas?

A. I should say about one hundred and twenty-five thousand gallons.

Q. Now, the competitors of the defendant in Dallas, about what is their gross capacity in bulk oil?

A. I am not familiar with the storage of the one competitor who is operating there. I should——

Q. You can approximate it then?

A. No, sir; I could not even give you an approximate idea.

Q. Well, your tank-wagons in Dallas,—how many do you have?

A. We operate three in the city and one in the country from Dallas.

Q. Have you any other distributing point in your territory?

A. We have Paris. Paris is quite a large distributing

1349 point. We operate three wagons in the country and one in the city there. At Sherman we operate one in the city and one in the country.

Q. Well, take your storage capacity in Paris for bulk oil, about what is it?

A. Little less than fifty thousand gallons.

Q. Do you know what the capacity of the opposition to your company is in Paris?

A. They have, I think, three storage tanks with an approximate capacity of ten thousand each—thirty thousand gallons.

Q. They operate no wagons in the country there?

A. No, sir.

Q. And you operate three?

A. Three, yes, sir.

Q. Well, at Sherman, what is your storage capacity for bulk oil?

A. When our plant will be completed, when it is completed, we will have about seventy-five thousand gallon storage; we are rebuilding it now.

Q. And how many tank-wagons do you have operating in the country?

A. We operate one in the country and one in the city. In speaking of tank-wagons, I refer to can-wagons as well. They are operated in the same way.

Q. Now, Mr. Cahoon, I wish you would state whether or not your equipment and your supplies of oil of various kinds, is and has been such that you have always been able to fill your orders promptly?

A. With very rare exceptions, we have always been. Occasionally we run out of stock at small stations, but that rarely happens.

Q. And if you do run out of stock at one of the small stations, you supply them from these distributing points in Texas?

A. Yes, sir, we supply them from the nearest stock station.

Q. And on short notice?

A. Yes, sir.

1350 Q. Now, what has been your observation as to whether the competitors of the Waters Pierce Oil Company were always able to fill their orders promptly?

A. Well, so far as I know, they have been able to do fairly well in filling their orders. I am not posted, however, as to how well they have kept in stock.

Q. Mr. Cahoon, since 1900, what has been the policy of the defendant Waters Pierce Oil Company with reference to cutting prices on oil?

A. It has not been their policy to cut prices on oil until it became a question of meeting a competitor's price or permanently losing the trade.

Q. Well, in meeting the competitor's price, have you reduced your price to his level?

A. Occasionally we do; as a rule we do not.

Q. Your service is such, then, that you can maintain a slightly higher price than the competitor?

A. Yes, sir.

Q. Well, state whether or not you have cut under the competitor?

A. I don't recall a single instance where we have knowingly done that. I will qualify that to the extent of stating that in allowing a jobber a discount, our price, our net price, might possibly be as low or lower, or a fraction lower, but I would have no means of knowing about that.

Q. I understand. I will get to the jobber in a minute. I understood you to say that where you had your tank wagons, you delivered oil in quantities or from five gallons up.

A. Yes, sir.

Q. Now, take the small dealer, Mr. Cahoon, as compared with the jobber. I wish you would explain to the Jury the cost to the company of delivering oil to the small dealer in smaller quantities as compared with delivering oil to the jobber in large quantities.

1351 A. Well, the larger the quantity of oil you can deliver at one time, the less the expense. We have many customers in the larger cities especially, that will buy five gallons at a time, and expect you to call on them once, twice or possibly three times in a day, while, if they would take a hundred galls., why, one trip, would possibly answer them for three or four days. That has grown to such an extent that in Dallas it forced us to put on an extra tank-wagon part of the time in the winter season to help out.

Q. Well, of course, in maintaining a tank-wagon service and making these deliveries in small quantities it cost- you more to deliver your oil to the small dealer than it does to the jobber?

A. Yes, sir, considerably more.

Q. And you take that into account, do you, in granting concessions to the jobber?

A. That is considered, yes, sir; and we also have in mind the fact that where we are selling a jobber, he is having his traveling men work the territory, and it relieves us of the expense of working the territory, and the jobber carries his accounts and sometimes does not get his money for sixty or ninety days, or until fall, and that is a great advantage to us to have an advantage of that kind.

Q. Since we are talking of the jobbers and those advantages, I will take up this Rotan Grocery Company matter. Do you remember a letter that you wrote to Mr. Ackert with reference to making some concessions to the Rotan Grocery Company of Waco?

A. Yes, sir.

Q. Now tell the Jury something about the Rotan Grocery Company, as to the character of business they carry on, the number of men,—drummers,—they have on the road and about the territory they cover.

A. Well, the Rotan Grocery Company are doing a very extensive wholesale business, with houses, if I recall right, at Waco, Temple, Hillsboro, Dublin, Cameron and possibly one other town.

1352 Q. Comanche?

A. I am not sure whether they have a house at Comanche or not. They travel I presume three or four men at least out of each house, on an average, and work their territory every week.

Q. Well, estimate about the number of men they have on the road.

A. I would say that an average of four men to the house would be very conservative. Traveling salesmen is what you have reference to?

Q. Yes, sir.

A. Yes, sir.

Q. Well, about twenty—then—would be a conservative estimate?

A. Yes, sir, I should think so.

Q. Well, now the territory they cover,—describe that with reference to its area and the population.

A. Well, they cover a very large and thickly settled territory, and, as stated before, many parts of it are worked every week. If we undertook to work it, it would necessitate our having more men than we have now, and then we could not work it as thoroughly as they do. I speak now of the territory we cannot reach by tank-wagons,—the barrel territory.

Q. Now explain to the Jury how these traveling salesmen from the Rotan Grocery Company relieve the defendant of the expense of advertising and getting to the trade the oils of this company.

A. San Angelo would be, probably, a good example of the advantages of dealing through the jobber. We supply a territory from there, I judge, a hundred to a hundred and fifty miles out. The jobber's salesman works the outlying towns every two or three weeks at a very heavy expense and solicits our orders for all of the lines we handle, not only refined oil, but many other grades of goods, and thereby saves us the expense of soliciting the trade.

Q. Now, in addition to saving you the expense of reaching
1353 this trade, state what their facilities are, that is, representatives and traveling salesmen of the Rotan Grocery Company, of introducing your oils, as distinguished from a stranger.

A. Well, the average grocery traveling salesman has a very extensive traveling acquaintance and stands close to the merchant.

Q. Extends credit to them?

A. Extends credit to them. His house many times carries them from June to the first of October, which places them in a position to extend courtesies to the retail merchant that we could not extend to them.

Q. Now explain to the Jury whether or not the Rotan Grocery Company, for instance, in handling your oils, whether they account to the company for that, that is, whether they pay for it, or do you look to the merchant?

A. We look to the Rotan Grocery Company.

Q. They pay your accounts?

A. Yes, sir, regardless of whether they have collected for the oil or not.

Q. Well, now, as the result of this saving to the Company in the many ways that you have described,—I understand that you give this concession in price to the Rotan Grocery Company?

A. Yes, sir.

Q. Now, there is a letter about some wholesale grocery concern at San Angelo, isn't there?

A. The Walker-Smith Grocery Company, at San Angelo, yes, sir.

Mr. BRADY: At Brownwood.

A. Yes, sir, Brownwood.

Q. Without going into the details again, and consuming time,—I wish you would state to the Jury whether or not this concession that was called to your attention, or this recommendation in the letter offered in evidence, was based on the same principles and grew out
of the same conditon of facts that the Rotan Grocery
1354 Company did.

A. Yes, sir, it was very much the same kind of a proposi-

tion. We lost their trade because they claimed that we offered oil at lower prices, and objected to our extending our country tank-wagon service to the retail merchant,—interfering with their making the sales, and the result was that we had to,—in order to hold our trade,—we had to travel the country much more thoroughly with our own man than previously, and it made it necessary for me to place two men in the territory I had formerly covered with one man; and afterwards they found—it was so stated to me—their arrangement not entirely satisfactory, and I am under the impression it was at their own request, their own suggestion, that they came back to us and accepted the arrangement we offered.

Q. Mr. Cahoon, you testified this afternoon about Eupion Oil. I believe P. W. that is Prime White oil?

A. Yes, sir.

Q. Brilliant Oil and S.W., or Standard White?

A. Yes, sir.

Q. Well now, this brand or name, "Eupion Oil", is that or not a trade-mark of the Waters Pierce Oil Company?

A. It is my understanding that it is a trade-mark brand.

Q. No other concern within your knowledge sells oil under the name of Eupion Oil?

A. No, sir.

Q. Well now, all right——

A. Excepting that they buy it from us.

Q. Yes, sir. Very well. Well now, Eupion Oil,—what distinguishes Eupion Oil from Prime White or Standard White or Brilliant or the other oils?

A. Well, Prime White, Standard White and Water White are refinery terms, while the Eupion Oil is a trade-mark brand that
1355 has been advertised for many years, at considerable expense; is well known by everyone, and called for by many customers. That in itself helps to hold the trade on it.

Q. Well, all right. That isn't exactly what I wanted to get at. Now, is it not true that as far as Eupion Oil is concerned, that it is bought at many different refineries,—the oil is?

A. It is shipped to us from a number of different refineries.

Q. That just simply means that it is the high-grade oil turned out by those refineries?

A. Yes, sir.

Q. In other words, it is the best grade?

A. Yes, sir.

Q. Like the best grade of flour from mills?

A. Yes, sir.

Q. And when this oil is purchased at the refinery by the Waters Pierce Oil Company, the Eupion brand goes on the high grade oil?

A. Yes, sir.

Q. Well now, Mr. Cahoon, you speak about Eupion Oil being advertised well, being known to the consumers generally, or by very many of them. Now, as a high grade and first-class oil, tell the Jury whether or not the reputation of that oil has anything to do with your ability to maintain prices and to sell such a large quantity of oil as you do?

A. The reputation of the oil is of very material assistance to us in holding the trade at the prices we do.

Q. Well now, after Eupion, what is the next best grade of oil?

A. We only market—we market an oil under the brand of Extra Headlight.

Q. Now there was some testimony about oil called Brilliant.

A. That is a common term applied to the low grade oils.

Q. And there is a difference, I believe, of three or four cents a gallon?

1356 A. From——

Q. Between the marketing price of Eupion and the Brilliant oil?

A. Yes, sir.

Q. You sell much more of the Eupion than of the Brilliant?

A. Almost entirely Eupion in my territory, yes, sir.

Q. Isn't it true that you sell ten barrels of the Eupion Oil to where you sell one of the Brilliant?

A. That is just about the proportion,—about ninety per cent. Eupion.

Q. Mr. Cahoon, in discussing what were called "rebates" this afternoon, or concessions, evidenced in these letters that were exhibited to you, or read in your hearing, I wish you would state whether or not your competitor granted rebates and made concessions to jobbers and other large dealers in oil?

A. We have been advised many times by the merchants that the competitor has offered them rebates.

Q. Mr. Cahoon, getting back to the jobber for a minute,—what does you company handle aside from Oil, what do they market?

A. Lubricating oils, axle grease, candles, paraffine wax, oil cans, harness oil, and a large line of specialty goods, stoves, lamps——

Q. Oil stoves?

A. Oil stoves, oil heaters, and a large line of lamps.

Q. Now, these jobbers, would they handle all classes of your goods?

A. Not all; they handle quite a number of items a wholesale grocery house would handle; some lubricating oil, axle grease, candles, possibly a little paraffine wax, and odds and ends in the specialty lines.

Q. How many tank-stations have you in your territory?

A. My recollection is now that it is 102; I will have 109 within a very short time.

1357 Q. Now describe to the Jury what you mean by tank-stations.

A. A tank station consists of a small warehouse or a warehouse large enough to enable us to carry a sufficient stock of axle grease and package goods to supply the trade, one or two storage tanks, with a capacity of from ten to twenty thousand gallons, the pipe connections, the ten-gallon delivery cans,—go to make up the station.

Q. Now, these storage tanks that you spoke of,—they are ordinarily built alongside of the railroad track?

A. Yes, sir.

Q. And the oil is emptied from a tank-car into the storage tanks?

A. Yes, sir.

Q. Well, now, getting back to—you say you have 102 of those tank stations in your territory?

A. That is my recollection, yes, sir.

Q. About how many storage tanks do your competitors operate in the same station—their stations?

A. How many tank stations?

Q. Yes, sir, tank stations.

A. Approximately twelve, large and small.

Q. Yes. Twelve as against more than a hundred.

A. Yes. Those figures are approximate; I would not be positive.

Q. Now, you distribute in this territory there by tank wagon or milk can, or oil can, from all of these 102 stations, do you not?

A. All but two or three; there are two or three stations in the extreme west where we are not doing it.

Q. Now, by this particular method you have described, of delivery from tank-wagons, I mean by the tank-wagon, and what is called the oil milk-can method, is it not true that about, that is, approximately seventy-eight per cent. of the company's business in this territory that you superintend*ent,* is done in that—by that method?

1358 A. Just about that percentage, yes, sir.

Q. Then this seventy-eight per cent. of the company's business in this territory comes to them by reason of these extraordinary facilities they have for the delivery of oil, as compared with your competitor?

A. That influences the trade to a very considerable extent; other reasons why it is held, are: It is worked aggressively by our traveling salesmen and agents; every possible courtesy is extended to merchants, in addition to keeping them well supplied.

Q. Mr. Cahoon, about how many agents and employees have you in your territory?

A. It is rather difficult to say without figuring it up. Commissioned and salaried together, I should say approximately from 165 to 175—165 possibly.

Q. Is that agents or employees?

A. Employees.

Q. Well, how many agents have you?

A. We have 102; each station has an agent.

Q. You have an agent at each station, of course?

A. Yes, sir.

Q. Now, you spoke about courtesies extended to merchants in delivering oil from your tank-wagons. How is it measured, as to whether or not gallon for gallon?

A. We are furnished with standard five-gallon measures that are used for delivering oil from the wagon, and it is drawn from the rear of the wagon and measured into the merchant's tank in that way.

Q. He gets then every gallon he pays for?

A. Yes, sir.

Q. Now, what method do you take to protect the merchant and

see that he gets full measure,—the dealer? Have you any
1359 system of checking against the driver to see that the customer has been protected?

A. Yes, sir, we provide the driver with what we call "tank-wagon tickets," that he makes in duplicate,—one copy for the merchant, and one copy for us. In order to insure the merchant always getting what he pays for, we frequently have our traveling salesmen to look over these tickets as they find them in the merchants' stores; they take a memorandum of the numbers on them and compare them with the numbers in our office, so as to see that they are the same. Occasionally we find where a merchant has paid for fifty gallons, his copy reads fifty and our copy reads forty. Those are rare cases, but we continuously are on the look-out, in order to protect the merchant and see that he gets what he pays for.

Q. Mr. Cahoon, do you know A. W. Clem?

A. Slightly, yes, sir.

Q. How long have you known Mr. Clem?

A. Why, I am under the impression that I met him some six or eight years ago.

Q. Do you remember the circumstances of the trial of the Hathaway case in McLennan County in 1895 or 1896?

A. Yes, sir.

Q. More than ten years ago?

A. Yes, sir.

Q. Mr. Cahoon, I wish you would state to the Jury whether or not after the trial of the Hathaway case, it was generally known that A. W. Clem was merely a manager and agent of the Waters Pierce Oil Company in selling oil?

A. My recollection is that at that time these facts were stated in every newspaper, continuously, and a large majority of the merchants knew it.

1360 Q. Do you know anything about—you heard Mr. Clem's testimony, did you not?

A. Only a part of it; I——

Q. Do you know anything about a sign that was sent to Clem at Dallas, in 1900?

A. I have seen the sign, yes sir.

Q. That was sent for him?

A. Yes, sir.

Q. Do you know what instructions he had with reference to that sign?

A. No, sir, I had no means of knowing anything about his instructions.

Q. You didn't see the instructions?

A. No, sir.

Q. Mr. Cahoon,—how many competitors have you at Dallas?

A. Of all kinds?

Q. Yes.

A. Three.

Q. Name them.

A. Clem Oil Company, the Oriental Oil Company and the Independent Oil Company.

Q. About how long have they been operating there?

A. The Oriental Oil Company have been in business five or six years, I think. I don't recall when Mr. Clem went into business; I am under the impression it was about 1903; and the Independant Oil Company only opened up about thirty days ago. In addition, however, I omitted to state another one,—the Bonner Oil Company, which is maintaining a stock in Dallas, as well.

Q. Have these companies any connection with the Waters Pierce Oil Company?

A. Absolutely none to my knowledge.

1361 Q. What about the Gulf Refining Company; do they sell oil in Dallas,

A. Not to the retail trade, no, sir.

Q. Well, do they sell it to these oil jobbers there?

A. Yes, sir, I have understood that they sold the Clem Oil Company and also some to the Oriental Oil Company.

Q. Now, the Richardson-Gay Company; do they operate in Dallas?

A. No, sir, not direct.

Q. Well, do they sell to the jobber?

A. It is my understanding that they sell some oil to Mr. Clem and the Oriental.

Q. Now, the Southwestern Oil Company; how long did it operate in Dallas?

A. I don't remember when they opened up; it must have been six or seven years.

Q. Well, did they undertake to do a general oil business?

A. Yes, sir.

Q. Has there been at any time since May 30, 1900, Mr. Cahoon, that you haven't had aggressive, active competition in the oil business that you supervise for the defendant?

A. We have had active competition ever since I have been connected with the business in Dallas.

Q. Well now, at Fort Worth; what competition have you there?

A. The Gulf Refining Company are operating a plant, and the Muskogee Refining Company,—two competitors.

Q. Any others?

A. There is another concern that carries a little lubricating stock there, yes, sir.

Q. Well, what is it?

A. George Hensler, I think, is the style of the firm.

Q. Now, the Gulf and the Muskogee Refining Companies,

1362 how long have they been operating in Fort Worth?

A. The Muskogee Refining Company has been operating a little less than sixty days; the Gulf Refining Company has been operating for, I presume, two years,—close to it.

Q. You speak of the Muskogee Refining Company,—is that of Muskogee, Indian Territory?

A. Yes, sir.

Q. Well, at Paris, what competition have you there?

A. The Gulf Refining Company.

Q. Well, Sherman?

A. The Gulf Refining Company, and the Southwestern Oil Company had a plant there; also the Independent Oil Company.

Q. Denison?

A. The Richardson-Gay Oil Company have a plant at Denison.

Q. Greenville?

A. The Climax Ink and Oil Company have a plant at Greenville.

Q. Waco; that's in your territory, isn't it?

A. The Climax Ink and Oil Company carry a stock at Waco.

Q. Temple?

A. There is no stock of competitive oil carried at Temple at the present time; the Southwestern were operating there.

Q. How long did they operate there?

A. I should judge six or seven years.

Q. Well, do those companies sell there in barrels, if they find a customer who wants it in barrels?

A. You say the Waters Pierce Oil Company?

Q. No, I say other companies.

A. Oh, yes, quite frequently it is in barrels.

Q. And at Gainesville, what stations are there?

A. No tank stations there; the Gulf Refining Company sells barrel oil.

Q. At Cleburne?

1363 A. It is shipped from Dallas and Fort Worth.

Q. They have no tank station?

A. No, sir.

Q. You were asked to-day with reference to competition being more active and aggressive for the last year or two than it had been, were you not?

A. Yes, sir.

Q. Now, in that connection, is it not true that there have been many discoveries of oil in the Indian Territory, that is, the Muskogee field, and other points in the Indian Territory and in Kansas and in Texas, and in Arkansas,—the last two or three years; and doesn't that account for the activities or so very many independent concerns, especially those that undertake to supply the trade in barrels?

A. That accounts for several of them entirely, yes, sir.

Q. The oil discoveries in the Indian Territory have been so great, the field so productive for the last year or two, that they are building a pipe line from the Indian Territory, through Texas, to the Gulf, are they not?

A. That is my understanding, yes, sir.

Q. *B* I think I asked this question, but I don't want to be mistaken about it. Mr. Cahoon, in this territory that you supervise for the defendant,—state whether or not you reach every town, hamlet and village with your tank-wagons and with your cans in delivering to the dealers.

A. We come just as near it as possible, yes, sir. Wherever we can make a trip within a day, or some within two days, we make them.

We have a number of trips where it is necessary for the wagon to stay out over night.

(That's all).

1364 Redirect examination.

(By Mr. Batts:)

Q. You say there have been enormous discoveries of oil in the Indian Territory?

A. Yes, sir.

Q. And enormous discoveries in Texas?

A. Yes, sir, that is my understanding.

Q. What has been the result, so far as the Texas consumers are concerned? Has it decreased the price of oil?

A. I don't know that it has to any material extent; it has lowered the price of naphtha and gasoline for engine use.

Q. Well, with regard to refined oil and oils that are ordinarily used by the people of Texas; do they or not pay as much for oil now as they did before the great deposits in the Indian Territory were discovered and the great deposits in Texas were discovered?

A. I would say there was no marked difference.

Q. It is a fact that for a long time in Texas there was produced as much as—more than 100,000 barrels of oil a day?

A. I am not personally familiar with that.

Q. Well, you know that as well as you know a great number of things you have testified to?

A. I presume so.

Q. You know that over 100,000 barrels—that would be how many gallons a day?

A. Barrels of crude oil?

Q. Yes, sir.

A. Four million gallons.

Q. The enormous deposits in the Indian Territory and in different parts of Texas is just as much as it ever was?

A. Very small percentage of that crude oil is refined.

Q. Well, while we are on that, tell me how much is refined

1365 in Texas now.

A. I don't know.

Q. Well, you can make an estimate?

A. Only a small part of it is refined oil because the crude oil only produces a limited amount of refined, as I understand it.

Q. I will ask you if it isn't a fact that there are more than 20,000 barrels of oil a day refined in Texas?

A. I don't know; I am not familiar with the South Texas refineries at all.

Q. Well, you know that the Security Company has got a very large refinery near Beaumont, don't you?

A. I have heard so.

Q. Well, what have you heard the capacity of that to be?

A. I don't know; don't recall having heard it.

Q. Don't you know its capacity is 15,000 barrels a day?

A. I don't know it.

Q. Well, have you had any information to that effect?

A. I don't recollect.

Q. You keep in touch with the oil situation as Manager of the Texas Division of the Waters Pierce Oil Company?

A. I get a very large percentage of my refined oil, have been recently from the North, North and Corsicana; I get very little from South Texas, and am not familiar with that.

Q. Well, you don't mean to tell me that as an oil man you have no idea of the output of the refineries of Texas?

A. I have no idea of the output of the refineries in South Texas.

Q. Well, up until very recently your principal supply came from Chaison, the Security Oil Company's refinery?

A. No, sir.

Q. You stated so this afternoon, did you not?

A. No, sir.

1363 Q. And from Neodesha?

A. From Corsicana and Neodesha.

Q. Up to about two months ago?

A. Well, state that question again and let me understand it.

Q. I say didn't you state that up to about two months ago your principal oil supply came from Chaison, the Security Oil Company's station, and Neodesha, Kansas?

A. I didn't intentionally say that; a big percentage of the refined oil came from Chaison and large percentage came from Neodesha.

Q. You knew of the existence of these refineries in Texas?

A. Yes, sir.

Q. And has the Gulf Refining Company a refinery?

A. Yes, sir, I have been told they have.

Q. The Texas company have a refinery?

A. Yes, sir.

Q. Security Company a refinery?

A. Yes, sir.

Q. And the concern at Corsicana, whose output you received?

A. Yes, sir.

Q. Now, all of those except the Corsicana refinery have been established in the last five years, have they not?

A. Yes, sir.

Q. And notwithstanding that, you say there has been no decrease in the price of oil to the people of Texas?

A. No, I don't know, couldn't state positively, but I don't think there is any material difference.

Q. Now, you stated that you go into every hamlet and town, something of the sort; you don't go anywhere where the jobber does his business do you?

A. Yes, sir.

Q. You told us before that you utilized the jobber to at-

1367 tend to the business; that that cut down your expenses, and you didn't have to keep a man there? You don't do anything where the Rotan Grocery Company does business?

A. Yes, sir.

Q. Then you are mistaken when you say you didn't ha[illegible] to maintain men in their section?

Mr. ODELL: We insist that that is an argument; the witness didn't make that statement.

Mr. BATTS: Counsel made the statement, but the witness acquiesced in it.

Mr. ODELL: Counsel didn't make it, and it is an argument and a re-examination of the witness.

Mr. BATTS: Cross examination on new matter.

Mr. ODELL: He is their witness, and it is asking for conclusions, and is an argument.

The COURT: The objections are overruled.

Mr. ODELL: Defendant excepts.

Q. Now, I understand you to have said that you utilized the jobbers to attend to this business for you, and they saved you any necessity for sending men into that territory and that thereby you can give them a very extraordinary rate,—is that what you now state?

A. I said, as I recall it, that the jobber worked the towns and supplied that business, but not our tank-wagon towns.

Q. Then as to the business you have got established, the jobbers don't affect it at all?

A. Not our tank wagon deliveries.

Q. Then in territory that you haven't got tank-wagons, you don't undertake to work that country?

A. We don't work it with our men as thoroughly as we would otherwise.

1368 Q. But I understood you to say that you didn't have to have any men in there at all. You still maintain men in there?

A. I said we didn't have to work it as often as we did otherwise.

Q. Well, that is the extent to which you now go,—that you don't work it as often, don't have to work it as much.

A. We don't work it as often as we would if we were not selling to the jobber.

Q. Now, so far as these jobbers are concerned and these people that they serve, you have no peculiar facilities for selling to jobbers?

A. Only the advantage of having the stocks distributed over the territory, making it convenient for them to get their supplies.

Q. Well, take the Rotan Grocery Company, does it depend upon your local tank wagons to supply its demands?

A. I don't understand you.

Q. You sell to the Rotan Grocery Company. You say it has got five or six or seven places in Texas and they employ a great many salesmen in Texas. Now, in your sales to the Rotan Grocery Co., do you sell to them in car load lots, or how?

A. We sell them what they buy in single barrel lots just as they want it.

Q. Delivered where?

A. At whatever point they want to draw it from.

Q. To them or to their customers?

A. To them; they do the shipping out.

Q. And do they have any tank wagons to deliver?
A. No, sir.
Q. Then these persons whom they serve have to get it in barrels?
A. Iron barrels, yes, sir.
Q. And stand the loss that you say results from the use of iron barrels?
A. Yes, sir.
1369 Q. Those people do?
A. Yes, sir.
Q. Then so far as that particular trade is concerned, the Rotan Grocery Company isn't in a better position than these other people that have nothing except barrels, are they?
A. I don't understand the question.
Q. I say are the Rotan Grocery Company in any better position to handle that trade than your other competitors who have only iron barrels?
A. Why certainly, the people are in better position to handle it; they are carrying the merchants and extending them a line of goods which influences the trade.
Q. Now, you sell to jobbers where you can do so?
A. Yes, sir.
Q. And you give them the same prices?
A. Not necessarily, no sir.
Q. Those cuts to these particular persons mentioned in these letters here?
A. Well, cuts to the prices that you give to jobbers ordinarily; ten per cent. is the ordinary jobber's discount.
Q. You asked for a special price to certain jobbers. You are given a general price to supply to all jobbers, are you not?
A. No, sir.
Q. You are not?
A. No, sir; I have no jobber's price.
Q. You have no jobber's price?
A. No, sir.
Q. Then the price that jobbers ordinarily get is exactly the same as you would give to any other merchant?
A. Yes, sir, less the discount that is allowed to him.
Q. Is there a regular discount allowed, or do you get a
1370 special discount from St. Louis?
A. It has always been customary for our St. Louis office to pass on each individual case as it came up.
Q. Now, the Rotan Grocery Company, you had their territory pretty well covered with your tank wagons, did you not?
A. Yes, sir.
Q. You covered the same territory that the Rotan Grocery Company barrel order transfers do?
A. Yes, sir, the tank-wagon transfers do.
Q. You go right into the territory that they go into?
A. Yes, sir, except a few outlying towns that we don't reach with the wagon, can't reach them.
Q. Now, as I understand you, you have one hundred and two stations?

A. That is my recollection; approximately that.
Q. One hundred and two storage tanks, or more?
A. More than that, two or three times that much.
Q. Two or three times that many tanks?
A. Yes, sir.
Q. You have eighty-five delivery wagons, tank delivery wagons?
A. I said that we have about 85; approximately that.
Q. Horses for each of them?
A. Surely.
Q. Equipment for each, harness?
A. In some cases I said the equipment, the wagons and harness and horse were owned by the agent and others we own them ourselves.
Q. You have in addition to that I suppose a large number of iron barrels that are in use in this territory?
A. Yes, sir.
Q. You have gone into every hamlet and established your business there, or substantially every one in your territory?
A. Every one we could get to, yes, sir.
1371 Q. You have a warehouse at all these places?
A. Yes, sir.
Q. Good large part of that has risen since 1900 hasn't it, a good large part of that improvement or that property has been accumulated since the present company went into business,—since 1900?
A. No, sir; if I understand the question right,—a great many of our plants were operated prior to that time.
Q. Well, I don't mean that all of them; I asked you if a large part of them, or a good large part of this property hadn't been accumulated since that time?
A. A large percentage of the property was in existence prior to 1900.
Q. And a large part since that time?
A. Quite a number of plants have been put in since that time, yes, sir.
Q. The business has increased, has more than doubled since you have had charge of it?
A. No, not to that extent.
Q. Well, it has quadrupled since you have been connected with the company?
A. It has undoubtedly increased wonderfully.
Q. All of this property has been accumulated and paid for out of the profits of this concern and six or seven hundred per cent. paid in addition to it in dividends?
A. I don't know what dividends are paid.
Q. All this property accumulated and six or seven hundred per cent. per year paid in addition to that, do you know?
A. I don't know anything about the dividends, the property has been accumulated, certainly.
Q. And you state that you conducted your business upon the basis of the superior quality of your oil, and you further state that Eupion Oil, the name "Eupion Oil" is a representative of the highest
1372 grade of oil made by these refineries—I will ask you if it isn't a fact that you sell any grade of oil whatever as Eupion

Oil that you can, that the demands or requirements of business suggest that you use?

A. No, sir, it is not a fact.

Q. It is not a fact?

A. No, sir.

Q. You didn't sell anything then except the highest grade of oil as Eupion Oil?

A. I am not in position to know what grades of oil are shipped now.

Q. I will ask you then this question,—if you haven't recommended that an inferior oil be shipped as Eupion Oil?

A. I did that one time when we couldn't get anything else.

Q. I will ask you if you haven't recommended that it be shipped for the purpose of recouping from the loss resulting from cutting the price?

A. I don't recall of making such a recommendation.

Q. I will ask you further if you haven't recommended or stated that you would put in Brilliant and sell it at the regular prices and meet your competition in that way, as Eupion Oil, and meet your competition that way?

A. I have no recollection of making such a recommendation; If I did it would certainly be out of the ordinary.

Q. Well, you don't ordinarily do that, then?

A. No, sir.

Q. And you don't ordinarily sell poor oil as Eupion oil?

A. Not knowingly, no, sir.

Q. And you don't ordinarily get S. W. oil at a hundred and fourteen to sell for oil of the one hundred and fifty, don't ordinarily do that?

A. No, sir.

1373 Q. But you sometimes do it?

A. The only time I recollect it is the instance I stated we were out of oil.

Q. Now give me the time that was.

A. I don't remember.

Q. You can't come at that? You stated what it was?

A. I didn't state the date; I would say that it was this past winter a year ago, as near as I can remember; I am not positive, however.

Q. In this case it would be the ordinary course of business for you to have told your customers you didn't have it, would it not?

A. We were forced to tell them we didn't have oil; we run out—quite a number of places.

Q. At that time, when you substituted this poor oil for the good oil, for the high grade oil, and sold it for Eupion, you didn't tell your customers that, did you?

A. The oil was not necessarily bad, the S. W. 112 oil.

Q. It is just as good as the other?

A. No, sir, it isn't as good as the other.

Q. It isn't as good as that which you styled as Eupion oil?

A. No, sir.

Q. Isn't it a fact that your statement to the trade is that your

Eupion Oil is oil of the best quality and better quality than is handled by your competitor?

A. If we had occasion to make the statement——

Q. That is the statement you make?

A. Yes, sir.

Q. Your statement is that Eupion Oil is always high, fine grade of oil?

A. Yes, sir.

Q. And your statement is that that is better oil than S. W. 112?

1374 A. If we had occasion to make the statement, that is what we would state.

Q. That is what you would state if the exigencies of business required?

A. Yes, sir.

Q. It is a fact that you can't sell, except in this State or one or two other States where the people have not been sufficiently protected by law, oil of that grade, S. W. 112?

Mr. ODELL: We object to that as wholly irrelevant and immaterial to any issue in this case, the assumption of what laws are in other States, and it is prejudicial to the defendant in this case.

Mr. BATTS: I expect to show by this witness that in most of the States of this Union, oil of that character cannot——

Mr. ODELL: I object to the statement before the Court and Jury.

Mr. BATTS: Get the Jury out.

Mr. ODELL: I am not running the Court; I am making my objection to the Court. As to what the laws of other States are is wholly irrelevant and immaterial; they can't bind the people of Texas or influence the laws of Texas, and it is prejudicial.

Mr. ALLEN: The evidence is already in.

The COURT: The objection is overruled.

Mr. ODELL: The defendant excepts.

Q. Now, isn't it a fact that some of the oil you have sold in this State as Eupion Oil could not be sold in other States at all on account of its inferior quality?

A. I am not personally familiar with the inspection laws of other States; there are some States where I presume it could not be sold.

1375 Q. Now, in addition to sending S. W. 112 sometimes as Eupion Oil, you also had an inferior quality of Water White 120 shipped as Eupion Oil at one time, did you not?

A. I never knew of an inferior grade of W. W. 120 being shipped intentionally.

Q. Will you explain this then, this letter in which you speak of an order for one tank car of Eupion P. W. 150 for shipment to Stephenville, Texas, and "I will be obliged if you will instruct Agent Angus to ship W. W. 120 on this order".

A. You want to know if the W. W. 120 was an inferior oil?

Q. No, I wanted to have you explain that, if you didn't send out W. W. 120 as P. W. 150?

A. P. W. 150 is an oil that isn't made for sale in Texas, not ordi-

narily sold in Texas, and we were at that time possibly using that oil because we couldn't get any other.

Q. The P. W. is superior to any oil you sell in Texas?

A. No, sir, it is inferior; it is a higher fire test but an inferior compared with Eupion.

Q. Now, talking about S. W. 112, will you explain this letter: "There are some points in Central Texas where we can market it, Corsicana S. W. 112, as Eupion", did you do that?

A. We did it at the time I refer to.

Q. And possibly that was the reason for it?

A. Because we couldn't get the other oil, yes, sir.

Q. And that was the reason that you assign for wanting to do this, to the St. Louis office?

A. It was; my recollection is it was either a question of doing that or getting an oil from South Texas, and at that time they hadn't been able to refine satisfactorily burning oil in South Texas, and I objected to it; that is my recollection; I wouldn't be positive about that, however, S. W. 112 made at Corsicana was a much more satisfactory burning oil than the best oil we could get in South
1376 Texas at that time.

Q. Well now, you couldn't at that time get as good oil as S.W. 112 from Chaison?

A. No, sir.

Q. Security Company?

A. No, sir.

Q. Then you were at that time handling S.W. 112, which is an oil so poor that it can't be sold in some States, and some oil that was inferior even to that to the Texas consumers as Eupion oil?

Mr. ODELL: We object to the question because it is an assumption of what the laws were in other States, not the best evidence of what the law is in other States and the witness isn't shown to be an expert, for the purpose of contradiction on an immaterial and prejudicial issue to the defendant in this case.

The COURT: The objection is overruled.

Mr. ODELL: Defendant excepts.

Q. Is that true?

A. Will you kindly state it again.

Q. I asked you if it wasn't a fact that at that time you were selling S.W. 112 Corsicana oil, *as* poor a quality that it couldn't be sold in some States, and still a more inferior quality made by the Security Oil Company at Chaison, Texas, as Eupion Oil?

A. It is a fact that we sold at that time some Corsicana 112 as Eupion; it was not necessarily a poor grade of oil, however, because if it is properly burned it will give just as satisfactory a light as any *light*, if it is burned in a proper device.

Q. Now the other oil at Chaison was poorer even than that, you say?

A. It didn't give my trade satisfaction.

Q. And those were the two oils you were handling as Eupion Oil for the Texas trade?

A. I don't recall handling over a very few cars of Chaison
1377 oil and that was before I knew—or before we knew that it was unsatisfactory.

Q. You were selling it as Eupion oil?

A. Yes, sir; we sold a few cars of Eupion Oil before we discovered the oil wasn't satisfactory.

Q. And then went from that quality of oil gotten at Chaison and sold as Eupion Oil, to the S.W. 112 gotten at Corsicana?

A. The S.W. 112 was used, as I stated, simply to tide over; we do not now and have never made a practice of substituting knowingly.

Q. Where do you get that Eupion Oil now?

A. I have been getting considerable portion of it from Neodesha, and get some from Corsicana as well.

Q. What is the quality of the oil that you get now at Corsicana, that you use as Eupion?

A. Very satisfactory, so far as I know; occasionally we have a little trouble due to local causes mostly, but as a general proposition it is very satisfactory.

Q. Now, you talked about the changes that were made in the business. You knew the occasion for the re-incorporation of the company, did you not, the fact of the judgment which had been rendered in Texas excluding the Waters Pierce Oil Company from this State?

Mr. ODELL: That is a question of law; we object to it; it is prejudicial to the defendant and not the best evidence.

The COURT: The objection is overruled.

Mr. ODELL: Defendant expects.

Q. Did you know about that?

A. Only from hearsay, newspapers.

Q. Well, you knew about it just as you knew about the fact that Mr. Clem testified at Corsicana, did you not?

A. At Waco?

Q. Yes, sir.

1378 A. Same way, yes, sir.

Q. And you knew that that was the occasion for the re-incorporation of this company?

A. I supposed it was.

Q. Judgment excluding that concern from the State?

A. I supposed it was.

Q. Now, I understand you to say that the only change that you knew of that resulted from that judgment therein rendered by the State of Texas against this concern was that on some of its letter heads the words, "Incorporated May 29, 1900" was put upon some of those letter heads?

A. That was put on as I recall, on all of the letter heads.

Q. That was the only change of any kind that was effected in so far as you know, on account of that judgment of the Court in Texas?

A. Practically so, yes, sir.

Q. Now, you say that everybody knew about the circumstance that Mr. Clem testified at Corsicana that the Eagle Refining Company's business—at Waco—that the Eagle Refining Company's business was the business of the Waters Pierce Oil Company. Will you

tell me why it was then, that thereafter that business was maintained up there?

A. That is something I had nothing to do with; I don't know.

Q. You don't know of any reason then for it being maintained up there, thereafter?

A. I don't know what the reason was.

Q. Two separate establishments there in Dallas?

A. There were two, yes, sir.

Q. Involving unnecessary expense?

A. That is a matter that was handled entirely by our St. Louis office, and one which I know nothing about; I wasn't even manager of the Division at that time.

1379 Q. The Waters Pierce Oil Company was entirely able to take care of the trade there, was it not?

A. In Dallas?

Q. Yes, sir.

A. I should say so, yes, sir.

Q. Capable of it, just as it is now, was it not?

A. Yes, sir, just as capable.

Q. No competition of any sort after that was bought out was there?

A. I don't recall when the Southwestern Oil Company was there, but I think it was along about that time.

Q. After Mr. Clem gave his testimony at Waco, there was no competition there?

A. I don't remember.

Q. The Southwestern Oil Company didn't come in there until 1900, about; did it?

A. I am not sure about when it was.

Q. Then you know of no reason, if everybody knew that the Eagle Refining Company was a part of the Waters Pierce Oil Company, why that business was run independently?

A. No, sir.

Q. Did you know about the fact that the Eagle Refining Company was a part of the Waters Pierce Oil Company prior to the time Mr. Clem gave his testimony?

A. I heard it stated it was, yes, sir.

Q. You didn't know about that?

A. I didn't know positively, no, sir.

Q. No employee of the company knew about it?

A. I understood that it belonged to the Waters Pierce Oil Company, but I had never had any dealings with Mr. Clem.

Q. Never seen any correspondence with them?

A. No, sir, not pertaining to the Eagle Refining Company's business.

1380 Q. You say no effort has been made to conceal the status of things since this was done?

A. No, sir, absolutely none.

Q. You are manager of the Central Texas Division of the Waters Pierce Oil Company in Texas; did you know anything at all about the fact that the Standard Oil Company owned a majority of the stock of the Waters Pierce Oil Company?

A. I think my first information came from the newspapers.
Q. During the last six or eight months?
A. Oh, no, sir.
Q. When did you first get any information about it at all?

Mr. ODELL: We object to the question as to what this witness may have known about the Standard Oil Company's stock as being irrelevant and immaterial to any issue in this case, taking up time unnecessarily.

The COURT: The objection is sustained.

Mr. BATTS: I want to suggest that this is cross examination upon a matter that was brought out new by the defendant; he states no effort was made to conceal anything connected with this concern, and I want to show that——

The COURT: I don't care to hear argument; I don't think there was any statement made about whether there was any effort to conceal the ownership of the stock of the Waters Pierce Oil Company, or about the Clem transaction.

Q. Mr. Cahoon, there is, as far as you know, no patents of any kind on these tank wagons, nothing to keep anybody from getting them?
A. If they have the price.
Q. Now, there have been quite a number of people during the time you have been with the concern at Dallas, have under-
1381 taken to supply the business of the people in your territory have there not?
A. In Dallas proper?
Q. In Dallas and in the territory adjacent to it.
A. There have been several, yes, sir.
Q. They have not lasted long against the competition of your company?
A. Several of them have been in business several years.
Q. Sir?
A. Several of them have been in business five or six years; the Oriental Oil Company, I think, has been in business five years.
Q. The Oriental lasted longer than any of them; the Southwestern has fallen before the competition?
A. It closed up, yes, sir.
Q. Did the Waters Pierce Oil Company buy it?
A. No, sir.
Q. Get any of its property?
A. No, sir, not that I know of; they possibly may have got some of the tank cars, something at the plant.
Q. Did you correspond with the St. Louis office with reference to the acquisition of that property?
A. Yes, sir, I have; I don't know that I did in regard to the Dallas property; I did in regard to the storage tanks at one or two other points.
Q. Now, I will ask you if it isn't a fact that you are advised by the St. Louis office that the negotiations had not been by which they would get charge of the Southern Oil Company's properties?

A. I was advised by the St. Louis office that they were negotiating with them, or had done so, in regard to some tank cars——

Q. Well, that——

Judge PENN: We insist on the counsel allowing the witness to answer.

1382 The WITNESS: In reference to tank cars, but they have sold their plant at Dallas to another concern, as I understand it, and so far as I know the Waters Pierce Oil Company has not purchased the equipment, except a few tank cars, at any point.

Q. The truth is, it was running in opposition up there and it has gotten out of the way, and the negotiations with reference to it were had between Mr. Tilley and the Waters Pierce Oil Company?

A. I don't know who the negotiations were with.

Q. They wrote you to that effect, didn't they?

A. I don't remember, possibly so; I took the matter up in my letters to the St. Louis office.

Q. There is one of them that has fallen. The Eagle Refining Company, the Waters Pierce Oil Company got hold of that concern, didn't it; got it out of business?

A. I understand so, yes sir.

Q. Now what has happened to the Wyse Oil Company's competition in your territory?

A. They are doing practically nothing.

Q. You don't know of your company having any interest in that?

A. No, sir, not to my knowledge.

Q. How long have they been in business?

A. Why, I should say ten years or more.

Q. They have practically been put out of business?

A. The originator of the business is dead; that probably explains their having dropped out.

Q. Well, now, what other concerns have come up during that time and been snowed under?

Judge PENN: We object to that character of examination; this witness was put on the stand by the State and these matters, according to my recollection, were gone over by Mr. Brady, he
1383 is going over the same matters. The questions are put in an offensive manner and involve conclusions that the testimony of this witness doesn't bear out, and we object to this character of examination and ask the Court to require counsel for the State to put his questions in a proper form.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts to the ruling of the Court.

Q. Will you answer the question, Mr. Cahoon?

A. Will you state it again?

(Question read by Stenographer.)

A. Well, I declare I don't remember; there was a concern doing business under the name of Texas Oil Company, I think, at Waco some years ago, and has discontinued business.

Q. Climax Ink & Oil Company, they are still doing business?
A. Yes, sir.
Q. Has the Standard Oil Company undertaken to do business in your territory?
A. In my territory?
Q. Yes.
A. Not to my knowledge.
Q. Not to your knowledge?
A. No, sir.
Q. Do you know anything about its business in any other part of the United States?
A. No, sir.
Q. Do you know whether or not in certain other parts of the United States it has the same character of business and the same character of equipment and doing business in the same sort of way that you are doing in this territory?
A. I have seen plants, riding along on the train, in different parts of the country that were intended for doing a business very similar to ours.
1384 Q. But they have not undertaken to get into this territory at all?
A. Not in my territory.
Q. And you don't know anything about them doing business anywhere in Texas?
A. Not as the Standard Oil Company, no, sir.
Q. Your understanding is they are able to do it, got the money to do it?

A. Mr. ODELL: We object to whether they are able to do it; they are not here doing business.
Mr. BATTS: We withdraw the question.

Q. You don't know of the Corsicana refinery selling any oil to the retail trade, do you?
A. No, sir.
Q. Do they ever sell any to jobbers, at all?
A. Not to my knowledge.
Q. Have you known of the Security Oil Company selling to jobbers?
A. No, sir.

Recross-examination.

(By Mr. ODELL:)

Q. Mr. Cahoon, those letters that you were interrogated about this afternoon; where did they come from, the copies that were exhibited to you this afternoon?
A. They were made in my office.
Q. Who made them?
A. My stenographer.
Q. At whose request?
A. Mr. Brady's request.
Q. Did you give him access to all the letters that you had there?

A. Yes, sir; those he asked for, I had copies of all of those he selected.

1385 Q. Free of cost?

A. He kindly gave the young lady a box of candy.

Redirect examination.

(By Mr. BATTS:)

Q. Mr. Brady took there the written authority under the law did he not, to make this examination?

A. Yes, sir.

Q. How long did he stay there?

A. Saturday and Sunday morning.

Q. How many hours in all?

A. In the office?

Q. Yes.

A. I declare I don't know; I should say ten or twelve hours.

Q. You couldn't have gone through more than one-tenth of what you had, in that time, could he?

A. No, sir.

Q. You had counsel there at the time representing you, did you not?

A. On Saturday only; no one on Sunday.

Q. Well, that was after you had taken advice of counsel, after having counsel there?

A. Saturday, yes, sir.

Q. You got instructions from St. Louis to get a lawyer, and then Mr. Brady selected the letters?

A. Yes, sir.

1386 *Testimony of E. S. Horn.*

The following testimony of E. S. HORN, taken at St. Louis, was offered by plaintiff,—Mr. Lightfoot reading the questions and Mr. Allen the answers, from the stenographic record:

Q. Upon what basis did you fix the prices, Mr. Horn?

A. Well, the only way I would fix them would be in the case of an advance or a decline. Then I would adjust the selling price accordingly.

Q. Well, did the fact of competition existing have anything to do with the price adopted?

A. Yes, sir.

Q. What?

A. If a competitor of ours, in the same line of business, was offering a similar class of goods at less than our selling price, we reduced our selling price to meet the conditions.

Q. Wherever there was competition you did that, when it was necessary?

A. Yes, sir.

Mr. ALLEN: Then on the next page, 311, the last question at the bottom of the page:

Q. Can you recall what action, if any, you took—do you recall any action that you took because of the receipt of that letter?

A. If there was a change in the price, it is advanced or declined, it would naturally change our selling prices accordingly.

Q. That is, if there was a change in the selling price of the refineries of the Company?

A. Yes.

Q. You would change your selling price accordingly?

A. Yes, sir.

(Omit next question and answer.)

1387 Q. Do you know anything about the delivery of lubricating oils to a mill or plant of the Central Coal & Coke Company located at Kennard, Texas?

A. Yes, sir.

Q. To whom were those oils delivered, at Kennard, Texas?

A. They were delivered to the Central Coal & Coke Company.

Q. That is the plant of that company, at Kennard, Texas?

A. Yes, sir.

Q. Did you make deliveries of lubricating oil to any other plant of that company in Texas?

A. No, sir.

Q. How did you come to make deliveries of those oils?

A. It seems that the Standard Oil Company of Kansas City were negotiating with the purchasing agent of the Central Coal & Coke Company, and he asked his representative, whom he was working under, to obtain prices for delivery at Kennard, Texas. The manager of the lubricating department of the Standard Oil Company asked us to quote them prices for delivery to the Central Coal & Coke Company at Kennard, Texas.

Q. Enumerating the grades of oil they wanted?

A. Yes, sir, and they wanted quotations.

Q. What did you do?

A. We quoted them prices, delivered there.

Q. Was there any understanding reached?

A. They accepted the proposition and asked us to honor the requisitions from the Central Coal & Coke Company and render invoices to them.

Q. That is, you rendered invoices of the oils you delivered at Kennard, Texas, to the Standard Oil Company of Indiana?

A. Yes, sir.

Q. And who paid you for the oils delivered in that way?

1388 A. The Standard Oil Company.

Q. They paid you the prices agreed upon as between the Waters Pierce Oil Company and the Standard Oil Company of Indiana?

A. Yes, sir.

Q. Can you recall any other transaction of that kind with the Standard Oil Company and the Central Coal and Coke Company in Texas?

A. No, sir.

Q. The transaction in effect was the sale to the Standard Oil Company the same as you would sell to anybody or any other concern?
A. Yes, sir.

Cross-examination:

Q. Mr. Horn, you say that you don't positively identify that letter a copy of which was shown you by Mr. Johnson, but you assume that it was received in the regular course of business?
A. Yes, sir.
Q. Wasn't it a frequent occurrence to receive letters of a similar import?
A. No, sir.
Q. From Mr. McNall?
A. We received quotations almost daily or weekly.
Q. I mean letters of that kind and character from Mr. McNall, when he was commercial agent of the company at New York?
A. That is the first letter that I recall seeing of that nature.
Q. You frequently received from him quotations on different kinds of oil, lubricating oils and wax products and things of that sort?
A. Yes, sir.
Q. Those prices would be quoted on board the cars at the refinery?
A. Yes, sir.
Q. What kinds and character of commodity did the lubricating department handle? That is, the sales department of the lubricating branch?
1389 A. We handled everything outside of the refined oils and naphtha and gasoline, which is manufactured from petroleum.
Q. You handle all sorts of greases and lubricating oils and wax, and everything of that character?
A. Yes, sir.
Q. Does the Waters Pierce Oil Company manufacture any lubricating oils?
A. We compound oils.
Q. You have a manufacturing establishment here in St. Louis, have you not?
A. Yes, sir.
Q. And compound cylinder oils of various kinds?
A. Yes, sir.
Q. And grease?
A. Yes, sir.
Q. What percentage of your lubricating oils did you purchase from the Standard, in the compounded state? Approximately, of course; I don't expect you to give an accurate statement.
A. I should say fifty per cent.

* * * * * * * *

Q. Now, Mr. Horn, isn't it a fact that on certain brands of lubricating oils that you purchased from the Standard Oil Companies, that is, from the different refineries and agencies, that they fixed the

selling price, the minimum selling price, for you, at which you should sell those brands?

A. Not in this market.

Q. You say that is not a fact?

A. Not in this market.

Q. Well, in any market, with the Waters Pierce Oil Company?

A. I mean not in the Waters Pierce Oil Company market.

1390 Q. They did not have anything to do with and did not prescribe or did not suggest any selling prices of any brands that you handled of theirs?

A. No, sir.

Q. Of any kind or character?

A. No, sir; if they did they were not carried out.

Q. Well, why do you put that modification in?

A. Because we have a selling price. I know they sell less than we do on some brands of oil.

Q. Where? At what point?

A. Well, through the South.

Q. Not in Texas?

A. Well, they can ship it from New Orleans to some points in Texas at less than we are selling.

Q. Of course, they can; I understand that. And they are selling it all over the country at prices less than you sell at in Texas, are they not?

A. Yes, sir.

Q. You never heard of their selling any in Texas did you, in the last six or eight years?

A. No, sir.

Q. You have contracts with practically all of the railroads of Texas to furnish them lubricating oil, have you not?

A. I don't believe we have with all of them.

Q. I said practically all?

A. Practically. The large roads, yes, sir.

Q. But you furnish all of the roads don't you with lubricating oil, practically all the roads in Texas?

A. No, sir.

Q. Have you the original contracts in your department, in your custody?

A. They are in my department, yes, sir.

1391 Q. Well, those contracts are made directly with your office, with your department here, the home office?

A. Yes, sir.

Q. With the railro[illegible]ompanies?

A. Yes, sir.

Q. Those contracts are kept on file here?

A. Yes, sir.

* * * * * * *

Q. It is a fact, isn't it, Mr. Horn, that where your department fixes the prices or promulgates the prices that the two prime factors in determining or fixing those prices are the cost, including the

freight and marketing, and competition? That those are the two prime factors that govern you in fixing the prices to the trade?

A. Well, we add some profit.

Q. Well, of course, your profit, that would be in addition to that?

A. Yes, sir.

Q. You first take the cost price—I mean the two original prime factors upon which you base the price—you get as much as the trade will stand, of course, in the territory, or that you think it will stand, where you have no competition?

A. Yes, sir.

* * * * * * *

Q. A very large percentage was purchased by the Waters Pierce Oil Company from the Standard Oil Company, or Standard Oil Company interests?

A. Yes, sir.

Q. Did you mean to say in cross examination that the Standard Oil Company sells lubricating oil cheaper in other localities than the Waters Pierce Oil Company sells within the territory in which
1392 it does business?

A. Yes, sir.

Q. How do you know?

A. We encounter their quotations.

Q. That is, it sells oil cheaper in Illinois than the Waters Pierce Company sells oil in Missouri?

A. Yes, sir.

Q. What is the difference in price?

A. Sometimes from a cent to two cents a gallon. Sometimes three cents. That is, when I say that, I refer to cylinder oil and high class oil. I mean oils which can stand a variation like that.

Judge PENN: We desire to offer the testimony of the witness he has just read, in connection with their introduction of these parts, so the Jury will understand it better.

The COURT: Hasn't part of that deposition been heretofore offered?

Judge PENN: Very small part, but if the State only wants to put in a half a page or so, we have no objection to letting them put that in now and let us put in the parts of this and Mr. Adams' testimony, but we wish to request that the Court allow us to do so in the morning.

The COURT: I will pass on that in the morning; I know now of no reason why it should not be permitted.

*Testimony of C. M. Adams.*

The following testimony of C. M. Adams, taken at St. Louis, is offered by the plaintiff.

Q. Now, isn't it a fact that ever since your connection with the Waters Pierce Oil Company, both the old company and the
1393 new, with the exception of a short time when Mr. J. D. Johnson was on the Board of Directors, there have been three

members of the Board who have been dictated by the Standard Oil people? Don't you know that to be a fact? Supposedly representing them, I am not asking if they did represent them. Don't you know it to be a fact that during your entire connection with the old Company as a director, and with the new company, except for this interval, in which Mr. J. D. Johnson was on the Board, that three members of the Board were dictated by the Standard Oil people or the Standard Oil interests?

A. I can't say that I know that—that they were dictated by them.

Q. What is your information about it?

A. Well, I can't say that I have any positive information.

Q. Well, information that is not positive? What have you information in regard to that? Why do you hesitate about it? You were one of the men that were supposed to represent the Standard Oil on the Board, were you not?

A. I am a director of the company.

Q. Aren't you one of the men who were supposed to represent the Standard Oil interests on the Board and always have been, and so considered by yourself and by every one connected by the Company? Now, why do you hesitate about that? Don't you know that to be a fact?

A. I cannot exactly say that my election as a director was dictated by them, or that any other one or two people were. The election was held by the stockholders and the Board of Directors are elected.

Q. Oh, that is a mere formality; don't you know that, Mr. Adams?

A. I can't say that I do, no.

Q. No? Why, don't they prepare in advance what you are going to do at the meeting? As to who shall be elected Directors or officers?

A. No, sir, I don't think that that is the case.

Q. It is not done?

1394 A. That is, unless it is done with some one before the meeting is held that I know nothing about.

Q. Where did you get your information as to who would be selected on the Board of Directors?

A. Well, I will tell you. At the last election, I received a proxy from——

Q. From M. M. Van Buren?

A. From M. M. Van Buren who owns a very large amount of stock.

Q. Ostensibly?

A. And he said that he would be pleased to see the old Board re-elected.

Q. Who was the old Board?

A. The old Board was Mr. Pierce—Mr. H. Clay Pierce—Mr. C. A. Pierce, Mr. Van Buren, Mr. Taylor, and myself.

Q. Who is Mr. Taylor?

A. Mr. Taylor's name is Walter F. Taylor. He is an attorney belonging to the firm of——

Q. Carter, Ledyard Taylor & Co.?

845

A. Something of that kind. I forget the style of it exactly.
Q. Of New York?
A. Yes, sir.
Q. Do you know what interest he has in the Waters Pierce Oil Company?
A. He owns one share of stock.
Q. He owns one share of stock?
A. Yes, sir.
Q. Transferred to him by whom?
A. I don't know.
Q. From whom?
A. I don't know.
Q. Isn't it a share of stock—you are custodian of the stock
1395 books, are you not?
A. Well, they are in my office.
Q. Oh, why do you quibble? I don't want to——
A. Well, you use the word "custodian".
Q. Aren't you the custodian of that book?
A. I don't know that that term would apply to this matter. The book is in the safe in my office.
Q. I don't want to mislead you, or get you tangled up, or anything like that, but all I want is just the facts. Of course, if you know them, you can say so, Mr. Adams?
A. Well, I can't remember where this share of stock—who it was transferred from, without referring to the books.
Q. You have no recollection at all about that?
A. No, sir; I have not, without referring to the books.
Q. Will you refer to the books and say?
A. If it is necessary I can do so.
Q. Now, getting back to the question I propounded to you a while ago,—don't you know in your own mind, and isn't that the impression that was made upon your mind that you and Mr. Gruet and Mr. H. M. Tilford, of the old company, were supposed to represent the Standard Oil interests, as members of the Board of Directors? Isn't that true?
A. Well, I——
Q. I am not asking you a positive fact, but what is your impression? You know the impression that was made on your mind about it?
A. Well, that is the impression that I had at that time.
Q. Now, isn't it a fact also that after the reorganization that the impression was made upon your mind that Mr. Gruet and you and Mr. Walter F. Taylor, who succeeded Mr. John D. Johnson as a member of the Board, was supposed to represent the Standard Oil interest?
A. I can't recollect now when Mr. Taylor came into the Board.
1396 Q. I don't care when he came in. He did come into the Board, didn't he?
A. Well, he was elected.

Q. He succeeded Mr. Johnson as a member of the Board, didn't he?

A. Well, I don't remember about that now.

Q. Mr. Tinsley was a member of the Board, wasn't he? At one time?

A. Yes, he was at one time.

Q. Wasn't Mr. Tinsley when he was on the Board—wasn't the impression made upon your mind that Mr. Tinsley was supposed to represent the Standard Oil interests, and didn't he represent the Standard Oil interests, and raise a row here, because he undertook to run it absolutely independent of Mr. Pierce, and his interests? Isn't that a fact? Don't you know that to be a fact?

A. Well, I don't know how much of a row he raised. I am not sure.

Q. Well, are not those the facts? That you knew that he was supposed to represent the Standard Oil interests, and was sent here for the express purpose of representing their interests. Don't you know that? Why do you hesitate about that, Mr. Adams?

A. Well, I——

Q. Have you absolutely no information or impression about that fact? Now why do you hesitate about that?

A. Why the impression was of course at that time that he was representing the Standard Oil Company, yes, sir.

Q. You say that you know—that it is your understanding that Mr. Tinsley was sent here to represent the Standard Oil Company's interest?

A. That is my supposition of the matter.

Q. Well, that is based upon what occurred here, in the management of the company, isn't it?

A. After he came, yes.

Q. After he came. That is what I say. Now, getting
1397 back to the question I propounded a while ago, don't you know it to be a fact that since the organization of the new company up to along in June of 1905, with the exception of a period during which Mr. J. D. Johnson was on the Board, there has always been three members of the Board of Directors that were supposed to represent the Standard Oil interests?

A. Yes, I think that is true.

(Thereupon Court adjourned until Wednesday morning at 9.30.)

WEDNESDAY, *May* 29.

Court opens at 9.30 a. m.

Mr. ALLEN: We offer in evidence the depositions of Charles S. Keith, taken in Kansas City, on interrogatories propounded to him by the plaintiff.

Interrogatory 1. What is your name, age and place of residence?

Answer. Charles S. Keith, Kansas City, Missouri, age thirty-four.

Interrogatory 2. What is your business? If you say you are in the lumber business, state how long you have been in said business;

and state with what company or companies you are connected or employed.

Answer. Vice president and general manager of the Central Coal & Coke Company and general manager of the Louisiana & Texas Lumber Company. I have been in the lumber business for ten years, employed by the Central Coal & Coke Company and the Louisiana & Texas Lumber Company.

Interrogatory 3. If you have stated, or if it be a fact, that you are connected with the Central Coal & Coke Company, then
1398 state in what capacity you are connected with said company, and during what years you have been so connected.

Answer. As vice president and general manager. I have covered a period since 1891.

Interrogatory 4. If you have stated, or if it be a fact, that you are the General Manager of the Central Coal & Coke Company, then state whether or not it has an office in Kansas City?

Answer. It has.

Interrogatory 5. Please state whether or not the Central Coal & Coke Company, owns or operates a sawmill within the State of Texas; if so, at what place or places?

Answer. It does not, but the Louisiana & Texas Lumber Company does at Ratcliffe, Texas, Houston County.

Interrogatory 6. If you have said that the Central Coal & Coke Company owns or operates a sawmill at Kennard, Texas, then state how long said company has owned or operated said mill, and under what name is said mill operated?

Answer. The Central Coal & Coke Company does not own a mill, but the Louisiana & Texas Lumber Company does, at Kennard, or Ratcliff, Texas, and it has been in operation since about 1901 or 1902,—I don't remember just exactly the year. The mill is operated in the name of the Louisiana & Texas Lumber Company. The Central Coal & Coke Company has no proprietary ownership in it at all.

Interrogatory 7. Please state whether or not the Central Coal & Coke Company is interested in any manner, directly or indirectly, in any sawmill plant located at Kennard, Texas; if so, state the name of the plant, and state whether or not the Central Coal & Coke Company furnishes it with any supplies?

Answer. No. Central Coal & Coke Company does not furnish the mill at Kennard, Texas, with any supplies, but the sup-
1399 plies are purchased from my office as general manager for the Louisiana & Texas Lumber Company.

Interrogatory 8. State whether or not the Central Coal & Coke Company owns or operates any sawmills at Neame and Carson, Louisiana. If so, state the name of the plants.

Answer. The Central Coal & Coke Company owns a mill each at Neame and Carson, and they carry the names of Neame and Carson.

Interrogatory 9. Please state whether or not the Central Coal & Coke Company owns or operates, either directly or indirectly, any sawmill plant at any other point in Texas outside of Kennard. If so, state the points at which such plants are located, and how long the Central Coal & Coke Company has been interested in same.

Answer. No.

Interrogatory 10. Please state whether or not the Central Coal & Coke Company, during the years of 1903, 1904, 1905, 1906, or 1907, entered into any contract with any oil company to furnish the Central Coal & Coke Company with lubricating, cylinder, engine or any other kind of oils or greases for either one or more of the years mentioned. If so, state the name of the oil company with whom such contracts were made.

Answer. In the years 1903 and 1904, Central Coal & Coke Company had a contract with the Waters Pierce Oil Company. In 1905 with the Bonner Oil Company. In 1906 with the Standard Oil Company. For 1907 its contract is divided between the Standard and the Bonner Company, the Standard supplying the oil to the Texas plant and the Bonner Company to the Louisiana plants.

Interrogatory 11. Please state whether or not the Central Coal & Coke Company made any contract with any Standard Oil Company for its supplies of oils and greases during either of the following years: 1903, 1904, 1905, 1906 or 1907?

Answer. The answer to the last Interrogatory answers that.

1400 In 1903 and 1904 the Waters Pierce Oil Company, in 1905 the Bonner Oil Company, in 1906 the Standard Oil Company, 1907 the Bonner Oil Company and Standard Oil Company. I only know this company as the Standard Oil Company and the Waters Pierce Oil Company as the Waters Pierce Oil Company.

Interrogatory 12. If you have stated, or if it be a fact, that the Central Coal & Coke Company, or any officer thereof, made or entered into any contract with any Standard Oil Company for any oil or greases for either or all of the years mentioned in the last preceding interrogatory, you will attach all such contracts, or a true copy thereof, to your answer and make it a part of your answer, and mark same for identification.

Answer. I will. Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M.

Interrogatory 13. Please state whether or not your company had such a contract for the year 1906 or any portion thereof. If so, attach a copy of said contract to your answer, and state whether or not it is a true copy, and mark same for identification.

Answer. We had such a contract and I will attach it. Exhibits F, G, K, J.

Interrogatory 14. If you have stated, or if it be a fact, that the Central Coal & Coke Company had a contract with any Standard Oil Company for its supplies of oils and greases for any year from 1903 to 1907, inclusive, state whether or not it had a contract during the same years with the Waters Pierce Oil Company for any of its supplies furnished to any mill or plants owned or operated by the Central Coal & Coke Company in the State of Texas or the State of Louisiana.

Answer. During the years before mentioned we had contracts with the Waters Pierce Oil Company and subsequently with the Standard Oil Company, but during any one year our contract was with only one company, with the exception of 1907, when it is divided between the Standard and the Bonner Oil Company.

1401 Interrogatory 15. State whether or not the Standard Oil Company furnish the Central Coal & Coke Company, or any other Company owned or operated by or connected with such com-

pany, any supplies of oils or greases in the State of Texas. If so, state through what company such supplies were furnished.

Answer. The Standard Oil Company furnished the Louisiana & Texas Lumber Company oil during the years above mentioned, as per contract attached hereto as exhibit, for its plant at Kennard, Texas. However, there is no connection between the Central Coal & Coke Company and the Louisiana & Texas Lumber Company, only that the Central Coal & Coke Company disposes of the product of the Louisiana & Texas Lumber Company on a commission basis.

Interrogatory 16. Please state whether or not it be a fact that all of the supplies of oils and greases furnished to the Central Coal & Coke Company or to any other company connected with the Central Coal & Coke Company under any contract made with any Standard Oil Company, were furnished to your company or companies by or through the Waters Pierce Oil Company in the State of Texas.

Answer. During the years we had contracts with the Waters Pierce Oil Company they furnished the oil, and it may be that the Waters Pierce Oil Company is furnishing the oil to us under our contract with the Standard Oil Company, but all remittances are being made direct to the Standard Oil Company, but I am not clear in my own mind whether this is being done, as I do not see the bills of lading covering the oil from the points or origin from which it is shipped. That information will have to be gotten at the mill.

Interrogatory 17. To what company did you pay your bills for supplies of oils and greases furnished any of your plants by the Waters Pierce Oil Company in Texas during the life of any contract which you had with the Standard Oil Company for such supplies.

1402 Answer. All bills were remitted direct to the Company in whose name the contract was made. In case where the Waters Pierce Oil Company were contracted with, the remittances were made to them; when the Bonner Company furnished the oil, to the Bonner Company; and when the Standard furnished the oil, to the Standard.

Interrogatory 18. If you have not already done so, please state whether or not the Central Coal & Coke Company had any contract with any Standard Oil Company for oils and greases for any portion of the year 1905. If so, please attach said contract to your answer, or a true copy of same, make it a part of your answer, and mark it for identification and state how you have marked it.

Answer. No. In the year 1905 our contract was with the Bonner Oil Company.

Interrogatory 19. Please state whether any supplies were furnished under that contract to any of your plants in Texas or Louisiana. If so, by and through what company were the supplies delivered, and what company you paid for such supplies?

Answer. All oils and greases purchased by the Central Coal & Coke Company and the Louisiana & Texas Lumber Company on account of the year 1905 were purchased from the Bonner Oil Company, and none from the Standard or the Waters Pierce Oil Company.

Interrogatory 20. If you have stated, or if it be a fact, that the Waters Pierce Oil Company delivered to any of the plants of the Central Coal & Coke Company, in the State of Texas, oil for and on behalf of any Standard Oil Company, please state from what station of the Waters Pierce Oil Company said deliveries were made.

Answer. I cannot answer that question, except in this way: that during 1904, 1905 and 1906 all the oils used by the Louisiana & Texas Lumber Company at its plant at Kennard, Texas, were shipped from the station of Lufton, Texas, by the three companies with whom we had contracts.

1403 Interrogatory 21. If you have stated, or if it be a fact, that the Waters Pierce Oil Company delivered to the Central Coal & Coke Company, or any sawmill owned or operated by the Central Coal & Coke Company, or any other company controlled by said company, any oil or greases for and on behalf of any Standard Oil Company, please state whether or the same charges were made by the Waters Pierce Oil Company for such supplies as your company had contracted for with the Standard Oil Company.

Answer. The Waters Pierce Oil Company never rendered any bills to the Louisiana & Texas Lumber Company or the Central Coal & Coke Company for any oil furnished under contract between the Central Coal & Coke Company or the Louisiana & Texas Lumber Company and the Standard Oil Company, but all oils were invoiced by the Standard Oil Company, and we remitted direct to the Standard Oil Company. Prices were according to the contracts with the company, as shown by the exhibits hereto attached.

Interrogatory 22. If you have stated, or if it be a fact, that the Waters Pierce Oil Company delivered any oils in Texas to any interest which you represent under any contract had by your company with any Standard Oil Company, then state whether or not there was any difference in prices charged by the Waters-Pierce Oil Company and those contracted for with the Standard Oil Company for any such supplies.

Answer. Our contracts were always let in competition and let to the lowest bidder, and necessarily there must be discrepancy in the prices furnished one year as against another on account of this competition. We never purchased any oil from the Waters Pierce Oil Company during the life of our contract with the Standard Oil Company, nor did we purchase oil from any other company during the time of the contract of any of the three oil companies whom we have named as having our contracts during the period named.

1404 Mr. ALLEN: We offer all these exhibits, Gentlemen.

Judge STEDMAN: May it please Your Honor, we object to the introduction in evidence of these exhibits, which are, copies of contracts for the purchase of oil by the Louisiana & Texas Lumber Company and the Central Coal & Coke Company. Some of the contracts are for the purchase of oil from the Standard Oil Company, others are for the purchase of oil from the Bonner Oil Company, and others are for the purchase of oil from the Waters Pierce Oil Company. We object to each and all of these contracts, because immaterial and irrelevant. So far as the contracts with the Waters Pierce

Oil Company are concerned, they are shown merely to be consumers' contracts, such as were presented to Your Honor yesterday in another connection, and they are not shown to be in violation of law, and they do not tend to establish any issue in this case. So far as the contract with the other companies is concerned, they appear to have been made with persons not parties to this suit; and we think it does not appear that the defendant had any connection, and it does not appear that if the defendant has connection with either of these companies, that these contracts related in any wise to any connection between the defendant and either of these companies. These contracts, too, we say, are merely consumers' contracts, and they are immaterial and irrelevant upon that ground, as well as the others.

Mr. ALLEN: We don't offer them to show a violation of the law, if the Court please. They are offered for two purposes: In the first place, to show, in connection with the testimony of this witness, what we have endeavored to show by other witnesses, that the agreement that the Standard Oil Company should stay out of the Waters Pierce Oil Company's territory was carried out, and that when the Standard Oil Company made any contract with anybody in the Waters Pierce Oil Company's territory the contract was turned over
1405 to the Waters Pierce Oil Company, and therefore there was no competition, and to show that there was no real competition so far as the Standard and the Waters Pierce Oil Company were concerned. The statement of the witness is that he let these contracts to the lowest bidder. Now, whenever two people bid on a contract and it don't make any difference which one gets it, the other one fills it, it shows those facts.

The COURT: The objection is overruled.

Judge STEDMAN: We except.

(Thereupon the exhibits attached to the deposition were introduced in evidence as follows):

Memorandum of agreement between the Waters Pierce Oil Company (incorporated under the laws of the State of Missouri, May 29th, 1900), the first Party, and (Central Coal & Coke Company) of (Carson, La.) the Second Party.

Witnesseth: That in consideration of the Second Party agreeing to take from the First Party, all of the Lubricating Oils and Greases it may require for its own consumption, the First Party agrees to furnish F.O.B. (Carson, La.), for a period of one year from date of signature, the following Oils and Greases at special prices named, it being understood and agreed that the maximum quantity of each grade shall not exceed, Cylinder Oil (30) Bbls.; Engine Oil (75) Bbls.; Black Oil (25), Grease (6) Bbls., (75) (Refined) Barrels, without the consent of the First Party, at the following prices, to-wit:

| | Cents per gallon. |
|---|---|
| 1406 Special Valve Oil | 36 |
| New Dark Valve " | 33 |
| Castor Machine " | 19 |
| Atlantic Red Eng. " | 20 |
| Summer Lub. Oil | 9½ |
| Winter " " | 10¾ |
| Golden Axle Grease Bbls. or ½ Bbls. | 30 per lb. |
| " " " 25 lb. Pail | $9.00 per Doz. |
| Cup Grease Bbls. or ½ Bbls. | 6 cts. per lb. |
| " " 25 lb. drum | 7 cts. per lb. |
| Brilliant Oil I. Bbls | 9 F. O. B. Lake Charles |
| Water White " " | 11 do. |
| Eupion " " | 12 do. |

(One cent rebate on Black & Refined Oils until July 15, 1903.)

The Second Party agrees to receive, and pay the First Party for, all Oils and Greases ordered by (them), at said prices as aforesaid.

The above prices are for Oils delivered in barrel quantities. Half-barrels, three (3) cents above; five (5) and ten (10) gallon lots in cans or 2/5 cases, seven (7) cents above barrel prices.

The first party guarantees that the Oils and Greases above mentioned are to be of uniform quality, and at all times to be up to their standard.

Should there, at any time during the life of this contract, be a decline in the Company's schedule of prices below the above mentioned prices, then the Second party shall have the benefit of such decline.

Settlement for all supplies of Oils and Greases sold and delivered to the Second Party by the First Party hereunder shall be made (60 days or 2% off for cash in 10 days).

Executed at (Shreveport) this (30th) day of (Dec.) 1902.

WATERS PIERCE OIL COMPANY,
By (J. H. LITTLEFIELD).
—— ——,
By —— ——.

Supplied from ——.
Local Rate —— cts. per cwt.

1407 (Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1902. Dec. 30th, 1903. Carson. Exhibit "A." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

Copy.

Memorandum or agreement, between the Waters Pierce Oil Company (Incorporated under the laws of the State of Missouri, May 29th, 1900), the first party, and the Lousiana & Texas Lumber Company of Lufkin, Texas, the Second Party.

Witnesseth: That in consideration of the second party agreeing to take from the first party, all of the Lubricating Oils and Greases it may require for its own consumption, the First Party agrees to furnish F. O. B. Lufking, Texas, for a period of one year from date of signature, the following Oils and Greases at special prices named, it being understood and agreed that the maximum quantity of each grade shall not exceed, Cylinger Oil 25 Bbls., Engine Oil 50 Bbls.; Black Oil 50 Bbls.; Grease 10 Bbls., Ref. Oil 75 Barrels, without the consent of the First Party, at the following prices,to-wit:

| | Cents per gallon. | |
|---|---|---|
| Special Valve Oil | 35¢ | |
| New Dark Valve Oil | 32¢ | |
| Castor Machine Oil | 18¾¢ | |
| Red Engine Oil | 17½¢ | |
| Summer & Winter Black Oil | 08¢ | |
| Vax Cylinder Oil | 50¢ | less 10% |
| 600 W. Cylinder Oil | 65¢ | " " |

1408 Gol. Axle Grease, Bbls. or ½ Bbls. 3¢ per lb.
25# Pails $9.00 per doz.
Cup Grease, Bbls. or ½ Bbls. 6¢ per lb. in 25# Drums 7¢ per lb.

| | |
|---|---|
| Brilliant Oils in Iron Barrels | 09¢ |
| Water White Oil in Iron Barrels | 11¢ |
| Euption Oil in Iron Barrels | 12¢ |

First party agrees to pay second party 50¢ each for return in good condition of all empty W. P. O. Co. Wood Barrels.

The Second par-y agrees to receive, and pay the First Party for, all Oils and Greases ordered by them, at said prices as aforesaid.

The above prices are for Oils delivered in barrel quantities. Half-barrels, three (3) cents above; five (5) and ten (10) gallon lots in cans or 2/5 cases, seven (7) cents above barrel prices.

The First party guarantees that the Oils and Greases above mentioned are to be of uniform quality, and at all times to be up to their standard.

Should there, at any time during the life of this contract, be a decline in the Company's schedule of prices below the above mentioned prices, then the Second Party shall have the benefit of such decline.

Settlement for all supplies of Oils and Greases sold and delivered to the *the* Second Party by the First Party hereunder to be made 60 days or 2% off for cash in 15 days.

Executed at Shreveport this 30th day of December, 1902.

WATERS PIERCE OIL COMPANY,
Signed by J. H. LITTLEFIELD, *Mgr.*
LOUISIANA AND TEXAS LUMBER COMPANY,
Signed by W. N. CARSON, *Mgr. of Mills.*

Supplies from ——.
Local rate —— cts. per cwt.

1409 (Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1902. Dec. 30th, 1903. Kennard. Exhibit "B." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

Copy.

Memorandum or agreement between the Waters Pierce Oil Company, (Incorporated under the laws of the State of Missouri, May 29th, 1900), the first party, and Louisiana & Texas Lumber Co., of Kennard, Texas, second party.

Witnesseth: The first party agrees to furnish to the second party, when ordered by them, f. o. b. Lufkin, Texas, during a period of one year from date of this agreement, the Oils and Greases hereinafter specified. It being understood and agreed, however, that the aggregate maximum quantity of each shall not exceed 40 bbls. of Cylinger Oil; 140 bbls. of Engine Oil; 50 bbls. of Black Oil; 15 bbls. of Grease; and 150 bbls. of Refined Oils without the consent of the first party, at and for the following prices to wit:

| | Cts. per gal. in wood bbls. | Cts. per gal. in iron bbls. or drums. |
|---|---|---|
| 600 W. Cylinder Oil..... | 70 less 16½% | |
| Vax " " .... | 55 " 10% | |
| Special Valve " .... | 35¼ net | |
| Castor Mchy. " .... | 19 | |
| Red Engine " .... | 19 | |
| 1410 Black Oils ..... | 10 | |

Golden Axle Grs. Brls. or ½ Brls. 3½¢ per #, 25# Pails $9.75 per doz.

Cup Grs. Bbls. or ½ Bbls. 6¢ per #, 25# Drums 7¢ per lb.

| | |
|---|---|
| Beaumont Oil Brilliant..... | 10 |
| Prime White Corsicana ..... | 12 |
| Water White " ..... | 14 |
| Eupion ..... | 16 |

The wooden barrels will be of the capacity of about fifty (50) gallons each. In the event any of said Oils are delivered on orders of the second party in half-barrels, then the second party shall pay for the same at the rate of three (3) cents per gallon in excess of the wooden-barrels prices, and if in five (5) or ten (10) gallon cans or cases, then at the rate of seven (7) cents per gallon in excess of the wooden-barrel prices specified above.

The first party agrees and guarantees that the said Oils and Greases shall be of uniform quality, and at all times up to their regular standard.

The first party further agrees, that if at any time during the term of this contract there should be a decline in the company's schedule of selling prices of said Oils and Greases below and above mentioned prices, then the second party shall have the benefit of such decline.

The second party agree to receive, and pay the first party for, all of said Oils and Greases delivered hereunder, at the prices aforesaid.

Settlement for all supplies of Oils and Greases sold and delivered to the second party by the first party hereunder to be made 60 days or 2% off for cash in 10 days.

The second party agree that whenever any of said Oils are delivered to them in iron drums or iron barrels, the said drums and barrels shall be promptly emptied and returned free of cost to the first party f. o. b. Lufkin, #2 Kennard, Tex. that all iron drums and iron barrels which are not so returned, shall be charged to and paid for by the second party, at their cost price to the first party,
1411 and that the second party shall pay the first party for all damages beyond ordinary wear which any of said iron drums and iron barrels may sustain while they are in the possession of the second party.

The Second party agree to purchase from the first party all of said kinds of Oils and Greases required by them, for their own consumption during the term of this agreement, up to the maximum quantity hereinbefore specified. Provided, however, that the second par-y shall not be required to order, nor the first party be required to deliver, more of said Lubricating Oils and Greases than the second party can use in their plant at Kennard, Texas, during said term.

Executed at Shreveport, La., this 30th day of December, 1903.

WATERS PIERCE OIL COMPANY,
Signed by J. H. LITTLEFIELD.
LOUISIANA & TEXAS LUMBER COMPANY,
Signed by J. H. MORRISON.

Supplied from ——.
Local rate —— cts. per cwt.

(Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1903. Dec. 30th, 1904. Kennard. Exhibit "C." E. A. Neal, Notary Public. Identified. Chas. S. Keith.

1412 Original.

Memorandum of agreement between the Waters Pierce Oil Co. (Incorporated under the laws of the state of Missouri, May 29th, 1900), the first party, and Central Coal & Coke Co. of Neame La. second party.

Witnesseth: The first party agrees to furnish to the second party, when ordered by them, F. O. B. Neame, La. during a period of one year from the date of this agreement, the Oil and Greases hereinafter specified. It being understood and agreed, however, that the aggregate maximum quantity of each shall not exceed 35 bbls. of Cylinder Oil; 125 bbls. of Engine Oil; 35 bbls. of Black Oil; 10 bbls. of Grease; and 240 bbls. of refined oils, without the consent of the first party, at and for the following prices, to-wit:

| | Cts. per gal. in wood bbls. | Cts. per gal. in iron bbls. or drums. |
|---|---|---|
| No. 1 Cylinder Oil | 37½ | |
| No. 66 Cylinder Oil | 34½ | |
| No. 8 Cylinder Oil | 33½ | |
| New Dark Valve Oil | 30½ | |
| Red Engine Oil | [29½]* | 19 |
| Castor Mchy. Oil | [20½]* | 19 |
| Renown Engine Oil | 27½ | |
| Black Oils | [11½]* | 10 |

Golden Axle Grs. Bbls. or ½ Bbls. 3½ per #, 25# Pails $9.75 per doz.

Cup Grease, Bbls. or ½ Bbls. 6¢ per lb., 25# Drums 7¢ per lb.

| | |
|---|---|
| Beaumont Brilliant, 150" | 10 |
| Corsicana Prime White | 12½ |
| Corsicana Water White | 14½ |
| Eupion | 16½ |

The wooden barrels will be of the capacity of about fifty (50) gallons each. In the event any of said Oils are delivered on orders of the second party in half-barrels, then the second party shall pay for the same at the rate of three (3) cents per gallon in excess of the wooden-barrel prices, and if in five (5) or ten (10) gallon cans or cases, then at the rate of seven (7) cents per gallon in excess of the wooden-barrel prices specified above.

1413 The first party agrees and guarantees that the said Oils and Greases shall be of uniform quality, and at all times up to their regular standard.

The first party further agrees, that if at any time during the term of this contract there should be a decline in the Company's schedule of selling prices of said Oils and Greases below the above mentioned prices, then the second party shall have the benefit of such decline.

The second party agree to receive and pay the first party for, all of said Oils and Greases delivered hereunder, at the prices aforesaid.

Settlement for all supplies of Oils and Greases sold and delivered to the second party by the first party hereunder to be made 60 days or 2% off for cash in 10 days.

The second party agree that whenever any of said Oils are delivered to them in iron drums or iron barrels, the said drums and barrels shall be promptly emptied and returned free of cost to the first party F. O. B. Neame, La., that all iron drums and iron barrels which are not so returned, shall be charged to and paid for by the second party, at their cost price to the first party, and that the second party shall pay to the first party for all damages beyong ordinary

[*Figures enclosed in brackets erased in copy.]

wear which any of said iron drums and iron barrels may sustain while they are in the possession of the second party.

The second party agree to purchase from the first party all of said kinds of Oils and Greases required by them for their own consumption during the term of this agreement, up to the maximum quantity hereinbefore specified. Provided, however, that the second party shall not be required to order, nor the first party be required to deliver, more of said lubricating Oils and Greases than the second party can use in their plant at Neame, La., during said term.

1414 Executed at Shreveport, La., this 30th day of December, 1903.

WATERS PIERCE OIL COMPANY,
By J. H. LITTLEFIELD.

CENTRAL COAL & COKE CO.,
By J. H. MORRISON.

(Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1903. Dec. 30th, 1904. Keith. Exhibit "D." A. E. Neel, Notary Public. Identified. Chas. S. Keith.

Copy.

Memorandum of agreement between the Waters Pierce Oil Company (Incorporated under the laws of the State of Missouri, May 29th, 1900), the first party, and Central Coal & Coke Company, of Carson, La., second party.

Witnesseth: The first party agrees to furnish to the second party, when ordered by them, f. o. b. Carson, La., during a period of one year from the date of this agreement, the Oils and Greases hereinafter specified. It being understood and agrees, however, that the aggregate maximum quantity of each shall not exceed 35 bbls. of Cylinder Oil; 125 bbls. of Engine Oil; 35 bbls. of Black Oils; 10 bbls. of Grease; and 240 bbls. of Refined Oils, without the consent of the first party, at and for the following prices to-wit:

1415

| | Cts. per gal. in wood bbls. | Cts per gal. in iron bbls. or drums. |
|---|---|---|
| No. 66 Cylinder Oil | 34¼ | |
| No. 8 " " | 33¼ | |
| Red Engine | .... | 18¾ |
| Castor Mchy. Oil | .... | 18¾ |
| Black Oils | .... | 9½ |

Golden Axle Grs. 3½¢ per lb. 25# pails $9.75 per dozen.

Cut Grs. Bbls. or ½ bbls. 6¢ per lb. 25# drums 7¢ per lb.

| | |
|---|---|
| Brilliant Oil Beaumont | 10½ |
| Prime White Corsicana | 12½ |
| Water White | 14½ |
| Eupion | 16½ |

The wooden barrels will be of the capacity of about fifty (50) gallons each. In the event any of said Oils are delivered on orders of the second party in half-barrels, then the second party shall pay for the same at the rate of three (3) cents per gallon in excess of the wooden-barrel prices, and if in five (5) or ten (10) gallon cans or cases, then at the rate of seven (7) cents per gallon in excess of the wooden-barrel prices specified above.

The first party agrees and guarantees that the said Oils and Greases shall be of uniform quality, and at all times up to their regular standard.

The first party further agrees, that if at any time during the term of this contract there should be a decline in the Company's schedule of selling prices of said Oils and Greases below the above mentioned prices, then the second party shall have the benefit of such decline.

The second party agrees to receive, and pay the first party for, all of said Oils and Greases delivered hereunder, at the prices aforesaid.

Settlement for all supplies of Oils and Greases sold and delivered to the second party by the first party to be made 60 days or 2% off for cash in 10 days.

The second party agree that whenever any of said Oils are delivered to them in iron drums or iron barrels, the said drums and barrels shall be promptly emptied and returned free of cost
1416 to the first party F. O. B. Carson, La., that all iron drums and iron barrels which are not so returned, shall be charged to and paid for by the second party, at their cost price to the first party, and that the second party shall pay to the first party for all damages beyond ordinary weat which any of said iron drums and iron barrels may sustain while they are in the possession of the second party.

The Second party agrees to purchase from the first party all of said kinds of Oils and Greases required by them for their own consumption during the term of this agreement, up to the maximum quantity hereinafter specified. Provided, however, that the second party shall not be required to order, nor the first party be required to deliver, more of said Lubricating Oils and Greases than the second party can use in their plant at Carson, La. during said term.

Executed at Shreveport, La., this 30th day of December, 1903.

WATERS PIERCE OIL COMPANY,
Signed by J. H. LITTLEFIELD.
CENTRAL COAL & COKE COMPANY,
Signed by J. H. MORRISON.

Supplied from Lake Charles, La.
Local rate —— cts. per cwt.

(Endorsed:) Waters Pierce Oil Co. Dec. 30th, 1903. Dec. 30th, 1904. Carson, La. "Exhibit "E." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

1417 *Contract.*

This agreement made this 30th, day of January, 1905, by and between Central Coal & Coke Co., Carson, La., and the Bonner Oil Company, of Houston, Texas, as follows:

In consideration of Central Coal & Coke Company buying their entire supply of lubricating and Illuminating Oils and Greases for a period of one year, commencing 30th day of January, 1905, from the Bonner Oil Company, the Bonner Oil Company agrees to sell oils for the following prices and terms.

Terms: 2 Per Cent. off in 30 days.

| | | | | | |
|---|---|---|---|---|---|
| Bayou City Valve | At | 50 | cents | per | Gallon |
| Climax Cylinder Oil | " | 40 | " | " | " |
| New Era Valve Oil | " | 29 | " | " | " |
| Dark Valve Oil | " | 25 | " | " | " |
| King Cylinder Oil | " | 28 | " | " | " |
| Extra Castor Machine Oil | " | 18 | " | " | " |
| Climax Engine Oil | " | 22 | " | " | " |
| "B" Engine Oil | " | 18 | " | " | " |
| Red Engine Oil | " | 17 | " | " | " |
| Summer Black Oil | " | 08 | " | " | " |
| Winter Black Oil | " | 08 | " | " | " |
| Beaumont Pirme White Oil (Barrel Wood) | " | 10 | " | " | " |
| Corsicana Prime White Oil " " | " | 11 | " | " | " |
| Corsicana Water White Oil " " | " | 12 | " | " | " |
| National Light Oil " " | " | 14 | " | " | " |
| Axle Grease (Barrels) | " | 2¼ | ¢ " | " | Lb. |
| Axle Grease (Pails) | " | 3¼ | " | " | " |
| Cup Grease (Barrels) | " | 05 | " | " | " |
| Cup Grease (Pails) | " | 06 | " | " | " |

Our Letter of December 27th, 1904, referring to guarantee, to be a part of this contract.

Remarks: The above price F. O. B. Carson, La., and the Bonner Oil Company agrees to pay 50 cents for Lubricating Oil Barrels and $1. for Illuminating Oil Valves, f. o. b. Mill.

All oils are guaranteed to give perfect satisfaction.

BONNER OIL COMPANY,

(Signed) Per J. S. BONNER.

CENTRAL COAL & COKE COMPANY,

(Signed) By THOS. MACKIE, *Gen'l Purch. Agent.*

Approved:

W. C. PERRY, *Vice Presd.*

1418 (Endorsed:) Bonner Oil Co. Jan'y 30th, 1905. Jan'y 30th, 1906. Carson. Exhibit "F." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

*Contract.*

This agreement made this 30th day of January, 1905. By and between the Central Coal & Coke Co., Neame, La., and the Bonner Oil Company, of Houston, Texas, as follows:

In consideration of Central Coal & Coke Co. buying their entire supply of Lubricating and Illuminating Oils and Greases for a period of one year, commencing 30th day of January, 1905, from the Bonner Oil Company, the Bonner Oil Company agrees to sell oils for the following prices and terms.

Terms: 2 Per cent. off in 30 days.

| | | |
|---|---|---|
| Bayou City Valve Oil | At 50¢ | Per Gallon |
| Climax Cylinder Oil | 40¢ | " " |
| New Era Valve Oil | 29¢ | " " |
| New Dark Valve Oil | 25¢ | " " |
| King Cylinder Oil | 28¢ | " " |
| Extra Castor Machine Oil | 18¢ | " " |
| Climax Engine Oil | 22¢ | " " |
| "B" Engine Oil | 18¢ | " " |
| Red Engine Oil | 17¢ | " " |
| Summer Black Oil | 08¢ | " " |
| Beaumont Prime White Oil (Wood Barrels) | 10¢ | " " |
| Corsicana Prime White Oil " " | 11¢ | " " |
| Corsicana Water White Oil " " | 12¢ | " " |
| National Light Oil " " | 14¢ | " " |
| Axle Grease (Barrels) | 2¼¢ | Per Pound |
| Axle Grease (Pails) | 3¼¢ | " " |
| Cup Grease (Barrels) | 05¢ | " " |
| Cup Grease (Pails) | 06¢ | " " |
| Winter Black Oil | 08¢ | Per Gallon |

1419 Our letter of December 27th, 1904, referring to guarantee, to be a part of this contract.

Remarks: Above prices are F. O. B. Neame, La., and the Bonner Oil Co., agrees to pay 50 cts. for Lubricating Oil Barrels and $1.00 for illuminating Oil Barrels, F. O. B. Mill.

All Oils are guaranteed to give perfect satisfaction.

BONNER OIL COMPANY,
Per J. F. BONNER.
CENTRAL COAL & COKE CO.,
By THOM. MACKIE,
*Gen. Purchasing Ag't.*

Approved
W. C. PERRY, *Vice Pres.*

(Endorsed:) Bonner Oil Co. Jan'y 30th, 1905. Jan'y 30th, 1906. Neame. Exhibit "G." E. A. Neel, Notary Public. Identified, Chas. S. Keith.

*Contract.*

This agreement made this 30th day of January, 1905, by and between Louisiana & Texas Lumber Co., Kennard, Texas, and the Bonner Oil Co., of Houston, Texas, as follows:

In consideration of Louisiana & Texas Lumber Co., buying their entire supply of Lubricating and Illuminating Oils and Greases for a period of one year, commencing 30th day of January, 1905, from the Bonner Oil Co., the Bonner Oil Co., agrees to sell Oils for the following prices and terms:

Terms: 2 per cent. off in 30 days.

| | | | |
|---|---|---|---|
| 1420 | Bayou City Valve | @ 50¢ | per gallon. |
| | Climax Cylinder Oil | @ 40¢ | " " |
| | New Era Valve Oil | @ 29¢ | " " |
| | Dark Valve Oil | @ 25¢ | " " |
| | King Cylinder Oil | @ 28¢ | " " |
| | Extra Castor Machine Oil | @ 18¢ | " " |
| | Climax Engine Oil | @ 22¢ | " " |
| | "B" Engine Oil | @ 18¢ | " " |
| | Red Engine Oil | @ 17¢ | " " |
| | Summer Black Oil | @ 08¢ | " " |
| | Winter Black Oil | @ 08¢ | " " |
| | Beaumont Prime White Oil (Wood Barrels) | @ 10¢ | " " |
| | Corsicana Prime White Oil " " | @ 11¢ | " " |
| | Corsicana Water White Oil " " | @ 12¢ | " " |
| | National Light Oil " " | @ 14¢ | " " |
| | Axle Grease (Barrels) | @ 2¼¢ | per lb. |
| | Axle Grease (Pails) | @ 3¼¢ | " " |
| | Cup Grease (Barrels) | @ 05¢ | " " |
| | Cup Grease (Pails) | @ 06¢ | " " |

Our letter of December 27th, 1904, referring to guarantee to be a part of this contract.

Remarks: The above prices F. O. B. Kennard Mills, Texas, and the Bonner Oil Co., agrees to pay 50 cts. for lubricating Oil Barrels and $1.00 for Illuminating Oil Barrels, f. o. b. mill.

All oils are guaranteed to give perfect satisfaction.

BONNER OIL COMPANY,
Per J. S. BONNER.
LOUISIANA & TEXAS LUMBER COMPANY,
By THOS. MACKIE, *Gen'l Pur. Ag't.*

Approved:
W. C. PERRY, *Vice Pres.*

(Endorsed:) Bonner Oil Co. Jan'y 20th, 1905. Jan'y 30th, 1906. Kennard. Exhibit "H." E. A. Neel, Notary Public. Identified. Chas. S. Keith.

1421 Copy.

*Memorandum of Agreement*

made by and between: Louisiana & Texas Lbr. Co., Kansas City, Missouri, party of the first —, and Standard Oil Company, a corporation organized under the laws of the State of Indiana (Lubricating Department), party of the second part, whereby the party of the first part agrees to buy from party of the second part all the Petroleum Oils and Greases, and also, such other products as are named in the list below, which the party of the first part may use in its plant,—but not for sale, for One (1) year from Jan. 1st, 1906, *190–*, at the following prices for the goods named: the maximum quantity of each grade not to exceed the number of barrels mentioned as estimated Yearly Consumption, without the consent of the party of the second part.

It is understood that this agreement does not include any Oils to be used for fuel or Illuminating purposes, except where such Oils are burned in Torches and Miners' Lamps.

| Estimated yearly consumption. | | | Prices. Cts. per gallon. | Estimated yearly consp. | | | Prices. Cts. gal. |
|---|---|---|---|---|---|---|---|
| — | Bbls. | Red V Cylinder..... | | | Bbls | Arctic Engine..... | |
| — | " | 600 W Cylinder..... | 70—17 % | | " | Vacuoline. ..... | |
| — | " | Rarus Cylinder..... | | | " | V. Dynamo..... | |
| — | " | 20th Cen. Cylinder.. | | | " | Heavy Machine.... | |
| 40 | " | Capitol Cylin-er.... | 36 | | " | Arctic Machine.... | |
| — | " | Vax Cylinder Oil.... | 55—17 % | 100 | " | Renown Engine ... | 25½ |
| — | " | #8 Cylinder Oil ... | 30 | | " | Str. Gas Engine ... | |
| — | " | #66 Cylinder Oil.... | 31 | | " | Eldorado Castor ... | |
| — | " | Dark Valve Oil..... | 28 | | " | Eldorado Engine .. | |
| — | " | | | | " | Atlantic Red ..... | 9½ |
| — | " | | | | | Euc. Red Engine .. | 15 |
| — | " | | | | " | Gratiot Cas. Mach.. | 15½ |
| 40 | " | Summer Lub. Oil #2. | 7 | | | | |
| — | " | Winter Lub. Oil #2. (Wood Barrels.) | 8 | | | Greases. | Cts. lb. |
| 250 | | Prime White..... | 9 | 10 | Bbls. | Arctic Cup ..... | 4 |
| — | | Eupion Oil..... (Iron Barrels.) | 11 | Hf. | " | Arctic Cup ..... | |
| | | | | | Tins | Arctic Cup ..... | |
| | | | | | Bbls. | Standard Carnk Pin. | |
| | | | | | " | #1 Arctic Campb... | |
| | | | | | | Mica Axle Grease.. | |
| | | | | 5 | " | Golden Ax. Grease. | 2½ |

Above prices are in bbls., f. o. b. Kennard, Texas.

1422 If taken in half-barrels 2 cents per gallon will be added to barrel price; if taken in 10-gallon cans 8 cents per gallon will be added to barrel price; if taken in five-gallon cans 10 cents per gallon will be added to the barrel price. If party of the first part furnishes cars, 3 cents per gallon will be added to barrel price to cover cost of filing same.

Terms: 60 days from date of invoice, subject to discount of one (1) per cent. for cash in ten days, payable in New York or Chicago Exchange.

All orders will be filled with reasonable promptness, but fires, strikes, differences with workmen, or any unavoidable cause beyond the control of the party of the second part, shall excuse delay in filling orders.

If, during the life of this Agreement, the financial responsibility of the party of the first part becomes impaired or unsatisfactory to the party of the second part, cash payments with above discount, or satisfactory security may be demanded by the party of the second part.

The party of the second part agrees to furnish the above named goods on the terms and at the prices stated, guaranteeing said goods to be uniform in quality, and, at all times, up to their standards.

Date of Execution: January 31st, 1906.
Town: Kansas City.
State: Missouri.
Business: Coal & Lumber.
Salesman: C. W. Mayer.

(Signed) STANDARD OIL CO.,
Per C. W. MEYER,
*Mgr. La. & Texas Lbr. Co.,*
By CHAS. S. KEITH, *G. M.*

Approved as to form:
DAN'L B. HOLMES, *Gen. Att.*

(Endorsed:) Standard Oil Co. Jan'y 31st, 1906. Dec. 31st, 1906. Kennard. Exhibit "I." E. A. Neel, Notary Public. Identified. Chas. S. Keith. No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

1423 *Memorandum of Agreement*

Made by and between Central Coal & Coke Company of Kansas City, Missouri, party of the first, and Standard Oil Company, a corporation organized under the Laws of the State of Indiana (Lubricating department), party of the second part, whereby the party of the first part agrees to buy from party of the second part, all the Petroleum Oils and Greases, and also, such other products as are named in the list below, which the party of the first part may use in its plants, but not for sale, for One (1) year from January 1st, 1903, at the following prices for the goods named; the maximum quantity of each grade not to exceed the number of barrels mentioned as Estimated Yearly Consumption, without the consent of the party of the second part.

It is understood that this Agreement does not include any oils to be used for fuel or Illuminating purposes, except where such Oils are burned in Torches and Miners' Lamps.

Q. Changes, however, were made in the——
A. Some changes in the restaurant, I believe.
Q. The restaurant was abolished?
A. Yes, sir, and rooms were rented that we had on the eighth floor.
Q. They were sub-let?
A. Yes, sir, and things of that kind.
Q. The size of the office was reduced—that is, the rooms were reduced?
A. Yes, sir.
Q. There were some changes in the heads of departments, were there not?
A. I was trying to think about that. I don't recollect now just what they could be. I think there was a change in the accounting department. Mr. Gruet resigned during that time—he left
1450 the company.
Q. And Mr. Backus was appointed controller?
A. Yes, sir.
Q. Some transfers were made of employees from one department to another, were there not?
A. Yes, I think there was.
Q. And some employees were let out?
A. Yes, I think there were.
Q. Now, were there any other changes in the policy of the company, so far as the conduct of the business was concerned, made by Mr. Tinsley while he was here?
A. I don't know of any.
Q. Do you remember of his making a change in the manager of the Oklahoma division?
A. That change was made, yes, sir, during the time he was here. I think it had been talked about, though, for a good while before; it was consummated during his time here as vice president.
Q. Mr. Hathaway, the old manager, was let out, and Mr. Ebie was appointed in his place?
A. Yes. Mr. Hathaway was retired with a regular monthly compensation.
Q. There was a change made?
A. He was not discharged from the company—not let out entirely, you understand. He was retired on pay.
Q. On reduced pay?
A. Yes, sir.
Q. There was a change in the manner of keeping the books and accounts?
A. Well, I suppose there was. I have heard in a general way about that, changes in the reports and the manner of keeping the books, but that was not my department and I never bothered myself with it.
1451 Q. There was a change also in the Mexico Division, wasn't there, in the management of that Division?
A. Yes, I think there was. I think that occurred while he was here.

Q. Now, do you recollect any other?

A. There have been so many changes there that it was difficult to tell under whose direction they were made.

Q. Mr. Ryder, the manager in Mexico, resigned?

A. Yes, sir.

Q. And Mr. Cole was appointed?

A. Yes, sir, and there have been one or two changes since then.

Q. Do you know of any other changes made in Mexico in the personnel of the employees?

A. At that time, while Mr. Tinsley was here?

Q. At that time?

A. Several people left and went with Mr. Ryder, that were——

Q. When he quit?

A. When he quit. I don't recall now the names, just who they were.

Q. Do you recall any other changes that were made while Mr. Tinsley was here?

A. Among the employees?

Q. In any way, in the management of the company's business?

A. Why, no, I do not now—I don't recollect any.

Q. While Mr. Finlay was absent on sick leave, Mr. Tinsley acted as president of the company?

A. Yes, he was ranking officer at that time.

Q. Isn't it a fact that all that time Mr. Gruet was a member of the board of directors—during the time that he was a member of the board of directors he co-operated with Mr. H. C. Pierce in the management of the company's business?—the present company, I mean—with you and the other officers and directors here?

1452 A. Yes, sir, just the same as we did.

Q. Isn't it a fact that the present company has always been run as an independent company by its officers and directors?

Mr. ALLEN: We object to that as a conclusion, and not the statement of facts.

The COURT: The objection is sustained.

Judge PENN: Defendant excepts.

Q. So far as you know, the company has always confined its operations within the territorial limits that the old company was doing business in at the time of its dissolution?

A. I know of no change in that respect.

Judge STEDMAN: I don't see anything else we want.

Mr. ALLEN: Well, we offer some of the crosses in connection with what they offer. It's on page 297.

Q. Isn't it a fact that after Mr. Tinsley came out here and was elected as vice president of the Waters Pierce Oil Company and put upon the board of directors, and after he had assumed the active management or, as Mr. Pierce puts it, usurped the management of the Waters Pierce Company—isn't it a fact that he had rescinded a lot of things that had been done by the former board of directors? Did you not have meetings at which he dictated the

rescinding of numerous actions that had been theretofore taken by the board of directors? Isn't that a fact?

A. There was something of that kind done in connection with some committees, yes.

Q. He abolished the executive committee that you people had originally inaugurated, didn't he?

A. Well, I can't say that he did.

Q. Well, he had it done?

A. It was done by——

1453 Q. Done at his instance?

A. Done by the board of directors.

Q. Who composed that board that did that?

A. He was here; he was president.

Q. Who was present at the time it was abolished?

A. Mr. Tinsley, Mr. Finlay and myself.

Q. Didn't Mr. Tinsley dictate that that should be done, and you and Mr. Finlay acquiesced in it?

A. Well——

Q. Those are the facts, aren't they? Didn't he keep nagging and nagging at Mr. Finlay about things of that sort until he actually drove him away, physically?

A. I wouldn't swear to that. That statement has been made, but I wouldn't swear to it.

Q. You don't want to make that statement as a representative of the Standard Oil Company?

A. I don't want to make that statement personally.

Mr. ALLEN: Now, then, next is re-cross examination on page 302.

Q. Mr. Adams, it is a fact, is it not, that before Mr. Tinsley came here there was an executive committee that had general control of the business of the company, and that they fixed the prices at which the oil should be sold? That is a fact, isn't it? They passed finally upon it?

A. Yes, I think so.

Q. And after he came here he had that committee abolished?

A. It was abolished, yes.

Q. And then, during the time that he was here, the prices were fixed by the executive officers of the company?

A. Yes, sir.

Q. Now, this man Backus that you speak of who had been

1454 put in as controller—he came direct from the Standard Oil Company?

A. I think he had been in their employ previous to coming here.

Q. And Mr. Ebie, also, who went as manager of the Oklahoma Division?

A. It is my recollection that he did, yes, sir.

Q. Mr. Coale,—where did he come from?

A. He came from Cleveland.

Q. He was in the employ of the Standard Oil Company of Ohio at Cleveland?

A. I don't know.

Q. That is your information, isn't it?

A. I don't know whether he was with them then or not.
Q. He had been with them? You know he had been with them?
A. I know that the Coale family in Cleveland were with them. Whether he had worked for them or not, I don't know.

Judge STEDMAN: Now, we will read another portion of it.

Q. Mr. Backus has been discharged from the company's employ, hasn't he?
A. Yes, sir.
Q. And Mr. Coale has been discharged from the company's employ?
Q. The persons selected by the present management to succeed them are in charge of those offices, are they not?
A. Yes, sir.
Q. And those departments of the company's business?
A. Yes, sir.
Q. What are the functions of the executive committee? What duties do they perform?
A. Well, they pass on the appropriations for expenditures, for additional plants, and equipments and things of that kind.
1455 Q. I don't care about the details.
A. On the prices.
Q. Isn't it a fact that the different heads of departments, who themselves were members of that committee, refer to the committee questions arising in their different departments for the advice of all the committee?
A. Yes, sir, most all important matters, aside from the routine matters, which they attend to currently as they come up.
Q. The committee considered them and passed upon them and left them for the president, who finally determined on what action should be taken?
A. Yes, sir.

Judge PENN: If the Court please, we will ask at this time to be permitted to read the balance of the depositions of Clay Arthur Pierce and A. M. Finlay which the plaintiff read from a few days ago.
The COURT: I know of no reason why you should not read it when your time comes.
Judge STEDMAN: May it please Your Honor, I don't wish to be in the attitude of being unduly persistent, but I would like to make a statement to the Court in reference to our offer to read the omitted portions of the depositions of the witnesses A. M. Finlay and Clay Arthur Pierce. A few days ago—I don't remember exactly—when the State read portions of the depositions of those witnesses it was our intention immediately upon the State's concluding the reading of those depositions, to read parts that had been omitted, but it happened that the State closed, if I remember correctly, at the adjourning time on a certain afternoon. Our time for offering the
1456 remaining portions was next morning. When I came in the court-room I discovered that Judge Penn, who had these depositions with the portions marked that had been omitted, in his grip—had not arrived. I then received a telephone message from

Judge Penn that his watch had stopped and that he would be here as soon as he could, and asked if the Court and counsel and jury were all here. Without inviting attention to that matter, I made no suggestion and just let the Court proceed with the regular order without reference to these portions of the depositions. Now, we think, may it please Your Honor, that we should have then been entitled to read the omitted parts, and we should have done so but for the facts that I have stated. We think that we ought to have a right to read them now, for the reason that those parts that were not read by the State are portions of the depositions of the witnesses as well as parts that were read, and that it is proper now that the entire depositions should go before the jury before the State concludes the introduction of its testimony, and we request the Court to now permit us to read the portions of the testimony of these witnesses which were not read by the State.

Mr. ALLEN: Those were the depositions they took themselves, and we read the cross examination where we drew out certain facts.

Mr. BATTS: We don't understand really that they have got any right to make out their case as we go along, anyhow.

The COURT: The reason the Court has permitted counsel for defendant to offer the remaining portions of depositions that the State has offered other portions from, was that the jury might get it connected at one time—have the whole deposition before them. These two depositions mentioned were read by the State—that is, the portions the State desired to read—and, without reference to whether it was any fault on the part of counsel for defendant or not, the fact remains that the other part was not read then. The introduction of other evidence has intervened, the reading of other
1457 depositions has intervened, and no good purpose would be subserved now in reading these portions of the depositions. The jury will not get the entire depositions because of the lapse of time. I understand that the State is about to close its case, and I will permit it to do so without going back and reading parts of depositions the other parts of which were read several days ago.

Judge STEDMAN: We except, Your Honor.

C. P. ACKERT, a witness for the plaintiff, testified as follows:

(Examination by Mr. BATTS:)

Q. Mr. Ackert, you are general manager of the Waters Pierce Oil Company?

A. I am.

Q. How long have you occupied that position?

A. Since July 1, 1903, I think.

Q. What were your duties prior to that time?

A. I was assistant general manager.

Q. Performing the same duties that you now perform as general manager?

A. No, sir.

Q. Well, prior to the time that you were assistant general manager, were you in fact at any time manager of the company?

A. Yes, sir—of the whole company?

Q. Yes, sir, of the whole company?
A. No, sir.
Q. Isn't it a fact that you performed the duties of general manager for a while prior to the time you were designated as assistant manager?
A. Not the duties, no, sir, altogether.
1458 Q. When did you first become connected with the Waters Pierce Oil Company?
A. In March, twenty-three years ago; in March, 1884, I believe.
Q. How long have you been with the company at St. Louis?
A. Almost thirteen years.
Q. Beginning there, then, about 1893?
A. Yes, sir.
Q. What were your first duties there?
A. I was assistant manager in the lubricating department.
Q. And that employment continued up to what time?
A. About five years.
Q. Then what was your position?
A. I was practically up to that time—up to the time that I was appointed general manager.
Q. Practically assistant in the lubricating department?
A. I was assistant in the lubricating department up to the time I went in with——
Q. Now, isn't it a fact that before you were appointed general manager that you discharged the duties of a general manager?
A. Before I was appointed general manager?
Q. Yes, before you got that title?
A. No, sir.
Q. From the time of the—just antecedent to the reincorporation what were your duties.
A. As I remember, now, I was in Mr. Andrew Finlay's office.
Q. Doing what?
A. Doing some corresponding, looking after some Mexico matters.
Q. Now, upon the reincorporation were your duties in any sense changed?
A. No, sir.
Q. Continued to perform the duties you had theretofore performed?
1459 A. I did.
Q. Upon the same salary?
A. Yes, sir.
Q. In the same room?
A. Yes, sir.
Q. At the same desk?
A. I think so.
Q. And that continued up to the time you were appointed general manager in 1903?
A. What do you mean?
Q. I mean the employment you were then engaged at.
A. Yes, sir.
Q. Without any change?
A. In title?

Q. In title or change in fact?

A. I have forgotten now whether there was any change in title; I was appointed to the present place on July 1st, 1903—the title.

Q. Well, did your duties as general manager begin prior to that time?

A. No, sir, they did not.

Q. They were concurrent with your appointment as general manager?

A. Yes, sir.

Q. Now, what are your duties as general manager?

A. General correspondence with all the division managers, looking after the marketing of our oils, placing of agents, and so forth.

Q. Employment—hiring of employees?

A. In part, yes, sir.

Q. Fixing of salaries?

A. In part.

Q. Determining the prices of oil at points where you have competition?

A. At all points.

1460 Q. At all points. Do you know the parts of the United States that the Waters Pierce Oil Company was doing business in prior to the reorganization or reincorporation?

A. Yes, sir.

Q. Do you know the line that divided what was called Standard Oil Company territory from the Waters Pierce Oil Company territory?

A. I knew where we were doing business.

Q. Well, I will ask you again, if you know the line dividing the territory?

A. I could not draw a line, no, sir.

Q. You know where you were doing business and where the Standard Oil Company was doing business?

A. I know all the towns we were doing business in.

Q. And where the Standard Oil Company was doing business?

A. Well, I assume they were doing business. All I know is where our agencies were.

Q. You have given testimony heretofore with reference to this matter, have you not, in the case in Missouri?

A. Yes, sir.

Q. In that you stated, did you not, that you knew where the Standard Oil Company was doing business and where the Waters Pierce Oil Company was doing business and the dividing line between them?

A. As I stated, I think, that I knew where all our agencies were. As far as the dividing line was concerned, I don't think I could draw any imaginary line.

Q. Now, in appointing agents, you tell him where he shall do business and where he shall not, do you not?

A. No, sir, I don't know as I do. I think that the division manager understands that; he knows where his agencies are.

Q. You then, give no instructions to division managers or any-

body else with reference to the points at which you are doing
1461 business and with reference to where the Standard Oil Company is doing business?

A. I don't remember that I have.

Q. Did you or not so testify in the case to which I have referred?

A. Testify what?

Q. Did you so testify in the case to which I have referred—that you had communicated to your managers and your agents and employees where the line was?

A. I don't remember that I did.

Q. You don't reny that you did?

A. I could not say positively.

Q. Has there been any change since the reincorporation?

A. In what?

Q. In the matter of the line between the Standard Oil Company and the Waters Pierce Oil Company?

A. Not that I know of.

Q. You know of none?

A. I don't know of any.

Q. As general manager it is a part of your business, isn't it, to extend the business of the Waters Pierce Oil Company into any territory that may need increased facilities or need oil, is that true or not?

A. Yes, sir.

Q. Have you since the reincorporation made any extensions over this line between the Standard Oil Company and the Waters Pierce Oil Company?

A. Our extensions have been entirely tributary to the agencies which we already had.

Q. Well, do you mind answering the specific question I put? Have you or not made any extensions into the territory that had been theretofore claimed by the Standard Oil Company?

1462 A. I don't know that I have, no, sir.

Q. Well, you know that you have not?

A. I don't know of any.

Q. You don't know of any?

A. No, sir.

Q. You have not then, at any time since the reincorporation invaded Standard Oil Territory?

A. Not that I know of.

Q. And you don't know of the Standard Oil Company at any time coming into your territory?

A. Yes, sir.

Q. Where?

A. In Louisiana.

Q. In Louisiana?

A. Yes, sir.

Q. Whereabouts?

A. Shreveport, Lake Charles—eight or ten points in Louisiana.

Q. Now, when was that Mr. Ackert?

A. Oh, a year ago—about a year ago.

Q. When?

A. About a year ago.
Q. Since the institution of the suit in Missouri against the Waters Pierce Oil Company?
A. I could not say—just about a year ago.
Q. Now, how did you happen to find it out?
A. I found it out from our manager in that division.
Q. He reported that the Standard Oil Company was invading your territory?
A. Yes, sir.
Q. What did you do?
A. We immediately went after it, the same as any other competitor.
1463 Q. Well, you referred that to 26 Broadway?
A. No, sir.
Q. Didn't make any report to Mr. McNall, or your commercial agent up there?
A. No, sir.
Q. Made no protest to the Standard Oil Company?
A. Not that I know of.
Q. Well, you took the matter up at executive meetings, did you not?
A. I don't know that I did.
Q. Well, I asked you if you did or not?
A. No, sir, I did not.
Q. To whom did you report the fact that you had found out that the Standard Oil Company was invading territory which had been agreed that the Waters Pierce Oil Company should alone be in?
A. Mr. C. A. Pierce, president of the company.
Q. You reported to him?
A. Yes, sir.
Q. Now, what did you and Mr. Pierce do with reference to it?
A. We immediately put in some more salesmen in Louisiana and went after the business.
Q. How did you go after the business?
A. Just the same as we would any other competitor.
Q. Reduced prices?
A. If they reduced their prices and it was necessary for us to secure business to reduce prices, we did it; in many cases we didn't have to do it.
Q. Now, after the suit was instituted in Missouri and the Standard Oil Company invaded your territory in Louisiana you put out more men and additional equipment and where necessary lowered prices to meet the competition of the Standard Oil Company?
A. Yes, sir.
1464 Q. Now, then, they haven't come into the State of Texas, have they?
A. Not that I know of.
Q. And you haven't found it necessary to increase your equipment on account of Standard Oil competition?
A. No, sir, not——
Q. Or increase the number of your men?
A. No.

Q. Or lower your prices on account of Standard Oil Company competition in Texas?

A. No, not on account of Standard Oil Company, because in Texas we meet conditions as they come up and as rapidly as they develop.

Q. I say, you have not done any of these things on account of Standard Oil Competition in Texas?

A. No, sir, our present equipment warrants not doing that.

Q. Now, what character of claim does the Standard Oil Company make with regard to its right under the agreement with the Waters Pierce Oil Company to go into that territory?

A. I don't know; I have never discussed that part of it.

Q. You don't know what is the basis of their claim to disregard the agreement as to territory?

A. I don't have any idea.

Q. Have you no idea of what it is?

A. No, sir.

Q. The result of their competition in Louisiana, isn't it that there here been a general lowering of prices?

A. In some places, yes, sir.

Q. You have also been compelled to put in a better quality of oil over there?

A. No, sir.

Q. What do you put in over there?

A. It's Prime White and Eupion.

1465 Q. Where do you get that?

A. From the same plants that we get it in Texas.

Q. That is to say, you put in Chaison Eupion?

A. No, sir.

Q. You don't use that?

A. No, sir.

Q. Can't use that over there?

A. No, sir.

Q. Well, can you use it over there?

A. No, sir, I don't think we can.

Q. That would be the easiest point to get it, wouldn't it?

A. That or Corsicana.

Q. Well, it would be cheaper to get it from Chaison?

A. Well, I don't know; I could not say whether it was cheaper or not or better.

Q. It is nearer the field, isn't it?

A. Yes, sir, some parts.

Q. Now, you haven't found it necessary to get a better grade of oil than that which you can get at Corsicana or Chaison on account of Standard Oil Company competition in Louisiana?

A. The oil we have always furnished there is the best that can be obtained.

Q. Well, I am asking you, you still furnish this oil you get at Corsicana and at Chaison to your Louisiana trade, do you?

A. We get the best oil we can obtain.

Q. Now, will you answer my question?

A. What kind of oil that we get at Chaison, do you refer to?

Q. Well, I am talking of what you call Eupion.
A. No, sir, we get no Eupion oil at Chaison.
Q. You don't furnish any Eupion oil from Chaison to the Louisiana trade?
1466 A. No, sir.
Q. It is a fact, isn't it, that you have at times in the past gotten some of this inferior oil at Chaison and used it for Eupion?
A. Not that I remember of; we may have gotten a few tanks, but it was not continued; I could not say positively on that.
Q. You were notified, were you not, by the East Texas division manager that the Eupion oil was even worse than the Corsicana S. W. 112?
A. I don't remember that I have.
Q. The Central Texas man—you don't remember that your attention was called——
A. We were talking about Louisiana, weren't we?
Q. Well, I am asking you about the Central Texas man now, if he didn't so notify you?
A. The question, please?
Q. I asked you if the Central Texas man didn't notify you that the oil you got from Chaison and you were selling as Eupion was inferior even to Corsicana S. W. 112?
A. We may have shipped a few tanks in there, but it was discontinued at once on statements by him.
Q. Well, did you have a few tanks?
A. Yes, sir.
Q. Now, you did continue to ship into Louisiana this Texas oil, notwithstanding Standard Oil Company competition?
A. That and the Neodesha or Sugar Creek or the Northern refineries for Eupion.
Q. Now, does the Standard Oil Company also get its oil from Neodesha and Sugar Creek and ship into Louisiana?
A. I could not say.
1467 Q. It doesn't go out in the same car—a shipment to the Standard Oil Company doesn't get into the same car?
A. No, sir, absolutely.
Q. How do you know?
A. Because our oil goes into our own tanks.
Q. What is your course of business in getting it there—how do you get it there?
A. In tank cars.
Q. If you want some Neodesha oil you make requisition on the Standard Oil Company for it?
A. That is handled in another department; I have nothing to do with that; I don't know who we place orders with.
Q. You don't know?
A. No, sir, I don't know; it is out of my department.
Q. You have no information except in your own department?
A. That's all.
Q. About the business of this concern. You have been there for many years?
A. In St. Louis about thirteen years.

Q. You don't know where they get the oil or how they get it?

A. I would like to testify on facts; I would not like to testify on hearsay.

Q. Well, as manager there, and as an officer of the company and as a member of the executive committee of that company, am I to understand that you don't know where oil is bought?

A. I know various refineries where it is bought.

Q. You know as much about that as you do that it is taken from Neodesha down into Louisiana?

A. I know that orders are placed on Corsicana refinery or Sugar Creek and Neodesha and any other place where we purchase our supplies, but I can't say further than that.

1468 Q. You place them yourself?

A. No, sir.

Q. How did you acquire that information?

A. I simply have knowledge that they are placed, but I don't place orders personally or in my department.

Q. Now, these other matters I have been interrogating you about, don't you know that in the same way, as to where you get it and who you get it from and prices that are paid for it?

A. That only in a hearsay way. That is out of my department, so far as the buying of our supplies.

Q. It's a part of the business plan of the concern, is it, to confine knowledge of the employees to their particular department?

A. Not altogether.

Q. But notwithstanding your long stay there and notwithstanding you are an important officer of the company and member of the executive committee, you don't know anything at all about the prices or from whom the oil is bought; is that true?

A. I have stated that the oil was bought from the Corsicana refinery and Neodesha and Whiting; they are placed on those refineries—I could not say with whom they are placed.

Q. They are filled from those refineries, you mean?

A. Yes, sir.

Q. Now, as far as the Corsicana refinery is concerned, you take the entire output there, do you not?

A. I could not say that definitely.

Q. Well, is that your information?

A. It is possible we do.

Q. Well, you know that is the case, do you not?

A. I could not say positively.

Q. You were so notified by your Central Texas division manager, are you not?

1469 A. He has made those statements, yes, sir; there may have been some changes since then—I don't know.

Q. You don't know?

A. I could not say positively.

Q. Now, isn't it part of your business as general manager up there to determine what shall be done with the output of the Corsicana refinery?

A. No, sir.

Q. Who does that?

A. Mr. A. M. Finlay.
Q. Without consulting you?
A. He may consult me at times.
Q. What do you do with that part of the output of the Corsicana refinery that you don't sell as Eupion oil?
A. As I understand it, they make two different grades there.
Q. You take it all?
A. I can't say; it is possible we do.
Q. Sir?
A. It is possible we do; I could not say definitely.
Q. You don't know, then, what is done with the balance of that oil?
A. I could not say definitely, no, sir.
Q. Now, don't you acquire any information up there by reason of your connection with the company—what is your information about it?
A. As to what?
Q. As to what is done with the balance of the output of the Corsicana refinery?
A. I could not say.
Q. You don't want to make any statement about it?
A. I could not say.
1470 Q. You don't know about that?
A. I could not say.
Q. When did you learn that the Standard Oil Company owned a majority of the stock in the Waters Pierce Oil Company?
A. Only so far as the papers—I have only seen it in the papers.
Q. You have no knowledge of that matter at all, then?
A. No, sir.
Q. You have never heard that discussed there by Mr. Pierce?
A. I have not, no, sir.
Q. Did you hear him discuss his stock ownership at any time?
A. I have not seen Mr. Pierce, only for a short time, in a long time.
Q. Yes, sir, but I didn't ask you that question.
A. I have not heard him discuss it.
Q. For a long time?
A. I have not heard him discuss it at all.
Q. You have never heard him make any statement about it?
A. No, sir.
Q. Didn't you make that statement in the other case?
A. I don't think I did; I don't remember.
Q. Now, who is the executive committee there?
A. Advisory committee?
Q. Executive committee?
A. We have an advisory committee.
Q. Have you an executive committee?
A. Not that I know of.
Q. Never have heard of the executive committee—never have heard of that?
A. Yes, sir.
Q. What became of it?

A. Why——

1471 Q. What became of the executive committee?

A. There is a committee.

Q. Well, there is an executive committee?

A. Well, there is a committee composed of the officers of the company.

Q. It is called the executive committee, isn't it—is it or is it not?

A. It is called the advisory committee.

Q. Well, it was formerly called the executive committee, wasn't it?

A. Might have been.

Q. Well, wasn't it?

A. It might have been.

Q. Well, you know it was, don't you?

A. Yes, there was an executive committee.

Q. Now, you have been a member of that advisory committee, haven't you?

A. Yes, sir.

Q. How long?

A. Since it was organized.

Q. Since its organization?

A. Yes, sir.

Q. The advisory or executive committee has before it very frequently communications from 26 Broadway, hasn't it?

A. I don't remember of any communications between St. Louis and 26 Broadway. We have now at 23 Broad Street a commercial agent.

Q. How long since you have had him there?

A. About fifteen months.

Q. Prior to that time you had men at 26 Broadway, didn't you?

A. I understand we did.

Q. Man that was on your pay-roll?

A. I could not say.

1472 Q. Don't know about that?

A. I don't.

Q. What was his name?

A. R. H. McNall.

Q. R. H. McNall. You had frequent communications from him, didn't you?

A. Me?—no, sir, I didn't.

Q. Did the company?

A. I presume they did, yes, sir.

Q. Officers of the company?

A. Naturally so, if he was our commercial agent.

Q. These matters were referred to the executive or advisory committee?

A. They were probably talked of in the committee.

Q. Then they came before the committee?

A. Probably so, yes, sir.

Q. Do you know who Mr. McNall was?

A. Do I know who he was?

Q. Do you or not?

A. I have never met the gentleman.

Q. What training had he with the Waters Pierce Oil Company prior to the time that he was appointed commercial agent?

A. I have never met the gentleman; I don't know anything about him or what training he might have had.

Q. Well, you know a number of gentlemen with the Waters Pierce Oil Company or know of them, that you have never met?

A. That I have never met?

Q. Yes.

A. I don't know of any now.

Q. Did you ever hear of Mr. McNall as an employee of the Waters Pierce Oil Company antecedent to the time he was designated
1473 as commercial agent?

A. No, sir, he was not in the employ of the company before that.

Q. Did you ever have any connection with him prior to that time?

A. Not any more than other men whom we employ.

Q. It's a rule to secure competent men by promotion, isn't it?

A. If we have them, otherwise we employ them on the outside.

Q. Now, your present commercial agent, where did you get him?

A. He was employed.

Q. He was an old employee?

A. No, sir, never had been an employee.

Q. Who employed him?

A. Mr. H. C. Pierce.

Q. Your other important officers, persons that conduct the general affairs of the company, have been people who have been raised up in the service and know something about it?

A. Part of them.

Q. Who have not?

A. Mr. Edward C. Stanley, the controller.

Q. Whose business is simply to audit accounts?

A. General finances of the company, handling reports of——

Q. Having nothing to do with the active business except keeping its accounts and its money?

A. He has some, yes, sir.

Q. Now, what training do you know of Mr. McNall having in the oil business prior to the time he was employed?

A. Only what I have heard and seen in the papers.

Q. Had he had any training at all?

A. I understand he had, yes, sir.

Q. You understand he was clerk in Mr. Tilford's office?

A. I have heard that and seen it in the papers.

1474 Q. Now, at the time he was employed, you didn't know anything at all about it, did you?

A. No, sir, no more than our present commercial agent.

Q. The executive committee didn't know anything about it?

A. No, sir, only he was employed by Mr. Pierce.

Q. Was that matter referred to the executive committee at all?

A. By whom?

Q. By Mr. Pierce?

A. No, sir, not until after he was employed.

Q. Now, the details of that business, such for instance as deter-

mining whether or not a rebate shall be given to the Rotan Grocery Company, is determined by the executive committee, isn't it?

A. It is considered there.

Q. Who determines it?

A. The Committee.

Q. The Committee?

A. Yes, sir.

Q. Whether or not a tank station shall be put in at any place is determined by the executive committee?

A. Yes, sir.

Q. As to whether or not a horse shall be bought is determined by the executive committee?

A. Yes, sir.

Q. But when you get a man to attend to your New York business, buy your supplies, buy all your oils and engines and everything of that sort, you don't take that into consideration in your executive committee?

A. Our present commercial agent, who was appointed in March, was employed on account of the death of the commercial agent we had had for about a year, and it was necessary to do it very
1475 quick, and Mr. Pierce arranged it personally and advised the committee of what he had done.

Q. The one preceding him was also arranged at 26 Broadway, wasn't it?

A. I don't know as it was.

Q. Well, was that matter up before the executive committee?

A. I don't remember.

Q. Did the executive committee consider whether it should discharge Mr. McNall and employ Mr. What's-his-name?

A. Mr. Rundel.

Q. Mr. Rundel?

A. I have forgotten; I could not say; at that time I was out of the country, I was in Mexico on business and I could not say.

Q. Those things are all put down in the minutes of the executive committee, are they not?

A. They may be.

Q. Well, do you know or not?

A. I could not tell you; I have not read any of the minutes or seen them.

Q. Don't you hear the minutes of the committee read?

A. I hear them read, yes, sir.

Q. How big a book is that, by the way?

A. I don't know as it's in a book.

Q. What is it?

A. Simply a memorandum kept of what is done.

Q. It is not put in a book?

A. No, sir.

Q. Is that volume of business so great that it could not be easily brought to Texas?

A. I could not say; I don't know anything about how it is kept; I simply hear it read.

1476 Q. Don't know anything about it, then?
A. No, sir.
Q. Now, tell us in a general sort of a way what this agent does at New York?
A. Attends to our shipments for Mexico, purchases stills, boilers, piping, for the supply of the refineries or for the refineries in Mexico. Attends to our shipping from there. Attends to crude oil, and any other matters which they may have up that is necessary to handle in New York.
Q. You have quite a good deal of business of that kind?
A. Yes, sir.
Q. Very necessary that you have somebody to attend to that?
A. Yes, sir.
Q. How did you get along during the time that testimony was being taken in the Hadley case and Mr. McNall was absent from New York?
A. I didn't know he was absent.
Q. His absence didn't so affect the business there that you didn't find out about it?
A. I was in Mexico at the time the testimony was taken.
Q. You were in Mexico and Mr. McNall was there?
A. I was down there in Mexico re-organizing the business in Mexico; I don't know where Mr. McNall was. Your information is the first I ever had that he was not——
Q. You did not know he was absent when Mr. Hadley was taking the testimony?
A. I did not.
Q. How did the company get along during that period?
A. I can't say; I didn't know he was absent.
1477 Q. Now, Mr. McNall during the time he was commercial agent there made all sorts of recommendations to you as to how you should conduct your business, didn't he?
A. No, sir.
Q. Didn't?
A. No, sir.
Q. You know his signature?
A. I don't think I would.
Q. Do you know that which is accepted by your office as his signature?
A. I couldn't say that I do; I have never had any correspondence with Mr. McNall.
Q. Well, I will ask you if that isn't Mr. McNall's signature?
(Hands letter to witness.)
A. Oh, I couldn't swear to it.
Q. That is what you accepted there as his signature? Haven't you seen hundreds of them?
A. I have seen them, but I couldn't say whether it is his signature or not.
Q. Well, it is R. H. McNall on Waters Pierce Oil Company's blanks, isn't it, and accepted as the signature of Mr. McNall in your office?
A. It may be.

Q. I am asking you if it isn't.

A. I have had no correspondence with Mr. McNall.

Q. I didn't ask you that; I asked you if that isn't that which is accepted as the signature of Mr. McNall in your office and the office of the Waters Pierce Oil Company at St. Louis, and is accepted by the executive committee of the Waters Pierce Oil Company at St. Louis as the signature of Mr. McNall, and acted on?

1478 A. If the letter came from Mr. McNall, I wouldn't know whether it is from him or some one else; I presume that is Mr. McNall's signature, but I couldn't swear to it.

Q. Well, I will ask you to specifically answer my question,—isn't that the same signature that is accepted by your office and by the executive committee as the signature of Mr. McNall in your office, in the St. Louis home office?

A. I have no correspondence in my office with Mr. McNall.

Q. I didn't ask you that.

A. It may be his.

Q. I didn't ask you that; I asked you if you didn't accept that as his signature?

A. I couldn't say.

Q. You didn't accept it?

A. I couldn't say, because I have never had any correspondence with Mr. McNall; it may be his name.

Q. You know it is his name, don't you?

A. That is his name, but I mean his signature; I couldn't swear.

Q. It is a fact, is it not, that when letters are received from Mr. McNall that they are passed around to you and other heads of departments and members of the executive committee?

A. There are no letters received from Mr. McNall.

Q. Well, they come to your office, do they not, and are they not passed around to you and other people there?

A. Sometimes they are.

Q. Well, now, when they are passed around there, do you accept that as his signature?

A. I have seen the signature before.

Q. Haven't you seen it a number of times before?

A. I have seen that signature before.

Q. And haven't you accepted that as the signature of Mr. McNall?

1479 Mr. ODELL: We object to that manner of examination, because the witness has stated time and again that he never saw Mr. McNall, didn't know Mr. McNall, didn't know his signature, and that he has had no correspondence with him.

The COURT: The objection is overruled.

Q. Well now, will you answer that?

A. (Question read by stenographer.) I can't say that I can swear that that is his signature.

Q. I didn't ask you to swear that; I asked you if you didn't accept that as his signature and act upon it?

A. It is possibly his signature; I have seen letters with that same signature before that came from our commercial agent.

Q. And you acted upon it as his signature?
A. We considered it as his signature.
Q. And acted upon it?
A. I don't know that we did; that was a matter for the executive committee to decide.
Q. I am not asking you whether you accepted his recommendations, but whether you acted upon that as his signature, assumed that to be his signature and accepted it as his signature?
A. We probably did.
Q. You did, did you not?
A. We probably did. I don't know the man, and I don't know; all I know is what I see there, and have seen before.
Q. Now, the course of business, wasn't it, was for a letter which you had any interest in coming to the office from Mr. McNall, was for that to be brought around to you and for you to read——
A. I have read a great many letters from Mr. McNall.
Q. Well, do you mind answering the question I have asked?
1480 A. It might have been brought around; I have read letters from Mr. McNall.
Q. I will ask you again if that isn't the course of business, wasn't the course of business when a letter that pertained to any of your business came from Mr. McNall, for that letter to be sent to you—to be brought to you, to be read by you, and if it wasn't read by you?
A. It might have been sent to me; yes, I have read lots of Mr. McNall's letters that have been passed around to me.
Q. Frequently you would note upon that the fact that you had read it, would you not?
A. Possibly so.
Q. Well, I will ask you if that wasn't frequently the case, that you noted it?
A. If I had read it I probably noted it; I usually do on all letters.
Q. Now, whenever a letter was read before the executive Committee that fact was noted, was it not, stamped on the letter itself?
A. I presume it was.
Q. (Hands witness another letter.) That is the same signature that was on the other letter that has been shown to you?
A. It looks like it.
Q. And that? (Counsel hands witness another letter each time.)
A. Looks like the same.
Q. And that?
A. It looks like the same one.
Q. And that one?
A. It looks like it.
Q. And that?
1481 A. That looks like it.
Q. And that one?
A. It looks like the same one you had first.
Q. (Same letter.) You would say it was the same?
A. It looks like it.
Q. And that?
A. It looks like it.
Q. And that one?

A. That looks like it.
Q. And that?
A. That looks like it.
Q. And that?
A. That looks like it.
Q. And that is the same is it not?
A. That looks like it.
Q. (Same letter.) Same signature isn't it?
A. It looks like the same one.
Q. And that one?
A. That looks like it.
Q. You know the signature of Mr. A. M. Finlay?
A. I think so, yes, sir.
Q. Now, that is the signature of Mr. McNall there, isn't it?
A. That looks like the same one you had first.
Q. And whose handwriting is that below?
A. That looks like Mr. Finlay's.
Q. (Hands witness another letter.) Did you ever see this handwriting before?
A. I don't know that I did, no, sir.
Q. (Another letter.) Now, that is the same signature as that which you have examined?
A. That looks like the first one.
1482 Q. And that also?
A. Same way.
Q. And that?
A. Same way. (Counsel handing letter with each question.)
Q. You don't know whose that is?
A. No sir, I do not.
Q. Now, how about that signature?
A. That looks like the first one you had.
Q. Looks like the correspondence which you have had here all the time?
A. Probably is.
Q. Now, what is the significance of that stamp up there in the corner?
A. Looks as though Mr. Gruet had got it and transmitted it to Mr. A. M. Finlay, vice president.
Q. That is the stamp that is used to indicate that fact?
A. That is the stamp he probably used in transmitting it.
Q. (Another letter.) Now, with reference to that signature?
A. That looks like the first.
Q. And that?
A. The same.
Q. And that?
A. The same.
Q. Look at that there, this "A. J. H" up there?
A. A. J. Hutchinson, I assume, that was his initials. He was clerk.
Q. What about that signature?
A. That looks like the first letter.

Q. Looks like all the other signatures you have received there in your office from R. H. McNall and acted upon?
A. It looks like it.
Q. And that?
1483 A. That looks the same way.
Q. And that one?
A. That is like the first.
Q. And that?
A. Same.
Q. And that?
A. The same.
Q. And that?
A. That looks the same.
Q. And that?
A. That looks the same.
Q. And that?
A. Looks like the same.
Q. And what about that?
A. That looks the same, like the same.
Q. And that?
A. Looks like the same.
Q. And that?
A. That looks like it.
Q. And that one?
A. That looks like it.
Q. What about that?
A. That looks like it.
Q. Is that the signature of Mr. McNall?
A. That looks like the first one.
Q. That is the signature accepted there as Mr. McNall's signature?
A. That looks like the first letter you showed me.
Q. Who is T. J. Rider?
A. He was general manager at that time in Mexico.
Q. What about that signature?
A. That looks like the first one.
1484 Q. Now, take this sheet here, have you seen anything like that in your business up there, like that? (Hands witness paper attached to letter and envelope).
A. I don't remember of seeing anything of this kind.
Q. Got any company blanks with reference to competitive shipments, shipments by competitors?
A. In St. Louis?
Q. Yes.
A. Yes, sir, we may have some blanks.
Q. Well, you have some blanks?
A. Yes, sir.
Q. What about that signature? (Another letter).
A. That looks like the first one.
Q. And that?
A. And that the same.

Q. Now, read this,—the heading, "Waters Pierce Oil Company, incorporated under the laws of the State of Missouri, May 29, 1900."

Mr. ODELL: We would like to see the letter.

Q. "R. H. McNall, Commercial Agent", all of these letters have that on them, haven't they?

The COURT: Let counsel for the defendant see the paper.
(Mr. Batts hands paper to counsel for defendant).

Q. All these letters that you have noted have "Waters Pierce Oil Company, incorporated under the laws of the State of Missouri, May 30, 1900, R. H. McNall, Commercial Agent", on them, have they not?

Judge PENN: That statement of counsel as to the contents of these letters, the letters themselves are the best evidence of their contents?

Mr. BATTS: I am not undertaking to prove the contents of the letter.

1485 Judge PENN: We object to the witness being interrogated as to the contents of the letters.

Mr. BATTS: I am undertaking to establish these letters. The witness has been very guarded in his statements with regard to this signature and it seems to me that it is entirely competent to show that these letters have the letter heads and name of the commercial agent there, and that it has semblance, at all events, of genuineness, and I am undertaking to establish that fact by him; it isn't the contents of the letter.

Judge PENN: If those facts assist in identifying the letter, or show that they are admissible in evidence, it will appear upon the face of them when they are offered in evidence, and it is entirely unnecessary to question the witness in advance as to the contents of the letters.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

Q. Now, the letters that reference has been made to, they have those letter-heads, have they, that I have just mentioned?

A. How is that?

Q. Well, I say these letters that you see here have the company's name, all that have been shown to you?

A. I think so.

Q. Just as all the letters that the company has received from its commercial agent at New York, that is the same character of stationery that all of those letters are written on?

A. So far as I know.

Q. So far as they have come under your observation?

A. So far as I know.

Q. (Hands witness another letter). Now, that is the same signature, isn't it?

1486 A. Looks like the first one.

Q. That also?

A. Same as the first, seems to be.

Q. And that?

A. That seems like the first.
Q. And that one?
A. That one seems to be the same.
Q. And that?
A. And that one.
Q. And that?
A. And that.
Q. Now, these letters are with regard to the same character of matters that Mr. McNall writes to you about, are they not? I will call off some of them. (Counsel reads) "Statement of bad debts for the first six months of 1902, Mexican bad debts——"

Mr. ODELL: Before the witness is interrogated about those letters, there are a great many of them and we have had no opportunity to examine them.

Mr. BATTS: If the counsel will admit their genuineness, why I have no further questions to ask upon it. If I have got to prove them up in this circumstantial way, I shall insist upon doing it.

Mr. ODELL: We insist that under the rule we are admitted to examine the letters or documents before the witness is interrogated about them, and I object to any interrogation about them for any purpose until we have an opportunity to examine them.

Mr. BATTS (hands all the letters to counsel for defendant): They are there for the examination of counsel.

Mr. ODELL: There are some forty or fifty of them, Your Honor.

Judge PENN: If the Court please, the examination of this witness with reference to these letters, as we understand, is being
1487 made for the purpose of undertaking to show by circumstances the authenticity of these letters for the purpose of introducing the letters.

Mr. BATTS: The purpose of the interrogation is to establish the genuineness of the letters, yes.

Judge PENN: We make the objection now, that this isn't the best evidence at the command of the State with reference to the genuineness of these letters, if they are genuine, and we ask the Court to retire the witness from the state, and permit us to put Mr. Lightfoot on the stand and show by him from whom he received these letters. We expect to show by Mr. Lightfoot that if these letters are genuine, they were received by him from one J. P. Gruet, and stolen by Gruet from the files of this company, and if they are genuine, that Gruet knows that fact; and that they have a contract with Gruet by which he has agreed to come here and testify whenever called upon by the State to do so, and having that evidence at their command it is the best evidence as to whether or not these letters were received in the ordinary course of mail by the Waters Pierce Oil Company, and having the best evidence it isn't competent for them to prove it by circumstantial evidence.

The COURT: The request will be denied.

Judge PENN: The defendant excepts to the ruling of the Court.

Mr. BATTS: Your Honor, I offer the documents in evidence under the proof already made. It is in connection with the established and admitted signature of R. H. McNall.

Judge PENN: Now, if the Court please, we object to the introduction of these letters in evidence, on the ground that their authenticity has not been sufficiently established; on the further ground that the fact of their having been received by the Waters Pierce Oil
1488 Company or by J. P. Gruet, as Secretary of the Waters Pierce Oil Company, has not been sufficiently established, and on the further ground that the evidence which has been introduced by the State with reference to the authenticity of these letters, or the fact that they were received by the Waters Pierce Oil Company or J. P. Gruet, is not the best evidence at the command of the State with reference to their authenticity, if they are authentic, or with reference to their having been received by the Waters Pierce Oil Company or by J. P. Gruet, if they were so received, and we here again offer to put Mr. Lightfoot on the stand and to prove by him that he received these papers from J. P. Gruet, and to show by him that he made a contract with J. P. Gruet, agreeing to give him one third of the county attorney's fee in this case, in consideration of his furnishing evidence in this case and coming here to testify when called upon to do so. We further offer to prove by Mr. Lightfoot that they have examined Mr. Gruet on two occasions by deposition and have not attempted to prove the authenticity of these letters, if they are authentic, by him, on either of those occasions.

The COURT: It is not incumbent on the party offering the letter to prove by one witness, rather than the other, the authenticity of the letter. The proof, so far, simply shows that the letters are written on stationery similar to the stationery that McNall used, and that the name resembled McNall's signature.

Mr. BATTS: There are established signatures of Mr. McNall already before the jury, and the witness testified that they are apparently the same.

Mr. ALLEN: And the question of law is that the jury themselves may compare the established signature with what we are offering, and let them pass on it and say whether it is the genuine signature.

The COURT: I don't understand that the witness has compared the signature with the letters which you offer in evidence
1489 with the admitted signature of McNall.

Mr. BATTS: The Court is mistaken about that. I did make that proof. I will do it over again if the Court desired.

Mr. ALLEN: We make the point further that the jury can do that themselves; it is a well established rule of law wherever you get an admitted signature in to the jury, then they can take other signatures and compare them themselves and say whether they are the same.

Judge PENN: If the Court please, in addition to the objections made, while we do not concede that the evidence is sufficient to establish the signature of McNall to these letters—but if it should be conceded that it is sufficient to establish his signature, it is in our judgment, certainly insufficient to establish the transmission of these purported letters to the Waters Pierce Oil Company or to J. P. Gruet, and the receipt of them. There is no evidence that they were ever mailed and no evidence that they were ever received, and the

point which I was after making is—and I think I made it clear—that we contend that the State cannot prove by circumstances the authenticity of these letters or their receipt, when they have better evidence at their command.

The COURT: The contention is overruled.

Judge PENN: We except to the ruling of the Court.

Mr. BATTS: If this is admissible on the proof that has been offered, I do not desire to use any more time to prove these up; if it is not, I shall——

The COURT: I am of the opinion that the evidence is sufficient to establish the—or to warrant the introduction of the letters, if that is desired, and further, that McNall wrote the letters, but whether they were ever received by the Waters Pierce Oil Company at St. Louis is another question.

Mr. BATTS: I shall offer proof on that, I think, later.

1490 Q. Now, Mr. Ackert, it is the habit, is it not, in your business there, that when a letter is received, to stamp the date of its receipt upon the letter?

A. Yes, sir.

Q. And for the signature or name of some of the officials of the concern to appear upon the stamp?

A. Yes, sir, the initials of the party who gets it, receives it.

Q. Has the name in some places?

A. It may have; I don't remember now of its having.

Q. Now, I will ask you Mr. Ackert, if letters—I will indicate the general subject-matter of these letters and ask you if they are not the character of letters received from your commercial agent at New York.

Judge PENN: We object to the counsel indicating in his questions the character of the letters, and if the Court thinks that it is permissible for him to prove the character, whether or not it is of the general character of letter received, that the proper plan is to hand the letter to the witness and let him examine it and state whether or not it is similar in character to letters which were received from McNall.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Q. Now, a letter purporting to be written to A. M. Finlay, Esq., and signed by R. H. McNall, dated September 1, 1904, "Advance in billing prices of 72 and 73, 76 gravity gasoline,"—is that the same character of letters received from your commercial agent at New York?

A. It might have been.

Q. Well, I will ask you if the matter of advance in billing
1491 prices of gasoline isn't among the things you received letters from your commercial agent in New York?

A. We bought a great deal of gasoline and oil from the Standard Oil Company, and he probably was advising of the advance and decline.

Q. Will you answer the question I asked?

A. I never had received any letters from Mr. McNall; it is possible Mr. Finlay got a good many letters of that kind.

Q. I am not asking you about that; I am asking you if that isn't the character of letters received by the Waters Pierce Oil Company at St. Louis, from the commercial agent in New York, if that is one of the things that would be included in his correspondence and with reference to which he writes you?

A. It might be.

Q. It is, is it not?

A. It might be; I couldn't say because I have never gotten any letters from Mr. McNall.

Q. Well, I will ask you to look at this particular letter, (Hands letter to witness) and see if you recall anything about it.

A. Not anything about this letter at all.

Q. Now, on the bottom of that letter, is the signature—handwriting—of A. M. Finlay, is it not?

A. Yes, sir, looks like it.

Q. Well, it is, isn't it?

A. I think it is, yes, sir.

Q. What is the date of that letter?

A. September 1, 1900.

Q. What was the relation of Mr. Finlay to your company at that time?

A. He was vice president, I think. No, he was president.

Q. Now, will you explain that stamp there?

A. It was the date on which Mr. Finlay received it.

Q. It was the date upon which Mr. Finlay received it?

A. I assume so, yes, sir.

1492 Q. Now, that is the character of stamp that is put upon it when a letter is received at the Waters Pierce Oil Company's office, is it?

A. Yes, sir.

Q. This stamp here, what is that and what does that mean?

A. J. P. Gruet, it was read in the executive committee meeting, September 4, 1904.

Q. What does that mean?

A. It was read there.

Q. It was read in the executive committee?

A. Yes, sir, that is what it says.

Mr. BATTS: What is the date of that letter?

Mr. JOHNSON: September 1, 1904.

Q. Now, explain these notations down here. (Hands witness letter.)

A. Looks as though it was noted by a clerk in Mr. Adams' department; I don't know what the lower one is, I couldn't say.

Mr. BATTS: I am sorry to have to go so minutely into each one of these letters, but we have now—here is a letter with the signature of R. H. McNall, such as he accepted in his office as the signature of McNall, with two stamps upon it, such as would be put there, and the subject-matter is the—such as might be the subject of a letter, that it is the signature or writing of A. M. Finlay, has that upon it,

and he was vice president of the company, and notations by a clerk in Mr. Adams' office——

Q. Who was Mr. Adams?

A. I don't know whether he was secretary or treasurer at that time.

Mr. BATTS: Now, I will offer that particular letter.

Judge PENN: The defendant objects to its introduction for the reasons stated: that neither the signature of R. H. McNall has been sufficiently established, nor its transmission to the Waters
1493 Pierce Oil Company or to A. M. Finlay, or its receipt by A. M. Finlay or the Waters Pierce Oil Company; and for the additional reason that the evidence which has been introduced by the State to show these facts is not the best evidence at the command of the State of the facts, if the facts are as claimed, and we again offer to put Mr. Lightfoot on the stand and to prove by him that these letters were received by him from J. P. Gruet, who was at the time of their receipt Secretary and an officer of the company, and if they are genuine, and if they were received by the Waters Pierce Oil Company or Mr. Finlay, as president, that the fact of their receipt could be established by direct, instead of circumstantial evidence, which we understand to be the best evidence; and that the witness had no personal knowledge of the receipt of this letter and has never seen it before.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

Mr. BATTS: I hate to take up so much time on these; it is our purpose simply to indicate the general subject matter of these letters, the subject-matter as indicated on each one, as "advance in billing price of 72, 70, 76 gravity gasoline, and with permission of the Court, I will undertake before now introducing this particular one, to see if I cannot meet the demands of the law with regard to the entire batch, so I can simply, with permission of the Court and counsel, indicate the subject-matter instead of having to read all of these letters.

Q. Now, I will ask you to look at this, Mr. Ackert. (Hands witness letter.) What does it mean in this corner of this letter dated December 18, 1902?

A. Transmitted.

Judge PENN: We object to the witness being asked to state
1494 what a thing means; the genuineness of it hasn't been established.

Mr. BATTS (Handing letter to counsel for defendant): We have not been attempting to read it; I have simply passed it up to them.

Judge PENN: We submit that it isn't competent for him to be permitted to testify to the meaning of something the genuineness of which hasn't been proved.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts. (Mr. Stenographer. Let the record show that the objection was made to notation on this letter, "transmitted December 20, 1902, to J. A. S.", and the notation "Received December 20, 1902, answered 20, J. P. Gruet," and the red

ink notation at the bottom of this letter, "J. A. S. 12/20/02" for the purpose of saving time, it can all be considered objected to on the same ground and the same bill. Counsel, I presume, introduces it all?

Mr. BATTS: Yes, sir.

Q. Now, will you explain that, that stamp?

A. That seems to be a stamp used in Mr. Gruet's office, and I assume it is transmitted to a clerk in his office. I don't remember now who "J. A. S." is.

Q. "J. A. S." was the secretary of the executive committee, J. A. Stuart?

A. I think not.

Q. You think that Mr. Stuart was not secretary of the executive committee?

A. He was undoubtedly at that time the secretary, but this stamp down here shows that undoubtedly, or to my mind, that it was transmitted to a clerk in Mr. Gruet's office.

Q. That is Mr. Stuart, now the private secretary of Clay Arthur Pierce?

1495 A. Yes, sir.

Q. You know his signature?

A. That isn't his signature.

Q. Whose signature is it?

A. I can't say, but I am sure it is one of the clerks in Mr. Gruet's office.

Q. At this time, Mr. Gruet was secretary of the company?

A. Yes, sir, I think so.

Q. Now, the subject matter of this letter purported to be the cost of barreling and marketing, I will ask you if the cost of barreling and marketing is one of the things that your commercial agent in New York gave you instructions with reference to?

A. He never gave me any instructions at all.

Q. I am talking about the Waters Pierce Oil Company.

A. That was undoubtedly handled entirely in Mr. Gruet's department without reference to me or others.

Q. Well, I will put it in another way then: Is the matter of cost of barreling and marketing one of the subject matters upon which your commercial agent in New York communicates with the Waters Pierce Oil Company or some of its officials in St. Louis?

A. I did not know that it was.

Q. You don't know that it was.

A. I didn't know that it was.

Mr. BATTS: We offer this letter, it having been stated that that was—that "J. A. S." was a clerk in the office of the secretary who was Mr. J. P. Gruet, in connection with the testimony with regard to the signature of R. H. McNall.

Judge PENN: We renew the objections which we have made to the introduction of this other letter; I take it to be unnecessary to recite them.

The COURT: The objection is overruled.

Judge PENN: The defendant excepts.

1496 Q. Now, your attention is called——

Judge PENN: In order to save any confusion, when a letter is offered in evidence, identified, we insist that it be read at that time without delay.

Mr. BATTS: It is all done, Your Honor, in an effort to save time. (Reads:) "Received September 3, 1904, Ans. —, President Waters Pierce Oil Co." "Read at executive committee meeting, September 8, 1904, J. P. G. Secretary", "Advance in billing prices of 72 and 73, 76 gravity gasoline." "A. M. Finlay, Esq., St. Louis, Mo. Dear Sir:" (Counsel reads letter.) Signed by R. H. McNall, dated September 1, 1904.

Mr. BATTS: (Reads another letter:) "Waters Pierce Oil Co., New York, N. Y." "Transmitted December 20, 1902, to J. A. S." December 18, 1902." "Cost of barreling and marketing." "J. P. Gruet, Secretary, St. Louis, Mo. Dear Sir:" (Reads letter) Written by R. H. McNall.

Q. Now, is this clerk Rundel you talked about here, the same one you sent up to New York as your commercial agent?

A. Yes, sir.

Judge PENN: If the Court please, we do not want to consume the time of the Court and jury unnecessarily by having the same procedure gone through with reference to fifty or sixty letters. We desire to claim, as we have with reference to the two letters introduced, that they are not admissible, and of course if this same procedure is gone on with, in order to preserve our rights, it will be necessary to make our objection, but if we have an adjournment now and counsel would give us an opportunity to examine these letters, we think we will probably—feel almost assured that we will be willing to concede that the same character of evidence has been introduced or might be considered that the same character of evi-
1497 dence has been introduced with reference to these two, and then let one general objection cover the whole matter; we think it would be a saving of probably an hour and a half or two hours' time, and we want time to go over these and confer with reference to them, but I feel satisfied that that will be the result.

The COURT: Well, we will adjourn until half past two o'clock.

Court re-convened at 2.30 p. m.

Direct examination of Mr. ACKERT continued.

(By Mr. BATTS:)

Judge PENN: If the Court please, with reference to these letters which have been offered by the State, for the purpose of saving time, we desire it to be considered as though the same character of testimony has been introduced with reference to each of these letters that was introduced this morning with reference to the two which Your Honor admitted in evidence.

The COURT: With reference to the endorsements and stamps on them?

Judge PENN: With reference to the endorsements and stamps

on them so far as they are applicable; some of them haven't the same stamp on them; some have others of similar character and some have not; one some of them these endorsements are omitted. And we make the same objections to all of these letters which we made this morning to the two that were introduced in evidence, to-wit, that it isn't the best evidence at the hands of the State of the writing of these letters or of the receipt by the Waters Pierce Oil Company or the different officers to whom they are addressed, and we make this objection specifically with reference to the letters addressed to J. P. Gruet, who, as appears from the testimony in this case, was an officer of this company, secretary, and we sub-
1498 mit that the testimony of the witness J. P. Gruet is the best evidence as to whether these letters were received by him, and we again renew our offer to put Mr. Lightfoot on the stand and prove that the State has a contract with the witness J. P. Gruet by which they could have him here if they saw fit to do so.

The COURT: The objection will be overruled.

Judge PENN: You decline to allow us to put Mr. Lightfoot on the stand?

The COURT: Yes, sir.

Judge PENN: The defendant excepts to both rulings of the Court.

Mr. BATTS: Now, with permission of the counsel and Court, instead of reading these letters, I will read the subject matter as indicated by the letter itself, where it does so.

Judge PENN: That is all right.

Mr. BATTS (to the Jury): Gentlemen, each of these letters is signed by R. H. McNall, written upon letter heads——

Judge PENN: We understood he is offering nothing but the letters and the endorsements on them. There are some of them that other papers are attached to, and there has been no effort to introduce those other papers in evidence.

The COURT: The other papers and the letters have not been offered in evidence.

Mr. BATTS: No, sir, I have not yet read them. The letter heads are: "Waters Pierce Oil Company, Incorporated under the laws of the State of Missouri, May 29, 1900. New York, N. Y., R. H. McNall, Commercial Agent," and all that I see right now are addressed to J. P. Gruet, Esquire, Secretary Waters Pierce Oil Company, St. Louis, Mo., and where anything else is indicated I shall call attention to that. (Counsel either reads entire letter or subject matter.)
1499 The subject matter of this is, "Returning of cargo of steamship Pennant," dated August 27, 1902.

Letter of February 18, 1903, subject matter is not indicated here, "Will you kindly send me a report covering your annual sales at your station," etc.

Letter of July 9, 1902, subject matter as indicated by the letter itself is changing from Walter Jennings, Agent, to R. P. Tinsley, Agent.

Letter dated September 16, 1904, cost and selling price sheet.

Letter of April 6, 1903, shipment of refined oil from San Francisco to Mexican ports.

Letter dated September 19, 1904, "I beg to advise that on all orders received after this date the price made on linseed oil shall be as follows," etc.

Letter of December 7, 1903, "I beg to give below memo. of the average cost of barreling and marketing oil at stations in your various divisions during the first six months of 1903," etc.

Letter of January 6, 1905, "On all orders received after this date the price on linseed oil will be as follows," giving the prices.

Letter of January 30, 1903, subject, returning debit memorandum.

Letter of December 24, 1902, "I beg to hand you herewith blank for reporting prices upon company supplies during the month of December."

Letter of March 31, 1903, "For some time past we have not received from you clearances of Texas fuel oil from Sabine Pass and Port Arthur," etc.

Letter of February 11, 1903, seems to be the one I read to the jury this morning.

Second letter, December 19, 1902, "I would like to have
1500 you make me up a statement showing the number of employees of the W. P. O. Co., and the annual amount of wages paid same for one year," etc.

Letter, November 25, 1902, "I beg herewith to hand you blank report on which I shall be glad to have you specify prices upon company supplies for the month of October not already rendered."

Letter of January 28, 1902, subject matter, "report of prices upon company supplies."

Letter of January 2, 1905, "On all orders received after December 29th, the price on linseed oil shall be six and three fourths cents per gallon," etc.

Letter of December 22, 1902, "I beg to return herewith stable inventories of your various divisions," etc.

Letter of June 28, 1902, reports 41-d and 41-e, Mexico refineries.

Letter of September 17, 1903, refinery statements.

Letter of November 28, 1902, "I am in receipt of your favor of 24th inst., and am to-day in receipt of express package containing reports," etc.

Letter of January 7, 1902, "I beg to advise that the cost of milk cans used for milk can delivery should be charged to B. & M. expense."

Letter of February 18, 1902, "Will you please have made up and send me a statement giving the names of the different banks where you have an account," etc.

Letter of February 6, 1902, "Will you please let me know if you have recently re d a letter from C. E. Bedford," etc.

Letter of March 18, 1902, "For some unknown reason, on December 28, 1895, instructions were given to charge iron barrel depreciation of four cents per barrel to P. & L. accounts," etc.

1501 Letter of January 15, 1902, "Replying to your favor of 11th, on the above subject, cost of milk cans, I think your manner or having these milk cans numbered," etc.

Letter of December 5, 1902, the subject matter is, "Excess tank wagon equipment at City of Mexico."

Letter of May 11, 1903, "In your telegram of May 8th, giving total sales of refined oil and naphtha for the month of April, I notice that you have included in the naphtha sales 20 barrels of engine naphtha," etc.

Letter of May 6, 1903, "Replying to your favor of 4th inst., beg to hand you herewith copies of cyclopædia reports relative to E. M. Wilhoyt," etc.

Letter of May 7, 1903, "I am in receipt of your favor of 4th inst., enclosing cyclopædia reports of various points."

Letter of March 13, 1903, subject matter of the letter is marine insurance.

Letter without date, "Referring to the wording of your letter of March 19th, I beg to say that I would suggest," etc.

Letter of September 6, 1902, "I have not received from you for some time current reports of fuel oil shipped from Beaumont," etc.

Letter of July 23, 1902, "Referring to report from 30-*d*, deliveries of refined oil and naphtha," etc.

Letter of September 18, 1902, "I should be glad to have as soon as possible W. P. O. Co.'s statement showing net results of marine oil business." (All of letter.)

Letter of February 24, 1903, "I am in receipt of report from form 23-*d*, receipts and purchase for month of January," etc.

Letter of July 18, 1902, statement of bad debts for the first six months of 1902.

Letter of August 7, 1902, bad debts in East Texas and Louisiana and North Texas Division.

1502 Letter of January 27, 1902, bad debts for the year 1901.

Letter of September 16, 1902, "I have not received from you for some time reports showing tank car shipments," etc.

Letter of November 12, 1902, "I have not received any report from you since September 1, of shipments of Beaumont oil," etc.

Letter of August 22, 1902, "I am in receipt of your favor of the 20th inst., in regard to bad debts charged off during the month of June," etc.

Q. Mr. Ackert, what arrangements did you have for ascertaining who shipped oil to and from—who shipped oil outside of your own company, from Beaumont and from Port Arthur and Sabine Pass?

A. Same kind——

Judge PENN: We object to that as irrelevant and immaterial.

The COURT: The objection is overruled.

Judge PENN: Defendant excepts.

A. Same kind of information we have now, from agents and salesmen, keep posted on what is going on.

Q. Well, you have some special payments that you make for the purpose of getting that information, have you not?

A. No, sir.

Q. You have discontinued that business?

A. I don't know of any.

Q. Didn't you have through Mr. Tolliver, at Houston, several employees for the purpose of obtaining information of that kind?

A. Not that I know of, sir.
Q. You know the signature of Mr. Tolliver?
A. Yes, sir, I think so.
Q. Was this letter received during your incumbency as general manager? (Hands witness letter.)
A. No, sir, it was not. I have never seen the letter before.
1503 Q. And the matter referred to there, you don't know about?
A. No, sir.
Q. Don't you know about the special arrangement for securing information at those points. (Hands witness letter) I will ask you to state whether or not that is Mr. Tolliver's signature?
A. It looks like it.
Q. Was that received while you were general manager?
A. No, sir.
Q. There was a Southwestern Oil Company doing business in St. Louis, Mr. Ackert, was there not?
A. Yes, sir.
Q. Purchased by the Waters Pierce Oil Company?
A. It was.
Q. It was in competitive business there?
A. Yes, sir.
Q. When was it purchased?
A. I think it was two years ago, or about two years ago.
Q. Have you, since you became manager, purchased any other competing plant?
A. I don't remember of any.
Q. Well, I will ask you to think about it and tell us.
A. I don't remember of any.
Q. The Southwestern was run there in its own name after you acquired it?
A. I think it was closed out immediately.
Q. Well, did your company organize the International Oil Works?
A. That was before my time.
Q. It is still operating, isn't it?
A. The International?
Q. Yes.
A. Yes, sir.
1504 Q. Belongs to the Waters Pierce Oil Company, doesn't it?
A. Yes, sir.
Q. Operating as in competition with the Waters Pierce Oil Company, is it not?
A. No, sir, I can't say that. I think it is known by the people of St. Louis who owns it.

Mr. ODELL: We object to testimony with reference to the International Oil Company, for the reason that it is irrelevant and immaterial to any issue in this case; it is not operating in the State of Texas.
The COURT: The objection is overruled.
Mr. ODELL: The defendant excepts.

Q. Well, that has been operated ever since you have been with the company, has it not?

A. Yes, sir.

Q. Operated as an independent plant?

A. Ever since I have been with the company in St. Louis.

Q. Yes.

A. Yes, sir.

Q. And is still being operated as an independent concern?

A. It is operated as the International Oil Works; it is known, however, by the people of St. Louis that it is owned by the Waters Pierce Oil Company.

Q. Well, why is it operated that way, then?

A. Simply operated, that is all.

Q. Now, why do you maintain two plants, when one would do the business, if everybody knew about it, the ownership of the International Oil Works?

A. I can't say; I couldn't answer that question.

Q. When did it become known that it belonged to the Waters Pierce Oil Company?

1505 A. I can't say just when; it has been known generally for several years.

Q. Generally known?

A. Yes, sir, that is my understanding.

Q. Published in the papers?

A. It has been in the papers quite frequently.

Q. A statement by the Waters Pierce Oil Company?

A. No, sir.

Q. Considered as an independent concern, is it a paying proposition?

A. I think so.

Q. You don't know about that?

A. I couldn't say for sure.

Q. You maintain separate offices and separate tanks?

A. All the reports come to our office every day; all the cash reports come to our office.

Q. Well, did you maintain a separate organization for the International Oil Works?

A. Only so far as the tank wagons and the manager of it.

Q. You have some tank wagons with the name "International Oil Works" on them; is there any difference, any better or any worse than the Waters Pierce tank wagons?

A. About the same.

Q. Well, now, will you tell me why this is maintained?

A. I couldn't explain that; that is a part that I don't have anything to do with.

Q. Now, while you were maintaining concerns in Texas, that were separate—belonged to the Waters Pierce Oil Company, but operated separately——

A. It was known to be the Waters Pierce Oil Company.

Q. You supplied them with oil from the International Oil Works, did you not?

1506 A. That was before my time, I couldn't say.

Q. Well, you kept the Eagle Refining Company going up to about what time?

A. 1903, I think, some time,—November, 1903, I think, about that time.

Q. Well, did you supply it with oil from the International Oil Works?

A. Not to my knowledge.

Q. Where did you supply that from?

A. I couldn't say; I didn't handle the orders.

Q. Now, you were right familiar with the situation in regard to the Eagle Refining Company, were you not?

A. I knew about it.

Q. And you discontinued it, did you not?

A. I arranged for its discontinuance.

Q. Why?

A. Well, I thought that our agency at Dallas could take care of it; Mr. Cahoon was in charge of the division; I thought he could take care of the business.

Q. When did he get in condition to take care of the business?

A. About a year before.

Q. Couldn't take care of it prior to that time?

A. He might have, yes.

Q. Why wasn't it discontinued?

A. Just because it wasn't. It got to a point where we made up our mind to do away with it.

Q. Now, you looked after these points, all the points in your division, and were very careful to figure out to a cent the cost of even a barrel and if it gets over on the Pacific coast or anywhere

1507 else, you keep correspondence in reference to it and you knew, did you not, the very moment that the Eagle Refining Company at Dallas, got to a point where it didn't pay, di- you not?

A. I think it was paying when it was closed out, as I remember.

Q. It was paying then?

A. Yes, sir.

Q. But the business could have been handled by the other concern?

A. It could have been.

Q. And you don't know of any reason why it was not closed out as soon as it was bought, do you?

A. Only as far as Mr. Clem's services were not altogether satisfactory and we decided to do away with it.

Q. Then it was on account of Mr. Clem that you discontinued this Eagle Refining business?

A. I think that was a part of it.

Q. That was it?

A. Yes, sir.

Q. What did you accomplish or hope to accomplish by the maintenance of the Eagle Refining Company's business there, separate and distinct from the regular station and business of the Waters Pierce Oil Company?

A. I understand arrangements were made long before I had anything to do with it, and I couldn't say.

Q. I know, but why did you keep it up?

A. I can't tell you that.

Q. You can't give any reason for keeping it up?

A. It was shortly after I was put in there in that capacity that I had it discontinued.

Q. I will ask you if that wasn't continued as long as it was in effect for the purpose of reaching what is known as the "dissatisfied trade"?

A. No, sir, I don't think so, because it was known in Dal-
1508 las that it was owned by the Waters Pierce Oil Company.

Q. You are speaking now with the knowledge of the facts?

A. I understand that it was known generally.

Q. What do you predicate that on?

A. It was advertised in the papers in '95, '94.

Q. What was advertised?

A. It was known in the papers, it was given out at the time of the trial, in '95, I think in Waco; it was known.

Q. Now, I will ask you if that concern was furnished oil in the name of or through the International Oil Works?

A. I couldn't tell you; I didn't handle any of the orders.

Q. Now, with reference to the Roy Campbell business, was it through the International Oil Works?

A. I couldn't say.

Q. Was it impossible to get another manager besides Mr. Clem up there?

A. I don't know that it was.

Q. You were not so dissatisfied with the services of Mr. Clem that you didn't still give him a place with the company?

A. He was given a place.

Q. Have you not now at this time in the State of Texas any concern that you run in the same way you ran the Eagle Refining Company?

A. No, sir.

Q. Have you any kind of business in the State of Texas that belongs to the Waters Pierce Oil Company that isn't operated under the name of the Waters Pierce Oil Company?

A. No, sir, not that I know of.

Q. No oil business at all?

A. No, sir.

Q. Now, I will ask you if you are in a position to know
1509 with reference to those things?

A. I think I would know if there was any such arrangement.

Q. All the business is communicated to you, of the Waters Pierce Oil Company?

A. Yes, sir. All of it?

Q. Yes.

A. Not all of it, no, sir.

Q. Well, by reason of your being an officer there and being on

the executive committee and coming in contact with those parties every day, you really know all of the transactions of the company, don't you?

A. No, sir, I don't know all of them.

Q. Now, they don't undertake to keep anything concealed from you, do they?

A. I have not heard of it, but I am away quite a little.

Q. The general course and policy of the business you, of course, must know certainly?

A. I know, generally, yes, sir.

Q. Now, you know how they get oil?

A. In what way?

Q. What arrangement they have got for getting oil?

A. For buying it?

Q. Yes, sir.

A. The most of our supplies are bought from one place.

Q. Who?

A. The S. O. People.

Q. What does that mean?

A. The Standard Oil Company, most of it.

Q. You make a contract every year for your oil?

A. No, sir.

Q. When was your contract made?

1510 A. I don't know of any contract; never heard of any.

Q. Never heard of a contract for oil?

A. No, sir.

Q. Well, how did you get it then?

A. It is bought, or purchased.

Q. Negotiate for every specific lot of oil?

A. No, sir.

Q. Don t negotiate for it?

A. We do not; there is a price for the various grades of oils, and we buy what we need.

Q. They fix the price then, absolutely?

A. Just the same as the Gulf Refining Company, or the Texas——

Q. I am not asking you that; I asked you if they fixed the price?

A. They have a price.

Q. Not a matter of negotiation between you at all?

A. No, sir. They have a price just the same as anybody else.

Q. And the- notify you as to what that price is?

A. If they change it, advance it or reduce it, we are advised.

Q. You are advised?

A. Yes, sir.

Q. You don't undertake to get any refined oil from anybody else at all?

A. Yes, sir, we bought from the Gulf Refining Company and the Texas Company.

Q. You have bought from them?

A. Yes, sir.

Q. Did the Standard Oil Company buy from them?

A. No, sir, the Waters Pierce Oil Company.

Q. Now, do you get a notice from them as to their price?

A. We assume they have a price before we buy.

1511 Q. And you assume the Standard Oil Company has a price before you buy?

A. We have a price from them and we assume that that price is good until we are advised of another price.

Q. Now, when you get another price from them, we will say a raise, you immediately, do you not, raise your own prices as far as possible?

A. Not always.

Q. Well, isn't that the ordinary course of business?

A. It is generally.

Q. Now, when they notify you the price has been raised, that is a matter that goes to the executive committee?

A. It is always considered.

Q. Always considered by them?

A. Yes, sir.

Q. And then you adjust your prices to the prices fixed by the Standard Oil Company, is that true?

A. No, sir.

Q. How do you fix it?

A. The local conditions in the territory may have something to do, always has something to do.

Q. That is to say, competition?

A. Yes, sir, and conditions.

Q. Competition, I say, has something to do with it always?

A. Naturally.

Q. And the price which the Standard Oil Company changes you is the other—considerable element?

A. It is the price we pay for our goods, is the basis on which the selling price is made.

Q. The price the Standard Oil Company charges you is the basis on which you make your price?

1512 A. From them or any one else.

Q. Well, you get the most of your oil from them, did you not?

A. Yes, sir.

Q. You say you bought oil from the Gulf Refining Company. Have you bought any refined oil from them?

A. I think so; I have forgotten now; I couldn't say, really.

Q. Well, when did you buy it?

A. I couldn't tell you.

Q. Well, can you tell me that you did buy it?

A. Yes, sir.

Q. What have you in mind to base that on? When was it and the amount of it?

A. I couldn't tell you just when or how much.

Q. Or the price?

A. I got twenty tank cars of gasoline only a short time ago.

Q. I am not asking you about the gasoline.

A. I couldn't say just exactly when.

Q. You have bought refined oil from them?
A. As I remember, we have.
Q. What did you do with it?
A. Sold the same as any other oil?
Q. Well, where?
A. In Texas, I assume.
Q. Well, now is this a matter of assumption with you, or do you know you bought oil from the Gulf——
A. As I remember, we have bought oil from the Gulf Refining Company, but I know we bought a great deal of gasoline.
Q. But I am talking about refined oil.
A. I couldn't say definitely, but I am of the impression that we have bought oil.
1513 Q. Well, now, so far as the Security is concerned, you haven't bought any oil from them, have you?
A. Yes, sir, buying it every day.
Q. You bought that from the Standard Oil Company,—do you not, what you get from the Security Company?
A. All of our quotations are made to them direct.
Q. From whom?
A. From the Security Company, from them direct; we know nothing except the Security Company.
Q. But you pay the Standard Oil Company, though?
A. I couldn't say; I don't have anything to do with the paying of it. I assume the Security is paid direct; I couldn't say.
Q. Now, I will ask you if this is the course of business, that you get a card or letter from the Standard Oil Company, in which they quote a certain price to you at Corsicana and at Neodesha, and that your orders are predicated upon that, your requisitions?
A. Our orders are placed at the most economical point of supply, considering the quality of the goods.
Q. But you haven't answered my question; you get that from the Standard Oil Company?
A. We have our quotations from the Standard Oil Company.
Q. With reference to the Corsicana and the Whiting, Indiana, refineries, and the Neodesha?
A. We get them direct from the Corsicana refinery, from the Neodesha refinery, as I understand, from the Sugar Creek refinery, Whiting, etc.
Q. Now, isn't the ordinary course of business for you to receive a letter like this from the Standard Oil Company: (Reading) "Effective August 15th, our prices on refined oil f. o. b. Whiting and Corsicana will be as follows: Common oil, Corsicana 4¼¢; Whiting 4-3/8¢; Water White 110 to 120, 4⅞¢; Eupion 6⅛¢; Water
1514 White 4⅞¢; Eupion 120 to 150, 6¼¢",—isn't that the ordinary course of business with reference to the purchase of oil?
A. It may have been.
Q. Well, if you know, I want you to say so.
A. I can't say, I haven't seen the letter.
Q. I am asking you about the ordinary course of business?
A. Probably they did come in that way.

Q. And upon those prices thus paid the Standard Oil Company you make your requisitions direct upon the refinery?

A. At that time I can't say how they were placed; all I know is at the present time.

Q. Well, this is August 15, 1906, have you changed since the suits were instituted against the company?

A. I couldn't say we had; all I know is the way the orders are placed now.

Q. Your recollection don't go back as far as August 15, 1906?

A. No it doesn't, I couldn't say.

Q. Now, I will ask you, Mr. Ackert, what the course of business is when an order is received by the company for oil from a person outside of the Waters Pierce Company territory and in the Standard Oil territory?

A. There isn't anything done with it?

Q. Sir?

A. There isn't anything done with it.

Q. Don't do anything at all with it?

A. No, sir.

Q. Don't reply to the letter?

A. Sometimes we do.

Q. You don't do anything with that at all?

A. I didn't understand your other question; I beg your pardon——

Q. Now, take the dividing line between the Standard Oil
1515 Company and the Waters Pierce Oil Company, when you get an order from a merchant or any person over on the Standard Oil Company's territory, what do you do with it, with that order?

A. You mean what——

Q. What does the Waters Pierce Oil Company do with it?

A. I don't understand the first question; I would like to have the first question changed; we always quote them.

Q. You always quote them?

A. Quote them the price, our regular selling price; if it is St. Louis, it is quoted f. o. b. there.

Q. If it is inside your territory, you don't quote f. o. b. St. Louis, do you?

A. Yes, sir, the same way.

Q. Now, how long have you been pursuing that policy with regard to such orders?

A. It has been done right along, as far as I know.

Q. About how long?

A. I couldn't say how long.

Q. Well, something less than a year?

A. I couldn't say, I am sure.

Q. Well, what was the course of Business before the suits were instituted?

A. I have forgotten now just exactly how they were handled; I assume in the same way.

Q. You assume in the same way?

A. Yes, sir, my understanding; I am not sure about it.

Q. Now, I will refer you, Mr. Ackert, to your statement taken in the case of the State of Missouri *vs.* Standard Oil Company, *et al.*, Waters Pierce Oil Company,—didn't you state in that, that prior to that time that these orders were turned over to the Standard Oil Company?

1516 A. Not that I remember.

Q. You don't remember having so stated?

A. No, sir; I don't.

Q. And you stated that——

Judge PENN: We make two objections to this: first, that this is the State's own witness,—it is incompetent for him to attempt to impeach him in this way; and, second, that what this witness may have testified to in another case in the State of Missouri is hearsay and not admissable as against this defendant. And then we make the third objection, if these should not be sustained by the Court, that the witness is entitled to have the questions which he is supposed to have been asked, stated to him and the answers which he is supposed to have given, stated to him, without asking him to state whether or not he made the statements such as counsel seems to conceive was the substance of his prior statement.

The COURT: The objection is overruled. If counsel for the State desire to introduce what they say was another statement of this witness, they will have to ask him if he made that identical statement before they can introduce it, but for the purpose of this examination they need not show it to him.

Judge PENN: The defendant excepts.

Q. Now, I will ask you, Mr. Ackert, if the course of business prior to that time was not for you to send the order to the Standard Oil Company, and didn't you get like courtesies from the Standard Oil Company, with regard to orders received by them?

A. I don't remember of any such thing.

Q. You don't remember anything of that kind?

A. No, sir.

Q. Was there any change at all about a year ago with reference to the handling of that matter?

A. Not that I remember.

1517 Q. Mr. Ackert, I notice among the letters introduced, a reference to "encyclopedia reports" relative to E. M. Wilhoyt, Joplin and Springfield, Missouri; what do you mean by "encyclopaedia reports"?

A. I am sure I don't know; I never heard of that before.

Q. Who is E. M. Wilhoyt?

A. Man in the oil business at Springfield, Missouri.

Q. One of your competitors?

A. Yes, sir.

Q. And Dubbs & Ruddles?

A. They were competitors at Belleville, Illinois.

Q. Are they competitors now?

A. Yes, sir.

Q. Actual competitors, now belonging to the Waters Pierce Oil Company?

A. Actual competitors.

Q. You had some little controversy, did you not, with reference to whether or not the Belleville, Illinois, territory belonged to you or the Standard Oil Company?

A. I don't know of any controversy; we have always continued our agency there; supplied the trade.

Q. They insisted that that belonged to them, did they not?

A. Not that I know of.

Q. Didn't you have some kind of a controversy with Mr. Von —— with regard to that?

A. No, sir, not that I remember of.

Q. He insisted that was in his territory.

A. No, sir.

Q. Well, in East St. Louis?

A. No, sir, the Waters Pierce Oil Company have always operated in East St. Louis.

1518 Q. Well, some point there across the river, didn't you have a controversy with him or somebody with reference to whether that was Standard Oil or your territory?

A. Not that I remember of now.

Q. With reference to which you testified in that case?

A. There was some territory above there that was in controversy; didn't amount to anything, but it wasn't Belleville or East St. Louis.

Q. Where was that?

A. I can't say.

Q. Then there was a controversy as to which one owned that territory?

A. We were supplying it; we were sending our wagons and they claimed that it was——

Q. And they claimed it was their territory?

A. And we have simply continued to do it.

Q. You haven't recognized their claim to that?

A. No, sir.

Q. You know anything about the capacity of the refineries in Texas?

A. No, sir, I do not.

Q. Are you familiar with the signature of Mr. Pierce?

A. Yes, sir.

Q. (Hands witness paper.) I will ask you to state whether or not that is Mr. Pierce's signature?

A. Yes, sir, it looks like it.

Mr. BATTS: Identified as voucher dated June 30, 1900.

Q. I will ask you about voucher dated June 15, 1900, you know whose signature this is?

A. Mr. A. M. Finlay's; looks like it.

Q. You recognize that signature? (Indicating on paper.)

A. Yes, sir.

1519 Q. Whose is that?

A. J. D. Johnson's; looks like it.

Q. Do you know whose signature this is?

A. Mr. Naudain's.

Q. Do you know anything about the books and vouchers, etc., of the Waters Pierce Oil Company being audited by the Standard Oil auditors?

A. No, sir.

Q. Don't know anything about that?

A. I simply know there were auditors there; I have understood that they were in the employ of the Waters Pierce Oil Company.

Q. That there were auditors there?

A. Yes, sir.

Q. Do you know Mr. H. H. Stein?

A. No, sir.

Q. Have you ever known him?

A. Don't remember ever having met him.

Q. You know whose hand-writing this is? (Indicating on voucher.)

A. No, sir, I do not.

Q. Have you any knowledge at all of the method of keeping books by the Waters Pierce Oil Company?

A. No, sir, I haven't it is out of my department.

Q. Do you know whose handwriting this is? (Hands witness paper.)

A. No, sir, I do not.

Mr. BATTS (handing paper to counsel for defendant): We offer it in evidence.

Judge PENN: You offer both of these in evidence?

Mr. BATTS: Yes, sir.

Q. Who pays the salaries of the auditors?

A. The accounting department.

Q. The auditors sent to St. Louis?

A. I suppose it is the same as all of the others.

1520 Q. Paid in St. Louis?

A. The treasurer, Mr. C. M. Adams, pays all the salaries.

Q. The auditors that came from New York to audit the books of the Waters Pierce Oil Company are paid by the Waters Pierce Oil Company?

A. Mr. Adams pays all of the salaries; further than that I know nothing.

Q. Well, you don't know by whom these auditors are paid?

A. No, sir, I do not.

Judge PENN: With reference to the voucher dated June 30, 1900, which is offered in evidence by the State, we object to it as irrelevant and immaterial to any issue in this case; only tendency it could possibly have would be to prejudice the jury against the defendant.

Mr. BATTS: I may be able to secure an agreement with counsel to obviate the necessity of putting this in, if he thinks it will prejudice the Jury; I have no desire to do that.

Mr. BATTS (after conference with defendant's attorneys): We have an agreement to the effect that there were auditors of the Standard Oil Company sent to St. Louis to audit the books of the Waters Pierce Oil Company; the first of the audits made by them is sometime in the year 1901; I take it that counsel will not hesitate to make

an agreement to the effect that audits were made by the Standard Oil Company as early as June 15, 1900. And further, that payments authorized by Mr. Pierce as early as that, were audited by the Standard Oil Company. If these agreements are made, the vouchers will be withdrawn.

Judge PENN: If the Court please, in addition to the objection which was made to this alleged voucher, dated June 30, 1900, we understand counsel for the State to say that their sole purpose in——

Mr. BATTS: I have not made any statement of the sole pur-
1521 pose; I made a statement to you as to what I would keep the vouchers out, if you would agree to; if the vouchers are to go in for any purpose, they are to go in for every purpose for which they are admissible.

Judge PENN: We desire to make the objection which has been made,—irrelevant and immaterial to any issue in this case, and that the audit stamp on the back hasn't been identified or proven up.

Mr. BATTS (after conference with counsel): The vouchers are withdrawn, and the following agreement is made: It is agreed that the expenditures made as early as June 15, 1900, and authorized by H. C. Pierce were thereafter audited by the auditors of the Standard Oil Company.

The COURT: Read that again. (Counsel having written it out in pencil on a scratch tablet.)

Mr. BATTS: It is agreed that expenditures made as early as June 15, 1900, and authorized by H. C. Pierce, were thereafter audited by auditors of the Standard Oil Company.

Mr. BATTS: Of course, this is expenditures of the Waters Pierce Oil Company?

Judge PENN: Certainly.

Mr. BATTS: Can I put that in,—"of the Waters Pierce Oil Company"?

Judge PENN: Yes, sir. (Counsel writes the words in the agreement.-

Q. Just one question, Mr. Ackert: I call your attention to a document dated February 8, 1901, being a letter from Wade Hampton; I wish you would explain, if you can, what this stamp which is included in it, means.

A. Transmitted to Mr. A. M. Finlay, vice president, Mr.
1522 H. C. Pierce, president, I suppose a copy of it is what it means, to be transmitted.

Q. You were at the home office in February, 1900, were you not?

A. I think so, yes, sir; I couldn't say definitely, though.

Q. You recall the occasion of Mr. Pierce sending out a letter to the subordinates to the effect that his health had become impaired so he would have to resign from the business management of the Waters Pierce Oil Company?

A. I think there was such a letter.

Q. That was about February, 1907?

A. I couldn't say just the date.

Q. Well, was it about that time? A few months before the re-incorporation?

A. I think there was such a letter as that, but I have not thought about it since then, and I couldn't say as to the date.

Q. Mr. Pierce went in as president upon the re-incorporation of the concern, didn't he?

A. I think so, yes sir.

Q. At the time of the re-incorporation, Mr. Andrew Finlay was president?

A. As I remember, he was.

Q. Just had been in only a few months?

A. I think so.

Q. After the re-incorporation, how many members of the Board of Directors were there as representatives of the Standard Oil Company?

A. After the re-incorporation?

Q. After the re-incorporation.

A. I don't know that there were any.

Q. Well, you didn't know then the representations that the members of the Board had with regard to the different interests involved?

A. No, sir, I did not.

1523 Cross-examination:

Judge PENN: If the Court please, Mr. Johnson is more familiar with the facts in reference to the testimony of this witness, and we ask permission that he be allowed to cross-examine him.

THE COURT: All, right, sir.

(Examination by Mr. Johnson:)

Q. When did you say you first became connected with the Waters Pierce Oil Company?

A. In March, 1883.

Q. In what capacity?

A. As agent at Fort Smith, Arkansas.

Q. How long did you remain in that position?

A. I think it was five years, about, as I remember.

Q. To what position were you transferred at the end of the five years?

A. To the position of traveling salesman in Arkansas.

Q. Connected with the Arkansas division?

A. Yes, sir, under the office at Little Rock, where I staid for six months.

Q. Then to what position were you transferred?

A. To a position in St. Louis.

Q. With the home office?

A. With the home office, for six months.

Q. What particular position did you occupy then, and what were your duties?

A. I was on the street as salesman.

Q. City salesman?

A. One of them.

Q. How long?

A. For six months, about.
1524 Q. Then what position did you assume?
A. I was transferred to the East Texas & Louisiana division at Marshall, as assistant manager, Marshall, Texas.
Q. Who were you under there?
A. Under F. M. Austin.
Q. How long did you remain there in that position?
A. A year and a half.
Q. Then to what position were you transferred?
A. As manager of the Arkansas division, where I remained for two years and a half.
Q. Headquarters at Little Rock?
A. Yes, sir.
Q. Then where were you transferred?
A. To St. Louis, as assistant in the lubricating department.
Q. When was that, Mr. Ackert?
A. In '93, June '93, I think.
Q. Who was the head of the lubricating department?
A. June '94, Mr. Stephen Johnson.
Q. How long did you occupy that position?
A. For five years.
Q. Then what duties did you assume?
A. I was with Mr. Gruet, in the accounting department, for a few months, just doing one thing and another; then I was transferred to Mr. A. M. Finlay's office.
Q. Mr. Andrew Finlay?
A. Yes, sir.
Q. What was his position at that time?
A. He was vice president.
Q. And general manager, wasn't he?
A. Yes, sir; vice president and general manager.
Q. You were made the assistant then to the general man-
1525 ager?
A. I was general manager for a short time and then I was——
Q. I say you were made assistant to Mr. Finlay, the general manager?
A. Yes, sir.
Q. How long did you perform the duties of that position?
A. Until June or the 1st of July, 1903.
Q. I don't recollect, did you state when you assumed the duties of assistant to Mr. Finlay?
A. As I remember, it was 1900; I have just forgotten the date.
Q. Was it before or after the dissolution of the old company and the organization of the new company?
A. Just before, as I remember.
Q. And you performed those duties as assistant to the general manager; Mr. Finlay was vice president of the new company?
A. Yes, sir.
Q. And continued as general manager of the new company from the time of its organization?

A. Yes, sir.
Q. Until 1903, when you were made general manager?
A. Yes, sir.
Q. Then you assumed all the duties of general manager?
A. Yes, sir.
Q. These different positions that you have occupied with the company, has given you a pretty thorough knowledge of its general plant and operation?
A. Yes, sir.
Q. And mode of transaction of business?
A. Yes, sir.
Q. And employees?
A. Yes, sir.
Q. Nature of the equipment?
A. Yes, sir.
1526 Q. Hasn't it?
A. Yes, sir.
Q. First, are you any relation to Mr. H. C. Pierce?
A. I am.
Q. What?
A. Cousin.
Q. First cousin?
A. Yes, sir.
Q. Have a brother, Cyrus L. Ackert?
A. Yes, sir.
Q. What position does he occupy?
A. Manager of the Missouri division.
Q. How long has he been connected with the company?
A. Sixteen years, I think.
Q. Mr. Stephen Johnson, you say, was at the head of the lubricating department for years?
A. Yes, sir.
Q. What relation is he to Mr. Pierce?
A. He is a brother-in-law.
Q. That is, his wife is Mr. H. C. Pierce's sister?
A. Yes, sir.
Q. Mr. Andrew M. Finlay, has been connected with the company longer than you have?
A. Yes, sir.
Q. In different responsible positions; what position—what relation is he to Mr. Pierce?
A. He is also a brother-in-law.
Q. He and Mrs. Pierce were brother and sister?
A. Yes, sir.
Q. And all the parties have been connected with the company since you first became connected yourself?
1527 A. Yes, sir; twenty-three years ago last March.
Q. Now, what are your particular duties; state them briefly,—as general manager of the company, Mr. Ackert?
A. Manager of the business in the divisions and St. Louis, so far as the agencies and marketing, etc.

Q. That is, you have general charge of what is called the marketing department?
A. Yes, sir.
Q. Marketing of all oils?
A. Yes, sir.
Q. And products of the company?
A. Yes, sir.
Q. Can you tell us, Mr. Ackert, how many stations the Waters Pierce Oil Company has in Texas, all told?
A. I think it is about four hundred and fifty; that is pretty close, I haven't the figures with me.
Q. You have one or more stations in every county in the State, haven't you?
A. Yes, sir.
Q. When I say you, I mean the company.
A. Waters Pierce Oil Company.
Q. You recall from memory the number of so-called tank stations, as distinguished from the other stations?
A. From memory I should say that there were about two hundred and fifty.
Q. By tank stations you mean stations at which there are storage tanks for the purpose of storing and keeping oil in bulk for distribution to the trade?
A. It is where we have one or more tanks.
Q. At each station you employ an agent?
A. Yes, sir.
1528 Q. Who is in charge of the agency or the business at that station?
A. Yes, sir, and what other employees are necessary to properly transact the business.
Q. But you have an agent who is in charge of the business at each particular station?
A. At each station we have an agent.
Q. And at many of the stations the agents have assistants or subordinates to assist in carrying on the business of the company?
A. Yes, sir.
Q. Now, you have a great many agents who are on a salary?
A. Yes, sir.
Q. You have a great many agents who are paid a commission on the quantity of oil which they sell?
A. Yes, sir.
Q. How many paid agents are there?
A. Let's see. There are about one hundred and fifty of them.
Q. Isn't there an agent to each station?
A. Not of the paid agents; there are commissioned and salaried agents; the commissioned agents get so much per barrel.
Q. Then there are commission agents?
A. Yes, sir; commissioned agents and salaried agents.
Q. How many employees has the company in Texas?
A. About 450.
Q. Does that include the employees at the division headquarters?

A. Yes, sir.
Q. There are more there?
A. Yes, sir, in the way of clerks, etc., there are about at each divisional headquarters fifteen or eighteen altogether.
Q. How many tank wagons does the company operate in the State?
A. Tank wagons and can wagons, about one hundred and fifty.
1529 Q. You know how many tank wagons as distinguished from the can wagons?
A. I should say about two-thirds of them, or more.
Q. Aren't there more than one hundred and fifty, Mr. Ackert?
A. I think that is about what it is, about one hundred and fifty.
Q. How many divisions are there in the State, so-called divisions in the State.
A. Central Texas, headquarters at Dallas, Mr. Cahoon, and South Texas Division.
Q. Their headquarters are at Houston, and Mr. Fries is the manager?
A. Yes, sir; and the East Texas and Louisiana Division,—headquarters at Shreveport.
Q. Who is the manager there?
A. Mr. D. A. Vann.
Q. Who preceded him?
A. Mr. J. H. Littlefield.
Q. When was Mr. Littlefield transferred or relieved from duty as manager at Shreveport?
A. About two weeks ago.
Q. You recall the date?
A. A week ago on Saturday; I think it was on Saturday.
Q. Mr. Vann was appointed to succeed him?
A. Yes, sir.
Q. Then, there is the Oklahoma Division?
A. Yes, sir.
Q. Which Division has a number of agencies in the Panhandle of Texas, that is, it takes in quite a large area of the Panhandle?
A. Yes, sir.
Q. And the Louisiana and East Texas Division takes in——
A. The eastern part of Texas.
1530 Q. There are two Divisions wholly within the State?
A. Yes, sir.
Q. These distributions are for the convenient distribution or marketing of oil or oil product, is it not?
A. Yes, sir.
Q. How do the division managers have control over the agents, all the agents in their respective divisions?
A. They have control of all of them in their respective divisions, and the marketing of oil and the handling of the Waters Pierce Oil Company's business in each of their divisions.
Q. And they communicate with the home office?
A. Yes, sir.

Q. And the home office communicates directly with them?

A. Yes sir.

Q. There is no immediate communication or connection between the home office and the agents in the different divisions?

A. How?

Q. I say there is no immediate connection or communication between the home office and the agents in the different divisions?

A. No, sir, it is direct with the manager at the division headquarters.

Q. And these division managers have charge of the marketing of the oil in their divisions? And all the facilities?

A. All of the facilities and the handling of the entire business of the company in their divisions.

Q. Mr. Ackert, what percentage of oil sold by the company within the State is distributed to the trade in bulk, that is, by tank wagons or by cans?

A. Sixty to sixty-five per cent. of the total sales of refined oil in Texas is sold from tank wagons or cans.

1531 Q. And the distributions are made from central storage points?

A. From our tank stations, which ever is the most convenient.

Q. And where you cannot reach the trade by tank wagons or by cans you make your shipments how?

A. In iron barrels; we have a supply of iron barrels in addition to our tank wagons and cans, to take care of the business in Texas.

Q. How many iron barrels does the Company own and operate in Texas?

A. About fifteen thousand, I should say.

Q. They are shipped out to fill orders beyond the reach of tank bulk deliveries, and the barrels are ultimately returned to the Company?

A. Yes, sir.

Q. What facilities have the retail dealers which you—which the company furnishes, to be filled with bulk oil from tank wagons and cans?

A. They have 50, 75, 100, and 150 and 200 gallon-tanks,—pump tanks.

Q. Those are called store tanks?

A. Or store tanks. They can buy them from the Waters Pierce Oil Company; and we have them for sale; our tank-wagons make the delivery into these tanks.

Q. They are provided with a pump, by means of which the oil is—the oil or gasoline, as the case may be,—can be readily pumped out into a smaller vessel,—the can of a customer, for instance?

A. Every convenience for our customers; yes, sir.

Q. Have you, as general manager, and the agents under you, encouraged the use of these store tanks,—the adoption of them by your customers?

A. To the fullest extent.

Q. Now, all the oil which was handled by the Company in bulk is transported from the refinery in tank cars, is it not?

A. Yes, sir.

1532 Q. Whether it be Chaison, or Corsicana, or Whiting, or Neodesha, or Sugar Creek?

A. It is all handled in tank cars.

Q. How many tank cars does the Waters Pierce Oil Company own and operate for the carrying of oil within the territory in which it operates, including Texas?

A. And Mexico?

Q. No; take the United States.

A. I haven't the figures before me here, but it is somewheres between eighty and a hundred; possibly a hundred; may be a little more; it is in the neighborhood of a hundred tank cars.

Q. When its equipment of tank cars are not sufficient for its business, it rents or hires tank cars from the Union Tank Line, does it not?

A. Yes, sir.

Q. And the deliverey of the bulk oil is made in those cars?

A. Yes, sir; we have also——

Q. Now, the process of supplying the trade begins at the refinery, by filling into a tank car, or tanks cars, the oil or gasoline, shipping it to the tank station, say, in Texas; transferring the contents of the tank car into a storage tank; then distributing from that storage tanks, according to the requirements, into tank wagons, into cans or into iron barrels, as the case may be.

A. It is a bulk deliverey all the way from the refinery into the merchants' tanks.

Q. Your tank wagons at the different tank stations make regular rounds through or over a certain route every day or so; many times every week.

A. Yes, sir; a sufficient amount to take care of the trade; to keep them all supplied.

1533 Q. And where you haven't sufficient tank wagons for the purpose of supplying your customers, you then transfer the oil from the storage tanks into cans, ten-gallon cans, load the cans into wagons, and distribute those cans around to the customers?

A. In the same way, giving the customer the benefit of the bulk delivery.

Q. Then, in localities beyond the reach of the tank wagons and cans, you fill the iron barrels from the storage tank, and ship them by rail to the point at which the purchaser resides?

A. Yes, sir.

Q. Mr. Ackert, how long has the Waters Pierce Oil Company, so far as you know, been engaged in building up this system of facilities which you have described?

A. Ever since they were first organized; and continually improved from time to time.

Q. What has been the method since you were connected with the General Manager's office, with respect to increasing those facilities, increasing bulk deliveries, increasing and establishing agencies, increasing facilities for reaching outlying and new localities?

A. It is one of our principal duties required of all of our people in the field, to watch that; just as quick as a town has grown to a

sufficient extent to warrant a tank station, or additional tanks are necessary, the manager comes to the home office with his recommendations. It is very frequently, nearly always the case, that the people—the residents of the towns—make application to put in a tank station. It is safe to say that in the last ten years, that ninety per cent. of all the tankage we have put in, we have had applications from the merchants at those towns to locate our warehouse, our tanks, etc., in them.

Q. So as to give them the conveniences and facilities of handling oil?

A. For the benefit of that. In a few instances we had to
1534 take them out, because the business did not justify it; and in each case where we have, we have had a very strong complaint from the merchants of those towns because we had done it; and in many cases, we had to extend our tank wagon deliveries to those towns where the tanks had been taken out, to have the trade feel entirely satisfied.

Q. Can you give any idea of the percentage of increase in the new facilities established since the present company was incorporated?

A. I should say that they had increased practically fifty per cent., or nearly that.

Q. Since the new company was organized?

A. Yes, sir; in rebuilding tanks, in extending the tankage and in building new plants.

Q. Do you know how many plants in the State or stations in the State the company has, at which it owns the land in fee and which are substantially improved.

A. Nearly,—well, there is a number,—fifteen or twenty,—I should say; I haven't the number with me.

Q. You have a station of that kind in all of the principal towns?

A. In nearly all of the principal towns we own property.

Q. You have one at Galveston?

A. We have.

Q. How extensive is it?

A. Quite a large one.

Q. At Houston?

A. Yes, sir, it is a very large one; recently rebuilt.

Q. It burned out?

A. No, it didn't burn out; it was too small.

Q. I mean the old plant.

A. Only in part; the fire didn't amount to anything. It was too small. We bought some land and spent forty or fifty
1535 thousand dollars at Houston for a new and thoroughly up-to-date plant.

Q. Can you mention other towns at which the company owns those stations in fee?

A. At Dallas; at Galveston,—I think that was mentioned; there is a number of small——

Q. At Fort Worth?

A. No, not at Fort Worth; a part of it only; a part of it in fee, and a part leased.

Q. You say there are twenty odd plants?

A. Yes; large and small, but a number are small.

Q. And at other stations the Company has leased the lands and improved the lands?

A. Yes, sir, and improved them.

Q. And their are some stations that the commission agents themselves provide the premises?

A. At very few in that way. Nearly all of that is leased, and we have our tankage.

Q. Mr. Ackert, what have these facilities to do with your ability to supply the trade, the retail trade, with the products dealt in by the Waters Pierce Oil Company?

A. It has altogether to do with it; we carry it in bulk; we try always to have enough of every product on hand, either in tankage or barrels, to fill any order. If we haven't it there, it is drawn from any point near, or the nearest point.

Q. During your lond experience with the Company, I suppose you gained some knowledge. What knowledge did you gain with respect to the old system of making delivery of oils to retail dealers in wooden barrels?

A. It was very unsatisfactory; there was leakage; always claims; and the cost of handling the barrels was excessive; the gluing
1536 and coopering; and in the collecting of the barrels. There was liability to be—the oil was liable to get off-color, complaints on account of that would be made; and there is no comparison at all between the two, because the one is old and out-of-date, and the bulk package is what the customers want, and they insist upon it. In addition to our tankage, we have put in,—in many cases the customers in the smaller towns have come to us and asked us to put on our tank-wagons, and I know of many cases where we had to be gone two days with five hundred gallons of oil. It is very expensive in rainy weather like this. If we dropped off for a week, we got any number of complaints, so that the trade expects us to come at certain periods during the whole year, regardless of weather.

Q. State whether or not you have, as general manager, kept posted with the business done by your competitors throughout the State.

A. I have.

Q. How, as a general thing, did the prices at which the Company has sold to the trade from time to time in the State, compare with the prices of corresponding grades of oil at which the Company's competitors sold?

A. It is nearly in all cases higher than the competitor; all for the one fact of our bulk deliveries. We have the large number of tank-wagons and cans, and I believe there are only ten or fifteen tank wagons of the whole competitors in the State. They make very few, if any, of the interior deliveries, and the only manner that they have of getting the oil out is in barrels, wood barrels, some few iron barrels; and because of that we maintain and are able to maintain from a half up to three-quarters and a cent, and sometimes a cent and a half, above what the other people ask for it; and the trade seem willing and entirely glad to pay us that difference. The in-

terior deliveries are expensive; they fully appreciate that, and
1537 that they get the full measure, as against the loss of the wood or iron barrels, as it goes out from our competitors. In addition, it is the hauling out from the railroad points which is avoided.

Q. Mr. Ackert, do you remember when the first so-called executive committee was organized at the home office in St. Louis?

A. I do.

Q. About what time was that?

A. It was, I think, in the summer of 1900, possibly June or July; I have just forgotten the date.

Q. Were you on that committee?

A. I was.

Q. The organization was informal, I believe.

A. It was, yes, sir.

Q. When was the formal organization effected by resolution of the board of directors?

A. Some time in 1902; I have just forgotten the date.

Q. Who composed that committee; do you recall?

A. Mr. A. M. Finlay, Mr. C. A. Pierce, Mr. C. M. Adams, Mr. J. P. Gruet, and myself and yourself, and Mr. H. C. Pierce was there; he always attended.

Q. Mr. Stephen Johnson?

A. And Mr. Stephen Johnson.

Q. In other words, made up of heads of departments?

A. Heads of departments.

Q. The president presided?

A. Yes, sir.

Q. How long did that committee continue in operation?

A. Until September, 1904, I think; about that time.

Q. What matters, in a general way, were referred to that committee and considered by it?

A. All matters of a general character.

1538 Q. That is, outside of the regular——

A. Regular current business, yes, sir.

Q. They discussed and passed upon questions, and advised, and acted in advisory capacity to the president?

A. Yes, sir; and the handling of the company's business, except in detail.

Q. Now, during the time of the continuance of those committees,—but before coming to that question. The executive committee was dissolved in the fall of 1904, wasn't it?

A. Yes, sir.

Q. By resolution of the board,—the board under which it was organized? Afterwards, was there any organization effected,—after that?

A. Not for a time.

Q. Well, when was a subsequent organization effected?

A. In October or November, 1906.

Q. That was an advisory committee, too?

A. Yes, sir.

Q. Who composes that committee?

A. Mr. C. A. Pierce, the president, Mr. A. M. Finlay, Mr. Edward Stanley, Mr. C. L. Harris, and myself.

Q. The heads of departments?

A. The heads of departments.

Q. Now, at the time of the organization of the first executive committee, the information organization, down to the time of the dissolution of the formal and regular executive committee,—how were the selling prices of the commodities of the company fixed or determined on?

A. They were all passed on by the committee.

Q. Well, how was it done,—state briefly how.

A. The letters as regards the prices—all of the correspond-
1539 ence from each of our divisions came to my office, and they were all submitted to the executive committee.

Q. Well, propositions came up to change the price of a commodity at a certain point?

A. Mr. Cahoon, as an illustration, would have one or more points where he considered that a change was advisable, and he would submit it to me, with recommendations; I would take it to the committee, and we would consider it. We would have our costs and everything that gave full information, and there it was decided whether it would go into effect. If we put in an advance or a decline, that was considered in that way.

Q. What had the Standard Oil Company, or what did anybody else have to do with the fixing of prices during that time, if anything?

A. Absolutely none whatever.

Q. How were the fixing or changes in prices arranged or made after the dissolution of the executive committee in the fall of 1904 and until the advisory committee was created or begun to act?

A. By the officers of the Company.

Q. What officers?

A. Mr. A. M. Finlay, Mr. W. P. Tinsley and myself.

Q. Anybody else have anything to do with it?

A. Mr. C. A. Pierce.

Q. How were the prices determined during that period; upon what basis did you fix the prices?

A. Our prices before that period were already in effect, and we simply advanced or declined, as the case might be, according to the market prices of oils or gasoline.

Q. That is to say you might raise prices throughout the State of Texas, or you might lower them; or you might raise the prices at one or two or three stations?

1540 A. According to the recommendation or advice of our people in the field,—of the managers.

Q. Then, in what way did the method of fixing prices differ during that time, from the method pursued while the executive committee was in existence?

A. Exactly the same as before.

Q. That appertains to the prices at which the Company sold its commodities in Texas, as well as in other States?

A. In all portions that the Waters Pierce Oil Company operated.

Q. Now, state whether or not the Standard Oil people or the Standard Oil Company, or any one besides the officers you spoke of, had anything to do with the fixing of prices during the period you mentioned?

A. None whatever.

Q. What has been the method pursued in fixing prices since this last advisory committee began to act?

A. Just the same as previous,—in the executive committee or in the last six or seven years,—ever since the re-organization of the company.

Q. Do you remember when Mr. Tinsley first went to St. Louis?

A. I do.

Q. About what time was it?

A. March, 1904.

Q. What were his duties at first; what duties did he perform, if you remember, in a general way?

A. Why, in the accounting some; various matters,—didn't amount to very much.

Q. He nosed around generally, didn't he?

A. Yes; that is all,—practically nothing.

Q. Do you remember the date at which Mr. Finlay, the president, I mean, had sick leave of absence.

1541 A. In February, 1905.

Q. He was the president?

A. He was the president, yes, sir.

Q. Do you recall when Mr. A. M. Finlay became president; it was in February, 1904, was it not?

A. I think it was, yes.

Q. Who performed the duties of president during the time of February, 1904, up to the time that Mr. Finlay had sick-leave?

A. Mr. Finlay.

Q. How long was he away?

A. From February, about the middle of February, until June 15th, I think of the same year.

Q. Who performed the duties as president—who acted as president during his absence?

A. Mr. R. P. Tinsley.

Q. During that time who fixed the prices at which the commodities were sold?

A. Why, he did and myself and Mr. C. A. Pierce.

Q. All continued to act in that capacity?

A. In the same capacity.

Q. Do you remember when Mr. Tinsley left St. Louis?

A. About June 1, 1905.

Q. Do you remember when he resigned as vice-president and director of the company?

A. About that time.

Q. And who succeeded him as president?

A. Mr. C. A. Pierce.

Q. Who became vice-president?

A. Mr. A. M. Finlay.
Q. Who have occupied those positions since?
A. Mr. C. A. Pierce and Mr. Andrew M. Finlay.
1542 Q. Now, Mr. Ackert, I want you to state generally whether or not the Waters Pierce Oil Company has been operated as an independent company since the time of its organization down to the present time.

Mr. BATTS: I think that is a conclusion of the witness——

Q. (Continued:) Under the management and direction of its officers at St. Louis?

Mr. BATTS: I object to it as a conclusion.
The COURT: The objection that it calls for a conclusion is sustained.
Mr. JOHNSON: Defendant excepts.

Q. Well, who since its organization has managed the business affairs of the Company, and fixed the prices and determined the quantity of oil that it would sell?
A. Mr. C. A. Pierce, the president, Mr. A. M. Finlay, the vice-president, and myself.
Q. And since—how was it while Tinsley was there?
A. Mr. Tinsley, Mr. Finlay, Mr. Pierce and myself.
Q. How has it been since Mr. C. A. Pierce was made president?
A. Just the same—Mr. C. A. Pierce, Mr. Andrew M. Finlay and myself. (To the Stenographer:) "Just the same" should be left out.
Q. Mr. Ackert, you spoke of the purchase by the Waters Pierce Oil Company of the Southwestern Oil Company in St. Louis. What did you mean? That the Waters Pierce Oil Company had purchased the plant?
A. Yes, sir.
Q. After the Southwestern Oil Company had gone out of business?
A. Yes, sir.
Q. Do you know Mr. Grinner?
A. I do.
Q. H. H. Grinner, isn't it?
A. H. C. Grinner.
1543 Q. How long has he been in the employ of the Waters Pierce Oil Company?
A. Since 1891 or '92, possibly 1890. It is between 1890 and '92; I have forgotten which.
Q. What has he been doing during that time?
A. To operate and manage that part of the buisness.
Q. That is——
A. That is, the International Oil Works.
Q. That fact is generally known in the city of St. Louis?
A. Yes, sir, it is.
Q. Among the trade?
A. It is, among the trade.
Q. Mr. Ackert, do you remember when the Republic Oil Company began doing business in St. Louis?

A. I do.

Q. About what time was it?

A. As I remember, about 1901. I have forgotten; somewhere about there.

Q. When did you first learn that it was a Standard Oil interest?

A. When this first came up in the courts.

Q. That is, when the Missouri case was brought?

A. When the Missouri case was brought, is when I knew definitely.

Q. What knowledge had you as manager of the Waters Pierce Oil Company of any connection between the Republic Oil Company and any Standard Oil Company?

A. I had none whatever.

Q. Where did the Republic Oil Company begin doing business when it opened up in St. Louis? At any other point besides St. Louis?

A. I think that was the only point in our territory, in the Waters Pierce Oil Company territory, where they operated.

1544 Q. They operated from St. Louis?

A. From St. Louis; but it was the only tank station.

Q. It established a tank station in St. Louis. Any tank wagons?

A. Had four or five tank-wagons.

Q. Any salesmen?

A. Had about three or four salesmen.

Q. Where did the tank-wagons operate?

A. In the City of St. Louis.

Q. Where did the salesmen operate?

A. In the city and out in Missouri.

Q. In the Missouri Division?

A. Practically all over the Division.

Q. How long did they continue to operate in that way?

A. They continued up to about five or six months ago.

Q. What policy did the Waters Pierce Oil Company adopt towards the Republic Oil Company, so far as competing with it is concerned?

A. They went after their business just as hard as they knew how.

Q. How long did they keep it up?

A. To the end.

Q. So you had your suspicions in regard to its connections?

A. I did for two or three years before, but I had nothing to prove it by.

Q. Notwithstanding that, you competed with it all the time?

A. Just as hard as we knew how.

Q. You were asked on direct examination about the quotation of prices by the Standard Oil Company. You understood that question to mean the selling prices——

A. It is the selling prices.

Q. Now, the fact that the Standard Oil Company, because of the large output of refined oil, really determines the general market price throughout the country, of refined oil?

1545 A. That is what I understand.

Q. State whether or not there are changes made in the prices by the Standard Oil Company to the trade generally.

A. There are frequently.

Q. Do those prices apply to the Waters Pierce Oil Company, the same as everybody else?

A. The same as any other large concern.

Q. Yes?

A. Yes, sir.

Q. Associate counsel suggests that I may not have made myself clearly understood in regard to this matter. I mean the quotation of prices—refinery prices or selling prices—by the Standard Oil Company to the trade generally.

A. Not to any of the trade in the territory, but it is to the Waters Pierce Oil Company, you mean?

Q. Well, doesn't it fix the prices generally, of the market generally,—the selling prices?

A. As I understand, it does. There is a report of the market prices in all of the papers—New York, Pittsburg papers, etc.

Q. State whether or not all other dealers or refineries do not follow the general prices fixed by the Standard Oil Company.

A. It is my understanding that they do.

Q. In other words, the Standard Oil Company and its allied companies determine and establish the market price throughout the country?

A. It is largely the same with the people in the Waters Pierce Oil Company.

Q. Then these quotations made by the Standard to the Waters Pierce Oil Company are on changes in the general market price from time to time of the commodity mentioned?

A. It fluctuates from time to time.

1546 Q. On refined oil and gasoline?

A. On all products.

Q. That has no relation to the prices at which the Waters Pierce Oil Company sells to the trade in Texas or elsewhere?

A. Absolutely none. We make our own prices.

Q. You were asked a question by Mr. Batts; I judge that your didn't understand when you made the answer. You, of your own knowledge, know nothing about the original arrangement made between Mr. Pierce and Colonel Thompson and others connected with the Standard Oil Company of Ohio, way back in 1878, regarding the territorial limits in which the Waters Pierce Oil Company, the old company, I mean, was to do business.

A. None whatever.

Q. When you went with the Waters Pierce Oil Company, it was doing business in the same territory it is doing business in now?

A. Yes, sir.

Q. That is all you know about it?

A. That is all I know about it at all.

Q. Now, that question related to knowledge on your part of the Standard Oil Company beginning selling oil in Louisiana, west of the Mississippi River; you don't know whether it was doing so in violation of any understanding or not, do you?

A. Nothing whatever.

Q. All you know is that the Standard Oil Company did go into

that territory and establish tank stations in competition to the Waters Pierce Oil Company?

A. I knew that, and we immediately took steps to protect ourselves.

Q. Yes, and you have beaten them out pretty nearly, haven't you?

A. Practically so.

Q. You have the same perfect organization of plants, system and method, and intelligent employees, west of the Mississippi
1547 River, that you have in Texas and elsewhere?

A. Just the same; they are practically doing no business, notwithstanding the efforts of a half dozen salesmen.

Q. The Standard Oil Company has also started in business in the portion of Illinois, that the Waters Pierce Oil Company has for years been doing business?

A. In East St. Louis; yes, sir.

Q. When did it begin there?

A. In May, 1906.

Q. And what has been the policy in respect to competing there?

A. To aggressively go after the competition.

Q. What has been the result?

A. We have practically held all of the business to date in that way.

Q. They are still competing?

A. They are.

Q. In both localities?

A. They are.

Q. There is no sham about that?

A. None whatever.

Q. As far as the Waters Pierce Oil Company is concerned?

A. Absolutely none.

Q. In neither instance?

A. No, sir.

Q. You don't know anything much about the refining of oil, do you, Mr. Ackert?

A. No, sir, I don't. It is out of my line.

Q. But you do know something about the product?

A. I do.

Q. You stated, I believe, that Eupion was the best grade of oil sold by the Waters Pierce Oil Company?

A. I did.

1548 Q. And that it had established a very large trade in it under that name,—that trade name?

A. I did.

Q. And that Eupion, while it is the same in quality, varies as to fire test?

A. It does.

Q. Do you know why that is?

A. In some States they require a hundred——

Q. Isn't it because of the crude oil——

Mr. ALLEN: We object to that. The witness has started to answer, and let him answer the question, and not the counsel.

Mr. JOHNSON: I was afraid he had misapprehended the question.

A. On account of some of the States having a law of 150 fire test, while in other States it is lower, or there isn't any. We have always considered that a lower fire test is better than a 150 fire test, unless you go too low.

Q. That is, until you get too low?

A. Until you get too low.

Q. Then the fire test has practically nothing to do with the burning-quality of the oil?

A. Down to a certain point?

Q. Or up to a certain point?

A. That is right.

Q. What is—what difference—what does the difference in fire test make as to the burning quality of oil; take, for instance, 120 degrees, so-called fire-test, and 150 degrees so-called fire test?

A. It is considered that the 120 is a good deal better than the 150.

1540 Q. In all respects?

A. In all respects; it is a better burner and it gives a better light than the 150; it is generally conceded that the 120 to 125 is better than 150.

Q. Really, the only difference is that the 120 is a little more volatile than the 150?

A. Yes, sir.

Q. And burns freer?

A. Burns freer.

Q. But the quality of oil is practically the same?

A. Yes, sir.

Q. Mr. Ackert, state whether or not you ever authorized the selling in Texas, at any time, of Prime White 112 degrees fire test, for Eupion.

A. No, sir, I have not.

Q. Instead of the regular Eupion brand?

A. I have not.

Q. Did you ever know of that being done?

A. I understood from Mr. Cahoon here yesterday, and I think that he reported it, that at one time it was done, and we immediately gave instructions that it be stopped, and I have issued letters to the managers, that if we didn't have the Eupion Oil, to go to the customers and inform them that we didn't have it, but that it was on the way. I have held meetings in each of our headquarters during the last year, and I have positively directed the managers and salesmen they should not *het* out and sell any lower grade for Eupion; and I think they all thoroughly understand it.

Q. What has been your policy since you became general manager, with dealing with the trade in that way?

A. With strict integrity; we feel that that is the capital stock.

1550 Q. You spoke of meeting with your agents; how often do you hold meetings with your agents?

A. Every four or five months we try to. I am not always present, but I try to be present as often as I can; that means all of our agents,—salaried agents and commission agents.

Q. Now, of your knowledge and the present state of business of the Waters Pierce Oil Company, state whether or not the amount of the company's business in Texas to-day—state what it results from, and your ability to hold the trade or to do the business that you do, against the competition that exists.

A. It is the quality of our oils, the men that we have, and the strict integrity and open manner in which we go after the business. It enables us to hold as large a percentage as it does. We try to have in every position men of strict integrity, men whom the people at large can place confidence in, and as soon as we find that any of our men are not of that class, that are not treating the people as they should, in a strict integrity, in a manner which makes or has the trade feel full confidence in the Waters Pierce Oil Company—that they are able to give first-class oils, to give first-class service—we simply make a change; we do that as soon as we can after we find that they are not of that calibre of men.

Q. Who has—what have you had to do with the purchase of oil supplies, Mr. Ackert?

A. I haven't had very much to do with that.

Q. Well, haven't you had anything to do with it?

A. Practically nothing.

Q. Who has had charge of that?

A. Mr. Andrew M. Finlay.

Q. What is the process—through what channels do requisitions or requests for supplies at the agencies, go?

1551 A. At the agencies?

Q. Yes.

A. The agencies make their orders on the main office or the division office, for carloads or less, as the case may be, and these orders are made up in the division office and sent to the home office in St. Louis, to Mr. Andrew M. Finlay.

Q. Do they all go direct to him?

A. Go direct to him.

Q. You- statement as to the policy pursued towards the trade, a moment ago, referred to the period since you have been general manager of the Company?

A. Yes, sir.

Mr. JOHNSON: I believe that is all.

Redirect examination.

(By Mr. BATTS:)

Q. The relations between the Waters Pierce Oil Company and the Standard Oil Company are just the same that they have been ever since it was incorporated, are they not?

A. What do you mean?

Q. Well, has there been any change in the course of business of the Standard Oil Company with reference to the Waters Pierce Oil Company during that period?

A. On prices?

Q. Anything.

A. I have had practically nothing to do with any correspondence or knowledge of the S. O. Company, in matters of that kind.

Q. Now, you seem to know most everything about the business when you are interrogated by your counsel, and you have
1552 been on the executive committee all the time, and you state that everything that pertains to the company comes before the committee. I want to know if at any time since May 29, 1900, there has been any change in the attitude of the Standard Oil Company towards the Waters Pierce Oil Company in the management of the business of the letter?

A. The Waters Pierce Oil Company have always managed their own business.

Q. Now, will you answer the question that I have asked you?

A. I don't know that there has been any change, because the Waters Pierce Oil Company has always done it.

Q. Very well, it has been auditing the accounts all the time?

A. I couldn't say whether it has or not.

Q. You still state that you were a member of that executive committee, but can't tell me whether or not the Standard Oil Company has been auditing the accounts, has been doing it all the time?

A. I have heard of no auditors for two years.

Q. Prior to that time there were?

A. Prior to that time?

Q. I am talking about that corporation.

A. There were auditors that came there during that time.

Q. Up to about two years ago?

A. I think so; yes, sir.

Q. About two years ago they stopped. What time was the suit up in Missouri filed?

A. I couldn't tell you, sir.

Q. What reference did that have—the suit up in Missouri?

A. I do not know.

Q. Well, it was talked about before the Executive Committee, was it not?

A. No, sir, it was not.

1553 Q. Now, as a member of the executive committee, and as a member of the family, and one of the officers of the Waters Pierce Oil Company's wasn't the affairs of that company and its relations to the Standard Oil Company, discussed?

A. No, sir, not in that way, as regards the management of the business.

Q. Well, was the matter of its stock-ownership discussed?

A. No, sir.

Q. When did you first learn of the ownership by the Standard Oil Company of the stock of the Waters Pierce Oil Company?

A. In the papers.

Q. Notwithstanding you are a member of the executive committee;

notwithstanding you knew about the affairs generally; notwithstanding the letters received daily from 26 Broadway; notwithstanding you are a relative of H. Clay Pierce; notwithstanding you met all these persons every day there,—you didn't know anything about it?

A. I do not know what stock the Standard Oil Company had, or anything about it.

Q. And don't know that it owned any stock?

A. I do not know.

Q. Now, I understand you to say that the general attitude of your business is to be entirely open and frank to the people of Texas?

A. Yes, sir, absolutely.

Q. And yet the stock-ownership of the Waters Pierce Oil Company was not disclosed even to you?

A. I had nothing to do with the stock or any part of it.

Q. And didn't know about it?

A. I had no means of knowing about it.

Q. You recall the testimony given by Mr. Pierce, to the
1554 effect that he had been informed that the Standard Oil Company methods would no longer be tolerated in Texas?

A. I knew of that?

Q. What was meant by that?

Judge PENN: We object, Your Honor; it is not competent to call on one witness to explain what another witness meant by his testimony.

The COURT: If the witness knows, he can state.

A. I do not know.

Q. Well, you don't know what that meant?

A. No, sir.

Q. I will ask you if there has been any change in the character of your relations to the people of Texas since May 29, 1900? Have you just since that time begun to treat them honestly, and have honest employees?

A. I didn't have anything to do with the business in Texas before that. I assume the company always tried to assume its high dignity of first class employees.

Q. You don't understand that there has been any change since May, 1900?

A. I don't know anything about it.

Q. And don't know what was meant by Mr. Pierce's statement that the Standard Oil Company's methods would not be tolerated in Texas?

A. Mr. Pierce didn't tell me; I don't know what that means.

Q. In your executive committee meetings, as I understand, that this committee up to the time that Mr. Tinsley came, had absolute charge of the corporation?

A. Yes, sir.

Q. And I will ask you, if in your talk or by any action put down on your books, you determined that you would abandon the
1555 methods of the Standard Oil Company in Texas, and conduct the business in an honest and decent way in Texas?

A. It was the same manner that we did previous to Mr. Tinsley's coming, and continued when he was there.

Q. Now, I am talking since May 29, 1900; did you take any such action in your Committee?

A. I do not understand you.

Q. Did you talk over or take any official action, changing the character of the business or the way in which you conducted business in Texas?

A. It was not talked over at all.

Q. Now, as I understand it, this executive committee had absolute control of the affairs of the company.

A. It did.

Q. Any time during that period was there a discussion of the matter of trying to get your oil from some supply other than the Standard Oil Company?

A. We have bought during that time from the Gulf Refining Company. There was no other company that could supply us.

Q. The Gulf Refining Company couldn't supply you?

A. No, sir, they couldn't supply all?

Q. Could the Texas Company?

A. No, sir.

Q. Can you tell me the output of those companies?

A. No, sir.

Q. Then how do you know?

A. Because I understood the companies couldn't do it.

Q. How did you hear that?

A. I simply heard——

Q. Where did you hear that?

A. I heard they exported most of their oils.

1556 Q. I asked if you discussed that in your Committee?

A. We have not.

Q. And what information did you undertake to acquire as to whether or not there was enough oil refined in Texas to supply the people in Texas?

A. We have simply understood that there was not.

Q. You don't know how much they did supply?

A. I don't know, because I understood most of it is exported.

Q. It could be used here, couldn't it?

A. I don't know. We haven't because it was not satisfactory.

Q. Now, what is the output of the refineries in Texas?

A. I can't tell you.

Q. How much—in all the refineries, how much oil is made of a quality equal to W. W. 120?

A. At Corsicana, is all.

Q. None at Chaison?

A. None at all equal to that or the northern oil.

Q. And how much oil is refined in Texas which you could use as Eupion oil?

A. I couldn't say how much.

Q. How much Eupion do you use in Texas?

A. About three-fourths of our total sales.

Q. What per cent. of all the oil business do you do in Texas?

A. I should say eighty per cent.
Q. Of the total business?
A. Of the total business.
Q. Eighty per cent.?
A. Eighty per cent.
Q. Isn't it more than that?
A. I couldn't say that it was.
1557 Q. Now, you have got some refineries in Mexico?
A. Yes, sir.
Q. You have never undertaken to establish any in Texas?
A. No, because we could get our oil cheaper here than we could make it.
Q. Do you know what it costs to refine oil?
A. I do not know in the United States; that isn't my part of the business.
Q. Well, how do you know that you can get it cheaper than refining it yourself?
A. I understood from others——
Q. How much have you understood from others; how much it costs to refine oil?
A. I do not know.
Q. Then you don't know whether you could refine it cheaper than you buy it, or not?
A. I have heard from those who know.
Q. From who?
A. Our people in St. Louis.
Q. Then you discussed it in the committee?
A. I do not know that it has been.
Q. What does it cost to refine oil in Mexico?
A. I couldn't tell you; I haven't the figures.
Q. Now, you stated this morning that the old agreement between the Standard Oil Company and the Waters Pierce Oil Company, made prior to the present re-incorporation, was observed afterwards; and you have stated this afternoon that you did not know anything about such an agreement. Why did you state this morning that it had been observed, if you did not know anything about it?
A. This morning I misunderstood your question.
1558 Q. Then you never had heard about any agreement between the Standard Oil Company and the Waters Pierce Oil Company?
A. Then I had not. I misunderstood your question this morning.
Q. You know, do you not, that there is a line between the Standard Oil Company and the Waters Pierce Oil Company?
A. I simply know where our agencies are; that is all. I will repeat again that I could not draw an imaginary line.
Q. You direct your agents not to go outside of that territory?
A. I have not directed them not to.
Q. You have directed them where to operate?
A. They know where to operate.
Q. How do they know?
A. Just from one agent to another.

Q. It has passed from one agent to another, as to where the line was; is that right?

A. Yes, sir.

Q. Now, you say that the Standard Oil Company has been getting into your territory, and that it is no sham. Has the circumstance that it is no sham been discussed in the committee?

A. No, sir.

Q. Have you discussed it elsewhere?

A. No, sir.

Q. Do you know what arrangement Mr. Pierce has made with the Standard Oil Company at 26 Broadway, about it?

A. I do not know.

Q. How do you know whether it is a sham or not?

A. From the way they have gone after the business.

Q. Do you know whether or not it has been arranged that they should go out after the business as though it were not a sham?

A. I do not know.

Q. You say the Republic Oil Company was doing business.

1559 You did not know it was a Standard Oil Company proposition?

A. I did not.

Q. They did not—Mr. Pierce did not let you know it was Standard Oil Company property?

A. I do not think he knew it himself.

Q. Then the Standard Oil Company didn't let Mr. Pierce know.

A. I do not know.

Q. So far as you know?

A. Yes, sir.

Q. It was not communicated to you in the Executive Committee, or as a member of the family?

A. No, sir.

Q. Now, does the Waters Pierce Oil Company also surreptitiously violate the agreement of the Standard Oil Company, and put in plants and conceal it from that company?

A. I do not know of any agreement.

Q. Well, you don't know of any arrangement upon which the Waters Pierce Oil Company surreptitiously goes into Standard Oil Company territory and maintains plants without letting the Standard Oil Company know of its character?

A. I do not know of any.

Q. But your belief is that the arrangement between the Waters Pierce Oil Company and the Standard Oil Company has been violated with regard to the Republic Oil Company doing business in St. Louis, and that it was not there as a sham?

A. I do not know of any arrangement; I simply know it was not there as a sham, and we went after their business as aggressively as any other.

Q. You don't know whether it was a part of the arrangement that you should go after the business that way?

A. Never was discussed that way.

1560 Q. But a great many things took place between Mr. Pierce and the Standard Oil Company, not communicated to you?

A. I do not know.

Q. Take, for instance, the matter of stock-ownership, that was not communicated to the executive committee?

A. I never heard of it.

Q. Never heard of it in your relation as a member of the committee or otherwise? So you are not in a position to say whether it had been agreed between Mr. Pierce and the Standard Oil Company, that the Republic Oil Company should appear to be in opposition to you down in St. Louis?

A. I don't think there was ever an agreement. I have no way of knowing, but I am positive that there was no agreement.

Q. Well, how are you positive about it; you know nothing about it?

A. Just the same as I am positive on anything else I am sure of.

Q. You had the same information about that as of the stock-*p*wnership?

Judge STEDMAN: We object to the further prosecution of this witness——

Mr. BATTS: Well, I will pass to something else, if you don't like that.

Q. Now, you say that the Standard Oil Company is so complete, that it fixes the price of all the refineries in the United States?

A. It has the largest output of oils in the United States.

Q. I ask you again to state if it is a fact or not, that its monopoly is so complete, that it fixes the price at which all the oil is sold in the United States?

A. I do not say its monopoly is so great.

Q. It fixes the prices?

A. It naturally fixes the prices on account of its output.

Q. Of all oils disposed of in the United States?

A. All refined oils.

1561 Q. All refined oils?

A. I think the other competitors follow it.

Q. They trail behind; you stated so in your examination——

A. Yes, sir.

Q. Didn't you, in your examination by counsel?

A. I stated so.

Q. The Standard Oil Company, then, fixes the price at which the refined oil is sold in the United States?

A. At which the refineries sell it.

Q. Now, it is a fact, is it not, that when you and Mr. C. Arthur Pierce, and Mr.—the gentleman sent there to nose around—what is his name?

A. Tinsley.

Q. Mr. Tinsley,—when you determined at what price you would permit Mr. Cahoon to sell oil in Texas, you fixed it with reference to the price which the Standard Oil Company had placed upon it at the refinery, did you not?

A. No, sir.

Q. Had nothing to do with it?

A. Absolutely nothing.

Q. Now, I will read you a part of what purports to be your former testimony in the case of the State of Missouri *vs.* Waters Pierce Oil Company, and ask you if you so testified:

"Q. The price at which it is billed to you by the Standard Oil Company, is accepted by you as the basis upon which you fix your price? A. It is."

Q. Did you so testify?

A. I presume I did.

Q. Well, when was it that you abandoned that as the basis?

A. We have not abandoned it.

Q. You have not abandoned it?

1562 A. Our prices generally are based on our cost—the same as any other mercantile house.

Q. And the Standard Oil Company fixes the cost?

A. They may fix the cost on oil, but so far as the selling price, they do not fix it.

Q. They fix it at the price it goes to you, and you fix it at which it is sold? Is or is not that the case?

A. No, sir, it is not. Our selling price would be based on what the conditions were at that time.

Q. Now, aren't these the circumstances that you take into consideration?

A. In that——

Q. Wait a minute. A certain price obtains and the Standard Oil Company informs you and the balance of the companies in the United States, that oil has gone up, say, a cent a barrel. Now, isn't it a fact that you immediately put up your price a cent a barrel?

A. Not always.

Q. What do you do?

A. We may put it up part, and not altogether; but we do not arrange our prices altogether on that basis.

Q. There are some other considerations you put there? For instance, if you have competition at a certain place, say, Greenville, or Commerce,—you may conclude that the trade would stand a one cent advance?

A. Not always.

Q. Not always?

A. Not always do we consider it on that basis.

Q. Now, let us consider the elements. It is what the Standard Oil Company alone says that oil all over the United States will be fixed at; the local conditions as to competition; the freight rate, and what else?

1563 A. And the marketing expenses.

Q. And the marketing expenses. Now, then, taking some specific case, that which you get it at from the Standard Oil Company is the biggest element, isn't it ?

A. The cost of any concern, is its basis.

Q. Well, will you just answer the specific question I have put to you?

A. Our cost, or our basis, are the same as any other concern.

Q. Now, in order to find out whether you fix the price, your executive committee, or the Standard Oil Company, I will call your atten-

tion to a letter already introduced, in which you were notified on September 1, 1904, "that on September 6th, an advance will be made in the billing prices of the following grades of gasoline;" what is meant by the billing prices?

A. It is the price at which we buy the gasoline.

Q. Now, at that time you were the General Manager, were you not, on September 1, 1904?

A. I think so, yes, sir.

Q. I will ask you to state if upon the receipt of that advance in price you didn't write a letter to each of your division managers to the effect that——

Mr. JOHNSON: That is not in evidence.

Mr. BATTS: Oh, I am going to get it there, though.

Q. You didn't write a letter to the effect——

Judge STEDMAN: Are you reading from a letter, Mr. Batts? We object to his reading from a letter, Your Honor, before we have an opportunity to inspect it, and before laying a basis for its introduction. We do not know what the letter is.

Mr. BATTS: I do not know whether I want to introduce it, or not.

Judge STEDMAN: We think it is but just to the witness
1564 that he should be shown the letter.

Mr. BATTS: Well, he can see it; I have no objection to his seeing it. (Hands letter to witness.)

Q. You don't recall the particular transaction?

A. No, sir, I don't.

Q. You don't know, then, whether you notified your division agents to advance prices in response to this letter, or not?

A. That purports to be a letter from my office, but I can't say whether I did or not.

Q. It's a common thing to have it advanced?

A. We advance if the cost increases.

Q. Advance when the cost increases?

A. Generally; we don't always.

Q. And notify your managers when to?

A. We do.

Q. Then the people at 26 Broadway determine what the price shall be down here in Texas?

A. No, sir.

Judge PENN: We object to that as argument, Your Honor.

Mr. BATTS: Well, don't get excited. I'll withdraw it.

Judge PENN: If the Court please, we object to counsel making side-bar remarks to us when we make objections to the Court.

Mr. BATTS: I will apologize for it.

The COURT: Yes, sir; Counsel will confine themselves to addressing the Court.

Q. Now you say the Standard Oil Company had nothing to do with the fixing of prices up there by the executive committee?

A. I do.

Q. Who fixes the executive committee?

A. No one fixes them.
1565 Q. Who determines who they shall be?
A. Who does?
Q. Yes, sir.
A. Officers of the Waters Pierce Oil Company.
Q. Who determines who the officers of the Waters Pierce Oil Company shall be?
A. Mr. H. C. Pierce.
Q. Mr. H. C. Pierce?
A. Yes, sir.
Q. He determines that?
A. So far as I know.
Q. Who owns the stock?
A. Who owns it?
Q. Yes.
A. Why, I can't tell you who owns it, only so far as I have seen in the papers, I stated.
Q. The officers of a corporation are ordinarily elected by the owners of the stock, aren't they?
A. Not always, I understand.
Q. You don't understand that to be the case?
A. Not always, no, sir.
Q. The officers of a corporation can be so elected, can't they?
A. They might; I don't know.

Judge PENN: If the Court please, that is a matter of law as to who controls or who elects officers of a corporation. We object to the witness being examined with reference to his opinion on questions of law.
The COURT: The objection is overruled.
Judge PENN: Defendant excepts.

Q. Now, if Mr. Pierce elects the officers of that corporation, it is because the Standard Oil Company permits him to do it, isn't it?
1566 A. I have no means of knowing.
Q. And you don't even now know that the Standard Oil Company owns a majority of the stock of that concern?
A. Only what I have seen in the papers and Mr. Pierce's testimony.
Q. But you know that Mr. Pierce names the officers of that corporation?
A. I have no personal knowledge of it.
Q. You so testified, didn't you?
A. So far as I know, he names them all.
Q. The directors and the officers of that corporation?
A. Yes, sir.
Q. And he has all the time?
A. So far as I know, he always has.
Q. He named Mr. Tinsley?
A. I don't know whether he did or not.
Q. You don't don't know who named Mr. Tinsley then?
A. No, I don't.

Q. Do you know who named Mr. Finlay?
A. I suppose Mr. Pierce did; I don't know.
Q. Well, you don't know, then—do you know whether he named Mr.—that auditor there, what's his name—Mr. Stanley; who named him?
A. I understand Mr. Pierce did.
Q. Well how did you get that information?
A. It's sort of understood that he did; I have no positive information.
Q. Who are the directors of that corporation?
A. I could not tell you, sir.
Q. You don't know who they are?
A. I could not tell you, no, sir.
Q. Well, how do you undertake to say who named them?
1567 A. Because the management of the Waters Pierce Oil Company has been in the hands of Mr. Pierce, so far as I know.
Q. Who sent Mr. Tinsley to St. Louis?
A. I have no advice.
Q. You know that he was sent there by Mr. Pierce?
A. I presume he was not.
Q. What makes you think that?
A. Because he left.
Q. You conclude from the fact that he left that Mr. Pierce didn't send him there?
A. That's my conclusion, that's all.
Q. He left after the Missouri suit was instituted, didn't he?
A. I could not say whether he did or not.
Q. You don't know?
A. I don't remember.
Q. Can you fix the time when he left?
A. He left the last of May or first of June, 1905.
Q. Now, you recall the testimony of Mr. Pierce to the effect that the offices were taken away from him when Mr. Tinsley came out there?
A. I have forgotton exactly what Mr. Pierce testified.
Q. Well, wasn't it something to that effect?
A. It might have been; I don't remember.
Q. Well, you have heard him say so, yourself, haven't you?
A. No, sir, I have not.
Q. You have been in the management all the time?
A. Yes, sir.
Q. During the time Mr. Finlay was there, was there any difference in the management of the concern, as compared with the way it was managed prior to that time and afterwards?
A. It was managed by the Waters Pierce Oil Company all the time.
1568 Q. Well, now, will you answer that question of mine? Was there any difference in the way in which it was managed?
A. There might have been.
Q. Well, what was the difference?
A. I don't know as I could state exactly.

Q. Well, was there any difference that you can state to the jury?
A. There might have been a difference.
Q. I will ask you if there was any difference that you can define or point out, mention or specify?
A. I don't know that I can mention any.
Q. Either before or after that time?
A. I don't know that I could mention any.
Q. Now, as general manager of the concern, as member of the executive committee while it was there, as manager of the concern with Mr. Tinsley, who was it that helped fixe the prices when Tinsley was there?
A. Mr. C. A. Pierce and Mr. Andrew Finlay.
Q. Mr. Finlay?
A. Yes, sir.
Q. As a member of the advisory committee since that time, I want to know from you if the business has been conducted in the same way all the time.
A. Then and now?
Q. All during that time?
A. Prices and all were fixed by the officers of the company, as I have explained.
Q. Yes, sir, but you won't answer questions, and I want you to do that. Was the business conducted in the same way all during that time?
A. Practically, yes, sir.
Q. What difference was there in the way in which business was conducted?
1569 A. There was no executive committee part of the time.
Q. That's the only difference?
A. As I remember.
Q. The people who first were on the executive committee still acted without being called the executive committee?
A. They acted, yes sir.
Q. Well, was there any difference?
A. There might have been some difference; I don't just remember. I don't think I could just explain what the difference was.
Q. You recall the circumstance that Mr. Pierce testified that he was taken out of the control of things and that things were different thereafter. Now, I want to know what the difference was?
A. I have forgotten just what he testified. It's on record. I say there might have been some changes, but I don't remember just what they were.
Q. You know that the directors that he had theretofore named were taken out of office—do you or not?
A. I don't know that any—I could not say, because I don't know who the directors were then, or who they are now.
Q. Now, you undertake to tell us all about everything in Texas, all your employees in Texas, method of doing business in every one of the counties in Texas and how many tank-wagons and just how they do business, how many barrels there are, and yet you can't

tell us about those things that take place in your office and under your immediate and direct supervision and within your own view?

A. It's a part of my business to look after this end of it.

Q. And it's a part of your business not to find out about these other things?

A. It's not in my part of it at all.

Q. Yes, sir. Now, you stated that the Standard Oil Company has increased its facilities in Texas—I mean the Waters Pierce
1570 Oil Company—fifty per cent. since 1900?

A. I should say nearly that, yes, sir.

Q. How much does that represent in dollars?

A. I could not say just exactly.

Q. What is the total equipment worth in Texas?

A. A million and a quarter, I should say.

Q. Million and a quarter.

A. Yes, sir.

Q. One-half of that has been put in since 1900?

A. I should say that we have increased fifty per cent. since 1900.

Q. And that during a time when dividends of six or seven hundred per cent. were brought in?

A. I don't know what the dividends were.

Q. Don't you know about that?

A. All I know is what has been testified.

Q. Member of the committee and in charge of the business and in touch with Mr. Pierce every day and a cousin of Mr. Pierce's?

A. I am looking after my part of the marketing end of it.

Q. And don't know the dividends declared by the company?

A. I have nothing to do with that part of it; whatever was done was done by the officers—I don't know what the dividends were, no, sir.

Q. That part of it you are not expected to know about?

A. It is not in my department.

Q. Well, at all events, of the million and a half of property in Texas, how much of it do you say has been put here since 1900—fifty per cent. since that time?

A. Of the property, I don't suppose there is a million and a quarter or a million and a half in property; the accounts and all would probably run a million and a quarter or million and a half.

Q. Well, it has been increased fifty per cent.?

A. Yes, sir, since 1900——

1571 Q. And that increase has been made——

Judge STEDMAN: Let him finish.

Q. Well, go ahead.

A. I said the accounts and the property of the Waters Pierce Oil Company would probably run from a million and a quarter to a million and a half, but the actual value of the real estate and the equipment will probably run five hundred thousand dollars.

Q. Well, then, you have got in Texas——

A. About five hundred thousand dollars.

Q. There has been an increase of about fifty per cent. since 1900?

A. Yes, sir.

Q. And that increase has been made notwithstanding whatever these dividends are?

A. I could not tell you, sir.

Q. Now, what per cent. of the business of the Waters Pierce Oil Company is done in this State?

A. I have not the figures here; I am sure I could not say.

Q. Well, now——

A. I should say not a half of it; I should say a third of it, possibly, in guessing at it.

Q. Well, what per cent. of the profits arise in Texas?

A. I could not tell you; it is impossible to tell you.

Q. You have no Standard Oil competition in Louisiana or Standard Oil competition in that part of Missouri that you are in,—have you or not?

A. We have competition there from them, yes, sir.

Q. Any competition from the Standard Oil Company in the Indian Territory and Oklahoma?

A. Not that I know of.

Q. No competition from the Standard Oil Company in Texas that you know of?

1572 A. None that I know of.

Q. Now, isn't Texas, so far as population is concerned, and the tank stations and the number of wagons that you have got,—aren't more than half of them in Texas?

A. No, I don't think they are.

Q. Forty-five per cent.?

A. I could not say exactly.

Q. Well, about that?

A. I could not say—could not say what per cent. of them.

Q. Now, I suppose that it was in pursuance of that plan of being entirely honest with the people of Texas that you did away with the Eagle Refining Company business?

A. It was known previous to that; as I understand, the people of Dallas knew it in 1895, but the people of Texas didn't.

Q. Some of the people, you mean?

A. Well, generally.

Q. Then, that had nothing to do with your anxiety to be honest and frank with the people of Texas—open and above board?

A. It was understood by the people of Texas, as I understand, that the Eagle Refining Company was owned and operated by the Waters Pierce Oil Company.

Q. And the busine[illegible]f Roy Campbell over there, I suppose you discontinued that on account of the fact that you wanted to be square with the people of Texas?

A. That was known back in 1895, as I understand.

Q. And I suppose, Mr. Ackert, that when you got a proposition from Mr. Cahoon to put in Brilliant as Eupion oil to meet competition up at Brownwood, that you immediately wrote him "We must not treat the people of Texas that way"?

A. I probably wrote to him that he could not make any

1573 any sales of Brilliant at Brownwood. I should say I did, but I don't remember it.

Q. An honest proposition?

A. I should say it was probably turned down—it would be naturally.

Q. His proposition to put in S. W. 112 at Corsicana, you turned that down as soon as you found out about it?

A. I presume we did. Positive instructions were not to make any sales of that kind.

Mr. BATTS: That's all.

Judge PENN: That's all.

Mr. BATTS: State rests.

Judge PENN: We will ask the Court to adjourn until to-morrow morning, to give us time to arrange the order of testimony for the defense.

The COURT: I will adjourn until 9.30 to-morrow morning.

THURSDAY MORNING, *May 30th.*

(Court opened at 9.30 a. m.)

Judge STEDMAN: We offer part of the testimony of Mr. Clay Arthur Pierce, taken in St. Louis. In order to make the matter entirely clear, we shall to some extent, read some of the testimony already offered by the other side. It is in the form of a deposition, and we do not care to uselessly consume time, but we desire to read some that is already read and also some of the omitted parts.

(Judge Stedman reads questions and Judge Penn reads answers:)

1574 Q. State your name in full, please.

A. Clay Arthur Pierce.

Q. Your age?

A. Thirty-three.

Q. Your residence?

A. No. 40, Vandeventer Place, St. Louis, Missouri.

Q. Your occupation?

A. President of the Waters Pierce Oil Company.

Q. How long have you been president of the Waters Pierce Oil Company?

A. Since June, 1905.

Q. Since that time you have actively discharged the duties of president of the Company?

A. I have.

Q. And managed and controlled its affairs as far as a president can manage and control?

A. Yes, sir.

Q. Well, what have been your duties as president of the company since your election?

A. I have been the executive head of the company, to manage its business affairs, all details connected therewith, and to take final executive action on all business of any nature pertaining to the Company.

Q. Who did you succeed as president of the Company?

A. Mr. Andrew M. Finlay.

Q. You were employed by the Company before you were made its president, were you?

A. I was first employed by the Company in the spring of 1898, as assistant treasurer.

Q. That was the old firm, Waters Pierce Oil Company?

A. The old firm, the Waters Pierce Oil Company. I was re-employed by the new company as assistant treasurer, organ-
1575 azed in 1900, and continued as assistant treasurer until June, 1905, when I was elected President. Just two months previous to that time, however, I was made acting president, and I occupied that position for two months.

Q. What were your duties as assistant treasurer? What duties did you perform?

A. I performed such duties as would naturally fall to the position of assistant treasurer in the Treasurer's department, and in addition I sat on the executive committee as Secretary of that committee, and a member of the committee from the time of its formation until the committee was disbanded.

Q. When was the executive committee organized?

A. If I remember correctly, it was organized in 1900. I am not sure as to the date.

Q. And it has existed down to what time?

A. Until the fall of 1904, I believe.

Q. What have you had to do since the organization of the executive committee with the fixing of prices at which the company sells its commodities in the State of Texas?

A. Since the organization of the Executive Committee I have been actively one of usually three who have determined or fixed the selling prices in the State of Texas.

Q. Who were the other members of that committee? I mean who were the other parties, not the executive committee, but who were the other parties that acted with you or that you acted with in fixing prices of sales of oil in Texas and other commodities?

A. The entire executive committee while it was in session acted finally upon the fixing of prices of a sub-committee, composed of Andrew M. Finlay, then president, C. P. Ackert, general manager, and myself, as assistant treasurer, examined schedules which
1576 were exhibited to the executive committee for their final approval with our recommendation.

Q. And the prices were fixed in that manner during the continuance of the executive committee?

A. Without exception.

Q. How have they been fixed since that time?

A. During the period that Mr. R. P. Tinsley was vice-president of the company after the disbanding of the executive committee until Mr. Tinsley resigned as vice-president I cannot say from my personal knowledge how the prices were adjusted; I was not present at such times. Since Mr. Tinsley resigned his position——

Q. When was that?

A. The date that his resignation was accepted was June, 1905. Since that date until the formation of the advisory committee which is at present in operation, the prices were adjusted by Mr. Andrew

M. Finlay, vice president, Mr. C. P. Ackert, General Manager, and myself, and the final adjustment of prices has been in my hands. Since the formation of the advisory committee, which was formed in 1906, in the fall of 1906, the prices have been considered by the advisory committee and voted on by the advisory committee and finally adjusted by myself and the president.

Q. Who composed the advisory committee during that time?

A. It was composed of myself, as chairman of the board, Mr. Andrew M. Finlay, vice president, Mr. C. P. Ackert, general manager, and Mr. C. M. Adams, Secretary and Treasurer, and Mr. Harris—I don't recall his initials managing the lubricating department, and Mr. Edward Stanley, Controller of the company, and Mr. Stewart, my private secretary, is the secretary of the committee. He is not, however, a member of it.

Q. And that way you have mentioned is the only way in which prices have been fixed, the selling prices have been fixed by
1577 the company during the time that you have had to do in prices?

Mr. ALLEN: We object to that as leading and suggestive. Direct examination of their own witness.

The COURT: The objection is sustained.

Judge PENN: The defendant excepts.

Q. What other concerns or individuals, if any, have ever had anything to say——

Judge PENN: If the Court please, if you will pardon a suggestion with reference to this question,—this is a deposition of this witness and we believe it to be well settled that whether the question is leading or suggestive goes to the manner and form——

The COURT: Was any objection made to that question at the time?

Mr. ALLEN: No, sir. This is under a different law and it is really taken before a court. We do not care, however.

The COURT: The objection is overruled.

A. Absolutely that has been the final fixing of prices, as I have stated.

Q. What other concern or individuals, if any, have ever had anything to do in respect to the fixing of prices by the company—the selling prices, I mean?

A. I would like to understand that question. Do you mean——

Q. Outside of the company and its officers?

A. To my knowledge, the prices of the company have never been fixed other than as I have stated.

Q. During the time that you have been an officer of the present Waters Pierce Oil Company, has it or not been managed by the officers of the company as an independent concern?

1578 A. To my knowledge, it has been managed entirely and absolutely as an independent concern by the officers of the company only.

Judge STEDMAN: Now skip to page 208, to the words, "by Mr. Johnson."

Q. Mr. Pierce, when was Mr. Andrew M. Finlay made president of the present Waters Pierce Oil Company

A. I can't answer that definitely. I think he was first made president in the year—well, it was either 1899 or 1900, I am not positive of it at all.

Q. Mr. H. C. Pierce was made president of the present company when it was organized on the 29th of May, 1900, was he not?

A. That was my understanding.

Q. Do you recall how long he continued as president?

A. I don't recollect positively. I think he continued for upwards of a year.

Q. And who was vice-president?

A. Mr. Andrew M. Finlay.

Q. And then Andrew M. Finlay succeeded him?

A. He succeeded H. Clay Pierce.

Q. How long did Andrew M. Finlay continue as president of the company?

A. Until June, 1900, when I was elected to that office.

Q. When was Mr. Tinsley made vice-president of the company?

A. I think Mr. Tinsley was elected vice-president of the company in the latter part of the summer of 1903.

Q. 1904, wasn't it?

A. No, I think it was in 1903.

Q. I wish you would refresh your memory on that point.

A. I will do so.

1579 Q. The oils which the Waters Pierce Oil Company got from Corsicana refinery and has been getting in the past, are purchased like the company purchases from any other Standard Oil refinery, are they not?

A. Entirely.

Q. Or from any Standard Oil refinery?

A. Well, they are purchasing the same as the production made in any refinery, whether Standard Oil or not Standard Oil.

Q. And the purchases also go through the same routine as purchases elsewhere, so far as your company is concerned?

A. Entirely the same.

Judge STEDMAN: Now the last question on page 210.

Q. As to the prices, you say you don't know how those prices are fixed?

A. I know less clearly regarding the marine oil prices than any other detail of the business, as to the prices. It is my knowledge, however, as far as it goes, that the prices are fixed by our lubricating department on a minimum which they have for all lubricating oils, plus the profits, which is added thereto, and so far as I know and all that I know definitely enough to so state, the prices are definitely determined in our lubricating department.

Q. But the sales are made to the Standard Oil Company, the same as the company would sell to any other customer?

A. To any other customer.

Judge STEDMAN: Now, over to Mr. C. A. Pierce, recalled, on page 212.

Q. Have you the memoranda that you were to get, before we adjourned?

A. You wanted to know the date that R. P. Tinsley was elected vice-president. That was April 28, 1904. You also wanted
1580 to know the date that he resigned. That was June 22, 1905. You asked the date when Mr. A. M. Finlay was elected president. That was the 18th of February, 1904. He also served until June 22, 1905, as president.

Q. When were you made president,—at that time?

A. Yes, sir.

Q. Do you remember, as a matter of fact, when it was that Mr. Tinsley came to the home office and assumed the duties of vice-president?

A. It was April, 1904.

Q. And when did he leave the home office entirely?

A. He left the home office very nearly the end of April, 1905. It was the last few days.

Q. And he left there for good, finally, before he tendered his resignation as vice-president of the company——

A. Very nearly two months before he tendered his resignation.

Q. Mr. Pierce, from the time that you have been connected with the present Waters Pierce Oil Company, in the different capacities which you have mentioned, what has been Mr. H. C. Pierce's connection with the company?

A. He was president up to February, 1904, and since that date he has been chairman of the Board of Directors.

Q. And what supervision or control has he exercised over the management of the business of the company while you have been connected with it?

A. Such matters as I have found advisable to refer to him for final decision, he has passed upon and advised me, and his decision in the matter has been final, and it was handled in accordance with his ideas entirely.

Q. That has been while you have been vice-president?

A. Yes, sir, while I have been vice-president.

1581 Q. How was it before that?

A. The same procedure was followed by Mr. Andrew M. Finlay, as far as I recall, and in addition, Mr. Pierce received copies of the minutes of the executive committee, and controlled the company through action taken there.

Q. State whether or not during the time you have been with the Waters Pierce Oil Company in the different offices that you have detailed, the Standard Oil Company,—I mean by that the one known as the Standard Oil Company of New Jersey—or any other Standard Oil Company, or the Standard Oil people, have anything to do with the general management of the business and affairs of the company, and the fixing of prices of its commodities?

A. You want a full answer, I presume.

Q. Yes, sir.

A. The Standard Oil Company, as a large stockholder in the company, received currently, from time to time, reports to which a stockholder was entitled. During my connection with the company they have, from time to time, offered suggestions in line with their ideas, as to the way the company should be managed, or in the way prices should be adjusted. Those were merely incidental, from time to time. Where their suggestions met with the management's views, they were sometimes followed. In the majority of cases they were not followed. They had nothing to do directly with the fixing of prices or controlling of the business in any manner, shape nor form.

Q. How was it prior to Mr. Tinsley coming to St. Louis, and subsequent to his departure from St. Louis?

A. Prior to Mr. Tinsley coming to St. Louis, it was as I have stated already. While Mr. Tinsley was there, I was not actively in touch with the management and I don't know. Since Mr. Tinsley left, it has been controlled entirely as stated.

1582 Q. You had nothing to do, as you have stated, with fixing the prices while Mr. Tinsley was here?

A. Nothing whatever, excepting during such period as Mr. Tinsley's stay here as the executive committee was in session, which was in *in* August, if I remember correctly, 1904—about three months. *It* was here in the latter part of April, May, June and July, and I left here on the 31st of July for the east. For those three months I had a great deal to do with the fixing of prices, through my position as a member of the executive committee.

Q. Well, how were the prices, that is the prices of the company fixed, up to the time of the dissolution of the executive committee?

A. By a sub-committee and finally by the executive committee.

Q. You say after that date, and until Mr. Tinsley left here, you don't know how the prices were fixed?

A. I do not.

Q. During that time, you yourself had no voice in the fixing of the prices?

A. None whatever.

Q. From the time the company was organized in 1900 down to the time that Mr. Tinsley came to St. Louis to take the position of vice-president, who was it that directed and carried out the general business policy of the company?

A. Mr. H. C. Pierce.

Q. Through the officers of the company, of course?

A. Through the officers of the company.

Q. Who was it after Mr. Tinsley left here?

A. Mr. H. C. Pierce.

Q. During the time Mr. Tinsley was here as vice-president, Mr. Andrew M. Finlay was the president and executive head of the company?

A. Yes, sir.

1583 Q. Mr. Andrew M. Finlay is a brother-in-law of H. C. Pierce, is he not?

A. Mrs. Pierce was his sister.

Q. Your mother was Andrew M. Finlay's sister?

A. My mother was Andrew M. Finlay's sister, yes, sir.

Q. Now, you speak of reports and information being given to the Standard Oil people. The Standard Oil Company of 26 Broadway, New York. Why were those reports—why was that information given, as you have understood it?

A. I have understood, without knowing, except through the testimony as it was presented through the Missouri case, that the Standard Oil Company owned about two-thirds of the stock of the Waters Pierce Oil Company, and as such owners I have always understood that the Standard Oil Company had the right to ask for such statements as a two-thirds stockholder or a majority stockholder would be entitled to, and for that reason statements were sent to them at their request.

Judge STEDMAN: Now, the next question refers to a letter; I don't see that letter.

Mr. ALLEN: The letter is attached. It is addressed to Mr. Backus, the controller of the company. It is attached to the deposition; it is defendant's Exhibit B.

Q. Have you refreshed your memory in regard to the manner in which deliveries were made by the Waters Pierce Oil Company for marine oils, etc., on account of the Standard Oil Company, and also in connection with contracts similar to the one that existed between the Central Coal & Coke Company and the Standard Oil Company?

A. I have. I recalled this morning, more or less indefinitely, regarding the marine oil prices, because that was a detail merely of the business. In general, they were fixed by the lubricating
1584 department upon instructions from myself. It was sometime back and I don't recall that specifically. I have since looked that up,—I find in December—December 6, 1905, if I recollect correctly, I have a copy of a letter in my book which I wrote the controller's department, fixing the price at which they have been billed.

Q. When was it you wrote that letter?

A. May I refer to the copy?

Q. Yes, to refresh your memory.

A. I think it was December 6, 1905. (After reference to paper.) Yes, it was, that is correct.

Q. Who was the letter addressed to?

A. To the controller at that time of the company.

Q. Have you made search for the original of that copy?

A. I have made search, and we have not yet located it. The time was short, and we made a great many changes in our filing space since this letter was written.

Q. And you found this letter since the adjournment for recess?

A. Yes, in my letter book.

Q. You remember the writing or dictating of that letter?

A. I remember it now. I remembered it in general this morning—that I had dictated a letter fixing the marine oil prices, but I could not recall specifically just when it was.

Q. That is a carbon of the original letter that you dictated, is it?

A. Yes; it was taken from my personal letter book.

Q. Can you refer to that and refresh your memory as to the

manner in which those sales were made, beginning at the date of that letter, and how they have been made since?

Mr. ALLEN (not in this trial, but in record being read): I will agree that that letter may be introduced, the same as the original.

1585 (The letter referred to is marked "Defendant's Exhibit C, F. H. S." and is attached as an exhibit to the deposition of this witness, and it is agreed that it may be used as the original).

DECEMBER 6TH, 1905.

Marine Oil Prices.

Mr. R. B. Backus, Controller.

DEAR SIR: Effective December 1st, 1905, you will please charge the Standard Oil Company Marine Oil Department prices as below for all our deliveries to their customers.

| | | |
|---|---|---|
| Vacuum No. 1, Larine Engine | 36½ cts. | per gallon. |
| Vacuum Dark Marine Cylinder | 44½ cts. | " " |
| Vacuum Arctic Engine | 39½ cts. | " " |
| Vacuum Colza Burning Oil | 49½ cts. | " " |
| Vacuum Sea Oil | 27 cts. | " " |
| S. and F. Heavy Red Star Engine | 36 cts. | " " |
| Tunnel Bearing Grease | 10 cts. | " " |
| Mineral Seal | Market price to jobbers. | |
| Refined Oil | Market price to jobbers. | |

The above, you understand, supersedes former Vice President R. P. Tinsley's instructions to you of May 5th last.

(Signed) —— ——, *President.*

Q. Now, go on and state, your memory being refreshed, just how the matter is handled, and has been handled, since you wrote that letter?

A. After I wrote that letter?

Q. Yes.

A. The lubricating department received requisitions from time to time from the Standard Oil Company's marine department, to deliver to certain vessels certain marine oils. This was only at Galveston; that is the only point at which we handled marine

1586 oils—Galveston, Texas; they would state when the vessels would be lying at the port and the amount of oil that they would need. Those were vessels that the Standard Oil had contracts for the sale of marine oils to. We would make deliveries there, through our lubricating department, of the oils requested, and bill those oils against the Standard Oil Company, at the prices which I have named in this letter, which I have subsequently adjusted from time to time, the Standard Oil Company paying us in accordance.

Q. Then the matter of the price at which you delivered those oils

is fixed by agreement between you and the Standard Oil Company? That is, you supplied the oil to the Standard Oil Company?

A. Yes, but those prices are not fixed by the agreement; the agreement is that we will supply the oil at the prices which we adjust from time to time here.

Q. You have nothing to do then, the Waters Pierce Oil Company has nothing to do, with the price that the Standard Oil Company charges the vessels?

A. Nothing whatever; we don't even know what price they are charging. That is a matter between the Standard Oil Company and the company that had this contract.

Q. You don't know anything about the terms of the contract as between the Standard Oil Company and the vessel owner?

A. Nothing at all.

Judge STEDMAN: Now, turn to page 221; the testimony of Andrew M. Finlay.

Q. You are vice-president of the Waters Pierce Oil Company?

A. Vice-president of the Waters Pierce Oil Company, yes, sir.

Q. You are Mr. H. C. Pierce's brother-in-law?

A. Yes, sir.

Q. When did you first become associated with Mr. Pierce in the oil business?

1587 A. In 1878.

Q. Was that before or after the former Waters Pierce Oil Company was incorporated? It was incorporated in 1878?

A. It was incorporated in 1878, and I think I came with them the month it was incorporated.

Q. Where were you located first? What was your position?

A. I was manager at Marshall, Texas, in charge of what was known as the Marshall Division at that time.

Q. How long did you continue there?

A. I was there for three years.

Q. Then where did you go?

A. To Mexico.

Q. Old Mexico?

A. City of Mexico.

Q. What was your position there?

A. I went there with a brother, who died in the City of Mexico, and I organized the business of the Waters Pierce Oil Company there.

Q. How long did you remain there?

A. I was there only five months.

Q. Then where did you go?

A. I was called back and placed in charge of what was then called the Coast Division, with headquarters at Galveston, Texas, as manager.

Q. How long did you remain there?

A. Nine years, I think.

Q. In charge of that division?

A. Yes, sir.

Q. And, then, what position were you transferred to?

A. I was called to St. Louis, as superintendent of divisions, all divisions, with headquarters at St. Louis.

Q. When was that?

A. That was twenty years ago this coming June.

1588 Q. That would be 1887?

A. 1887.

Q. How long did you occupy that position?

A. Until I was elected vice-president. I don't recollect the exact date.

Q. Of the old company?

A. Yes, of the old company.

Q. You continued as vice-president of the old company down to the date of its dissolution in May, 1900, with a short——

A. With a short period while I was president, from February, I think, until the dissolution of the old company.

Q. You were made president of the old company in February, and it was dissolved in the following May?

A. Dissolved the following May, yes, sir.

Q. While you were vice-president of the old company, you were general manager, were you not?

A. Yes, sir.

Q. And had charge of the business details of the company?

A. Yes, sir.

Q. Especially the equipment department and the marketing?

A. Yes, construction, as well.

Q. Then when the new company was organized you were made vice-president under Mr. Pierce as president?

A. Yes, sir.

Q. And you continued as vice-president down to February, 1904, when you were made president?

A. Yes, sir.

Q. You continued, then, as president until 1904, when Mr. C. A. Pierce became president, and you were made the vice-president?

A. Yes, sir.

1589 Q. Ever since the organization of the new company you have had direction, and supervising control over the marketing department, have you not?

A. Yes, sir.

Q. You know the different stations or agencies in Texas that were established from time to time by the old company, since its organization?

A. Yes, sir.

Q. I don't want you to detail just how many, or when the new or increased stations were established, but I would like to have you state in a general way, as concisely as you can, the increase in the number of agencies in Texas and the increase in the volume of business, beginning with the time you went to Galveston, as manager of that division.

A. You mean as to the number of stations increased?

Q. Yes, agencies.

A. The growth has been rapid, since I went first to Galveston. It was then comparatively a small division. We have been continu-

ously adding to the equipment and construction and everything in connection with the handling of the business ever since then. There was no stop, it is going on now, just the same as ever.

Q. You have had from time to time and from year to year, to meet the requirements of the new business, established new agencies—bulk stations, and adding tank wagons, and cans and iron barrels, and means of convenient and economical handling of oil?

A. Yes, sir.

Q. How many tank cars did the company own or operate when you first became division manager at Galveston?

A. About fifty.

Q. Has that number increased?

A. It has increased, now.

1590 Q. How was the increase; was it all done gradually?

A. It has been gradual.

Q. From year to year?

A. From year to year.

Q. How many tank cars does the company own and operate at this time?

A. We own and operate in the neighborhood of four hundred.

Q. Is that altogether in the United States territory?

A. Yes, the United States and Mexico together.

Q. How many does it own and operate in Mexico?

A. Seventy-five to a hundred.

Q. It owns and operates in its United States territory about three hundred tank cars?

A. Yes, sir.

Q. And they are in constant use?

A. Yes, sir.

Q. Used in Texas?

A. Yes, sir.

Q. More than any other State, are they not?

A. Yes, sir.

Q. What per cent. of the refined oil and gasoline sold by the Waters Pierce Oil Company is shipped in the tank cars?

A. I should say eighty per cent., or possibly eighty-five.

Q. Have you any idea of the number of tank stations in Texas at the time you went to Galveston as manager of that division?

A. If you will give me a little time to think of it, I will figure it out for you. I think there were not more than ten; I know I could count them on my fingers' ends.

Q. Do you remember the capacity—can you state approximately the capacity of the tanks at that time?

A. Fifteen hundred to two thousand barrels altogether.

1591 Q. Has that increased since?

A. Tremendously.

Q. Has that increased in a sudden or a gradual way?

A. Gradually; some years larger than others.

Q. How many tank or bulk stations have you in the State of Texas now?

A. I suppose a hundred and fifty.

Q. You know the capacity of those stations, or would that be merely a guess.

A. It would be merely guesswork, because a tank station may be from one to ten tanks, whereas in the early days if we had one tank, that was all.

Q. Well, the increase in tank wagons and cans for deliveries, etc., has been about the same ratio as the increase in tankage, and the number of stations?

A. Yes, sir.

Q. Now, Mr. Finlay, since the organization of the present company who has managed and controlled the business and affairs of the company, in an executive way, I mean?

A. Mr. Pierce.

Q. H. C. Pierce?

A. H. C. Pierce.

Q. What have you had to do with it?

A. I have been general manager, and took a very large part in the management under Mr. Pierce,—carrying out his instructions—the details of his instructions.

Q. You had other associate officers in the management?

A. Oh, of course, we had others during that time—doing their part of the work.

Q. I am speaking now of the present company?

A. Yes, sir.

1592 Q. Who has fixed the prices at which the company sold its oil to the trade?

A. We have here in the St. Louis office,—Mr. Ackert and myself, Mr. Pierce and Mr. C. A. Pierce.

Q. Do you remember when Mr. Tinsley came to the home office to assume the duties of vice-president?

A. Perfectly.

Q. Do you remember when he left?

A. Perfectly.

Q. You, during that time, were president of the company, were you not?

A. Yes, sir.

Q. And during that interval who controlled the policy and business of the company, the business policy and affairs?

A. Mr. Tinsley attempted to interfere a good deal, but I was managing, and he was interfering against my objections.

Q. And, during the entire time, endeavored to perform your duties as president?

A. As president, yes, sir.

Q. And to run the company in an independent way?

A. Yes, sir.

Q. Who during that time, fixed the prices at which the company sold its oil to the trade?

A. Mr. Ackert, Mr. Tinsley and myself.

Q. Did any one of you do it, or did you act together?

A. We acted together.

Q. State whether or not the company was even during that time run as an independent concern?

A. It was.
Q. And in what way did Mr. Tinsley interfere or attempt to interfere?
1593 A. He would insist on things being done that I did not think was to the interest of the company, the Waters Pierce Oil Company. He was insisting on discharging old and tried employees and putting in new men, which was not to the interest of the company. He made himself generally disagreeable to me,—so much so that his continual nagging at me broke me down completely and I had to leave for Europe for a trip to be gone three or four months, on a day's notice, by order of my doctor.
Q. That was two months that you were away?
A. I was away from here three months. I sailed on the 4th of March, and returned to St. Louis about the first part of June.
Q. Who was general manager during that time, if you know?
A. Mr. Tinsley was the vice-president; Mr. Ackert was general manager.
Q. He remained as general manager?
A. He remained as general manager while I was away.
Q. What is Mr. Ackert's relation to Mr. H. C. Pierce?
A. Cousin.
Q. Who is Stephen Johnson?
A. A brother-in-law of Mr. Pierce.
Q. He was manager of the lubricating department of the present company, from the time of its organization down to what time?
A. When he was retired recently. Wasn't it the latter part of last year?
Q. He retired on account of age?
A. On account of age, and his health.
Q. He was succeeded by whom?
A. Succeeded by Mr. C. L. Harris.

Judge STEDMAN: Now, on page 259.

Q. Mr. Finlay, when Mr. McNall was first employed by the Waters Pierce Oil Company, he had his office at No. 26 Broad-
1594 way, New York City, did he?
A. Yes, sir.
Q. Established his office there?
A. Yes, sir.
Q. All communications were addressed to him at that number?
A. Yes, sir.
Q. Do you know when the change was made from 26 Broadway to 75 New Street?
A. I don't recollect the date.
Q. In 1904, was it?
A. I think it was about that time.
Q. Did you or the company have anything to do with the change, or know anything about it?
A. No, except a request from Mr. McNall to address all mail to him in the future to 75 New Street.
Q. Don't you recollect, Mr. Finlay, when you received that letter

from Mr. McNall that you referred that to the general counsel of the company, who advised against any such change being made?

A. I remember that.

Q. You advised Mr. McNall of the decision of the general counsel of the company, did you not?

A. Yes, sir.

Q. Notwithstanding, Mr. McNall insisted on having his mail addressed to that number?

A. Yes, sir.

Judge STEDMAN: Now, page 262.

Q. You know while you were president of the present company, that the books and accounts of the Company were audited from time to time by auditors sent here by Mr. Wade Hampton, of New York?

A. Yes, sir.

1595 Judge STEDMAN: We offer the deposition of S. K. WHEELER, page 162.

Q. What is your age?

A. Forty.

Q. What is your occupation?

A. Assistant general manager of the Waters Pierce Oil Company.

Q. Who is the general manager at this time?

A. C. P. Ackert.

Q. Where were you first employed by the Waters Pierce Oil Company, and in what capacity?

A. In May, 1902, in charge of the fuel oil business at Beaumont.

Q. How long were you in that employment?

A. One, year, until May, 1903.

Q. You severed your connection at that time with the company?

A. Yes, sir.

Q. Then, when were you again employed?

A. In November, 1903.

Q. In what capacity?

A. As a general representative of the home office.

Q. Have you continued in that employment down to the present time?

A. Well, I continued in that employment until June, 1905; since June, 1905, to date I have been assistant general manager.

Q. From November, 1903, until June, 1905, what were your duties?

A. I visited the more important agencies in Texas.

Q. You visited the more important agencies in Texas?

A. Yes, sir, in Texas, and looked into the local conditions, and made such improvements as conditions seemed to justify.

Q. In the plants?

A. Yes, sir, in the plants and methods of doing business.

Q. In the work of the agents?

A. Yes, sir.

1596 Q. Do you recall now how often that occurred?

A. During the time that I was president?

Q. Yes, since the organization of the new company?
A. It would be, I guess, four or five times, possibly may be less.
Q. They did not come here oftener than once a year, or eighteen months, or two years, did they?
A. No, sir, I think more likely a year and a half or two years.
Q. And they made a general audit of all the books and accounts of the company covering the period beginning at the date of their last audit and running up to the date of the audit that you were making currently?
A. Yes sir.
Q. That was not done at the instance of the Waters Pierce Oil Company?
A. Never.
Q. Why did you concede to him the right and privilege to do that, Mr. Finlay, as president of the company?
A. They came, if I remember, with a letter from Mr. McNall.
Q. It was done for the information of the majority of the stockholders?
A. Certainly.
Q. It had no relation to the management or control of the business of the Waters Pierce Oil Company, had it?
A. None whatever.
Q. Well, what relation had it to the management and control of the Waters Pierce Oil Company, or to the Standard Oil Company or the Standard Oil people?
A. It had no relation to the management; it simply showed that the books and accounts were in a proper condition and correct.
Q. For the information of whom?
A. For the information of the majority of the stockholders in New York.

1597 Q. And since you were transferred to the home office here, what have been your duties?

A. A general oversight, under Mr. Ackert, of the marketing of all our products.
Q. In Texas?
A. In Texas.
Q. Also in the other divisions in which the company does business?
A. Yes, sir.
Q. You know the general organization of the company's business, do you not?
A. Yes, sir.
Q. In these divisions?
A. Yes, sir.
Q. State what it is, briefly.
A. The chief of division is known as manager.
Q. Well, it is divided, there are territorial limits in which the company does business, divided into what is called divisions?
A. Yes, sir.
Q. There is the Missouri division and the Arkansas divisions?

A. Yes, East Texas, Louisiana, Oklahoma, Central Texas, and South Texas division.

Q. And the Republic of Mexico is a division by itself?

A. Yes, sir.

Q. What comprises the East Texas division?

A. The East Texas division comprises a portion of the State of Louisiana and the northeastern portion of the State of Texas.

Q. Where are the headquarters of that division?

A. At Shreveport, Louisiana.

Q. Who is the division manager?

A. J. H. Littlefield.

1598 Q. Where was the division headquarters prior to this transfer to Shreveport?

A. Marshall, Texas.

Q. When was the change made?

A. In June, 1906.

Q. What comprises the South Texas Division?

A. The South Texas division takes in the southern part of Texas.

Q. Where are the headquarters?

A. At Houston.

Q. Who is division manager?

A. Louis Fries.

Q. What comprises the Central Texas division?

A. The Central Texas division comprises the central and northern portion, the portion of the western part of the State.

Q. Who is the division manager of that?

A. W. C. Cahoon, at Dallas, Texas.

Q. What is the Oklahoma division?

A. The Oklahoma division comprises Oklahoma and Indian Territory and some little part of the Panhandle of Texas.

Q. Where are the division headquarters?

A. Oklahoma City.

Q. Who is the division manager?

A. A. P. Ebie.

Q. The division headquarters used to be at Denison?

A. Yes, sir.

Q. When was it transferred to Oklahoma City?

A. I think it was in June in 1905.

Q. Do you know why the transfer was made?

A. Well, to locate their headquarters more centrally.

Q. That is the business in Oklahoma north of Denison had increased to such an extent that it was a good business policy

1599 to locate the headquarters at Oklahoma City?

A. Yes, sir.

Q. Did you state who the division manager was?

A. Yes, sir, Mr. Ebie.

Q. Now, the company has a large number of agencies in each of these several divisions of Texas that you have spoken of, have they not?

A. Yes, sir.

Q. To whom do the agents report? Under whose direction or

supervision do they carry on the company's business at the different agencies?

A. They report to the division manager and work under his instructions.

Q. That is to the division manager——?

A. In the division in which they are located.

Q. Under whose supervision or direction do the division managers work and operate? To whom do they report?

A. They report to the general manager. Work under his direction.

Q. The general manager is located at the home office of the company in St. Louis?

A. Yes, sir.

Q. How long has the organization you speak of continued, to your knowledge? That was the case when you went into the company first, wasn't it?

A. Yes, sir, that was the same organization.

Q. You have visited in your employment, in the employment of the company, the agencies, have you not?

A. No. Well, most of the important agencies.

Q. Your agencies consist of what is known to the company as the tank wagon stations, tank can agencies and commission agencies, do they not?

1600 A. Yes, in order to divide the agencies into different headings of salaries and commission; that depends upon the manner in which the agents are paid. We subdivide the agencies into two headings, being bulk agencies where oil is delivered in bulk, and others.

Q. What do you mean by bulk agencies,—oil delivered in bulk?

A. Bulk agencies are where they maintain teams and tank wagons or can wagons, and deliver the oil in bulk to the merchants.

Q. That is, you have storage tanks, large storage tanks in which the oil is delivered from the tanks, cars, and is distributed from those agencies to the customers of the company through the tank wagons and cans?

A. Yes, sir.

Q. Do you know or can you state from recollection the number of agencies in the State of Texas that the company has?

A. It has about 216 agencies.

Q. Practically the company has agencies of one kind or another all over the country—in every county and town of any consequence, in the State of Texas?

A. Yes, sir.

Q. How many bulk agencies are there at which the company has storage tanks in which it handles the oil in bulk?

A. One hundred and ninety-two, I believe.

Q. Can you mention the particular ones?

A. Dallas, Sherman, Denison, Gainesville, Fort Worth, Waco, Houston, Galveston, Beaumont, San Antonio, Austin, El Paso, Eagle Pass, Laredo, Brownsville, Corpus Christi, Bryan, Mineral Wells, Jacksonville, Bluffton, San Angelo, Brownwood, Calvert, Marshall,

Rutherford, Seymour, Wichita Falls, Amarillo, Belton, Temple, San Augustine, Huntsville, Palestine, and others.

Q. And others?

A. Yes, sir.

1601 Q. Now, the particular commodity dealt in by the company and handled at these bulk agencies in bulk, is refined oil and gasoline?

A. Refined oil and gasoline,—stove gasoline and engine naphtha.

Q. Any others? Do you handle any lubricating oils in bulk in Texas?

A. At some of the agencies, at some of the larger agencies.

Q. Do you handle any fuel oil in bulk?

A. No fuel oil; we handle at the larger agencies lubricating oils and turpentine and linseed oil, in bulk.

Q. How are the oils that you mention shipped to those bulk agencies or stations?

A. They are shipped in tank cars and unloaded into storage tanks.

Q. Your company has storage tanks for unloading it in that way, at all of the bulk stations you have mentioned or which you have enumerated, and others, in addition?

A. Well, we do not carry lubricating oil, linseed oil or turpentine in a great many, but the majority.

Q. Well, take refined oils, gasoline and engine naphtha. How are the illuminating oils and gasoline distributed from those bulk stations to the retail trade—to the customers of the company? Just give the details in a general way.

A. To the local merchants and nearby towns, the deliveries are made in either tank wagons or can wagons, and the merchant is delivered whatever quantity that he wants, whether large or small,——

Q. What do you mean by a tank wagon?

A. A tank wagon is a tank, a steel tank.

Q. But on wheels, mounted on wheels?

A. Mounted on wheels, which has compartments to hold refined oil and gasoline.

Q. All of them have separate compartments for that?

A. They have separate compartments for each, yes, sir.

1602 Q. Some of them you use for gasoline alone? That is, some have not the compartment, have they? Some of them have two compartments, and some have three. All the compartments are used for either refined oil or gasoline, as the trade requires?

A. Yes, sir.

Q. These wagons you move around with horses?

A. Yes, sir.

Q. The wagon is pulled direct from the storage tank with oil or gasoline to be delivered to the customer directly into the tanks?

A. Yes, sir.

Q. It is driven to the customer's place of business, and it has convenient facilities for drawing the oil from the tanks—what are the facilities, buckets?

A. Five gallon buckets.

Q. In that way are the deliveries made to the customer?

A. The driver carries the buckets to the storage tanks of the customers and empties them in.

Q. And the customer, as a rule, is supplied with what you call storage tanks?

A. Yes, sir.

Q. What are the capacities of those tanks?

A. Usually about sixty gallons.

Q. Those are located in the stores of the retail dealers, are they?

A. Yes, sir.

Q. The driver drives up to the store and finds out what the customer wants and takes the order and fills the order by drawing the fluid from the tanks, or from the wagon, into the bucket?

A. Yes, sir.

Q. Carrying the bucket into the store, he dumps it into the store tank?

1603 A. Yes, sir.

Q. Now, those store tanks are kept in a way so that the retail dealer can readily draw out, can conveniently draw out whatever quantity the customer may want?

A. Yes, sir.

Q. So that the oil passes from the refinery—that is, the oil handled by the company—passes from the refinery to a car tank, and from the car tank to the bulk station of the Waters Pierce Oil Company in Texas, and is transferred from the car tank into one of the bulk tanks of the company, stationed at Texas, and transferred from there into the tank wagon and taken from there to the purchaser's store,—it is transferred from the tank wagon by the buckets, into the customer's store tank and then the retail dealer or customer draws from that same tank into the vessel or receptacle of the purchaser,—consumer?

A. Yes, sir.

Q. It is all handled in bulk?

A. Yes, sir.

Q. What percentage of the oil and gasoline sold by the Waters Pierce Oil Company in Texas are handled in that way?

A. I should say about seventy per cent.

Q. Now, has the company any other means or facilities in Texas for handling oils and gasoline in bulk? You have cans, I suppose.

A. Yes, we have ten gallon cans.

Q. How are they handled?

A. Wagons with a specially prepared bed used, which usually hold 30 ten-gallon cans; those are used for deliveries of this kind.

Q. Those cans are made like milk cans, are they not?

A. Yes, sir.

Q. Are they filled from the storage tank, and the driver empties then directly into the merchants' store tank?

1604 A. Yes, sir.

Q. He drives to the customer, retail dealer and transfers the contents of the can into the retail dealer's store tank?

A. Yes, sir.

Q. Are those cans used by the company at the stations where tank wagons are used?

A. Yes, sir.

Q. Are they used also at the stations where the company has no tank wagons?

A. Yes, sir.

Q. What area has any one agency to those tank wagons or those can deliveries cover? That is, deliveries are not made alone in the town in which the company is located, are they?

A. No, they go to points fifteen and twenty miles from the agencies.

Q. That is, they circle around the agencies fifteen or twenty miles?

A. Yes, sir.

Q. And deliveries by tank wagons and cans are made in that way?

A. Yes, sir.

Q. Now, is it not a fact that practically the company covers the entire area of Texas by deliveries of that character?

A. Yes,—well I don't know as I can make it quite as broad as that.

Q. Well, the thickly settled district?

A. The thickly settled district, yes, sir. That is so, yes, sir.

Q. Wherever the population is dense enough to justify deliveries in that way?

A. Yes, sir.

Q. Now, how is the business done at agencies and stations in the State in which you had no bulk tank, no facilities to make
1605 bulk deliveries beyond the reach of deliveries from the bulk station?

A. Those agencies are supplied with oil and gasoline in iron barrels shipped from the nearest and most economical agency close by?

Q. That is, in iron barrels?

A. Yes, sir.

Q. That is, you have agencies at that point, or warehouse, or place for keeping the stuff in iron barrels?

A. Yes, sir.

Q. And you keep the stock of oils and gasoline in the iron barrels at such stations for delivery?

A. Yes, sir.

Q. And those iron barrels are shipped to such stations from time to time from the most convenient and adjacent bulk stations?

A. Yes, sir.

Q. They are billed at the bulk station and shipped in that way?

A. Yes, sir.

Q. How are the deliveries made to the retail trade, in iron barrels?

A. Our agent has an iron barrel which is drayed to the merchant's place of business, and it is unloaded wherever he designates.

Q. How is the contents of that barrel handled, by the retail merchant?

A. In some instances the merchant will use the barrel for storage purposes.

Q. He draws from that?

A. He draws from the iron barrel. In other instances, where he has store tanks, it is emptied from the iron barrel direct into the store tank.

Q. That is, where the tank—these iron barrels all belong to the company, and are returned by the purchaser when they are emptied?

1606 A. Yes, sir.

Q. Is there any other way in which the company handles and distributes its oils and gasoline in Texas? Do you use wooden barrels, or cans, or cases?

A. Yes, deliveries are made in wooden barrels also, and in cases, holding two five-gallon cans.

Q. At what stations, what kind of stations are deliveries generally made in wooden barrels and five-gallon cans?

A. Well, the demand for the oil in five-gallon cans is restricted pretty well to the western part of the State. In the more thickly populated parts of Texas they take their oils there in bulk, either that way or iron barrels.

Q. This other goes to localities where the population is not dense or large enough to justify sending in larger quantities, and the distances are so great as not to justify the deliveries in bulk through tank wagons or cans, or the iron barrels, is that the case?

A. Yes, sir.

Q. And in these different ways you practically reach every locality in the State of Texas?

A. Yes, sir.

Q. Making sales and deliveries of oil in one way and another, as you have indicated?

A. Yes, sir.

Q. In those localities?

A. Yes, sir.

Q. Was that the method and system of doing business by the company when you were employed by it?

A. Yes, sir.

Q. In the general manager's department?

A. Yes, sir.

Q. Do you know how many stations or agencies the com-

1607 pany has in Texas, of which it owns its plants in fee?

A. No, sir, I don't.

Q. You don't know the capacity of the tankage in the State either, do you?

A. We have 444 storage tanks, aggregating a capacity of something over five million.

Q. That is 444 storage tanks? Those are distributed all over the State?

A. Yes, sir.

Q. At the bulk stations which you have mentioned, and elsewhere?

A. Yes, sir.

Q. What, if anything, have you had to do with the fixing of prices at which the company has sold oil in Texas, since you went into the general manager's office?

A. The prices are all made by the general manager.

Q. You have had a great deal to do with carrying on the correspondence relative to prices, have you not?

A. Yes, sir.

Q. As assistant to the general manager?

A. Yes, sir.

Q. Is it not a fact that the general manager, or you, representing him, always notified the agents where oils were being sold——?

A. Notified the manager, and the manager notified the agent.

Q. The manager of the division?

A. Yes, sir.

Q. Those matters are handled by directions from the General Manager's office to the managers of the divisions?

A. Yes, sir.

Q. Has anybody else besides the manager, the General Manager, ever dictated or had anything to do with the fixing of prices at which the company sells oil in Texas, while you have been in the general manager's office?

1608 A. No. The price is usually determined by the general manager through consultation with other officials of the company.

Judge STEDMAN: Now, on page 190, last question.

Q. Go on and state then what prices those competitors have sold corresponding quantities of oil at, as compared to the prices at which the same qualities of oil are sold and have been sold by the Waters Pierce Oil Company in Texas?

A. As a general proposition, they sell their oils at the same prices that we do. In cases where they are not able to sell their oils for the same prices that we are asking for ours, they will offer a lower price as an inducement to the trade.

Q. And when they do that, what action has the company been in the habit of taking?

A. Of meeting the prices, if we thought it necessary to do so. In a great many cases the prices are not met.

Q. According to your observations and experience gathered during the time that you have occupied your present position with the company, what is the fact, so far as the obtaining of trade or selling of oil is concerned, or facilities which the company has in Texas for selling the oils, as compared with the facilities which its competitors have?

A. The Waters Pierce Oil Company have very superior facilities, while those of the competitors are very meager.

Q. And what is the fact as to the advantage that the company has in those superior facilities?

A. The advantage is that the Waters Pierce Oil Company is able to supply the oils to the trade in a manner that is very satisfactory to the trade, keeping them supplied at all times with any kinds of oil at any time of the day.

Q. And it supplies its customers promptly?
A. Yes, sir.
1609 Q. And in a clean, convenient way?
A. Yes, sir.

Judge STEDMAN: I believe that is all.

C. W. CAHOON, recalled by defendant, testified as follows:

Direct examination.

(By Mr. ODELL:)

Q. I wish you would look at that sign, Mr. Cahoon. (Counsel holds up a wooden sign before witness and jury.) Are you familiar with that sign, Mr. Cahoon?
A. I have seen it before, yes, sir.
Q. Where?
A. In Dallas.
Q. Who was it used by there?
A. A. M. Clem.
Q. During what time?
A. I don't know the exact date it was placed on his office, but sometime early in 1900, as I recall it.
Q. I wish you would hold it up so the Jury can see it, Mr. Cahoon.

(Witness holds sign up before Jury.)

That is all.

Cross examination.

(By Mr. BATTS:)

Q. When was the first time you saw that on Mr. Clem's office, you say this was on Mr. Clem's office?
A. Yes, sir, on Mr. Clem's office.
1610 Q. When was that?
A. I don't recall when I first saw it.
Q. The office down on the creek?
A. No, the office was in quite an elevated place.
Q. How far from the street railroad?
A. One hundred yards, I should say; possibly two hundred.
Q. One or two hundred yards from the railroad street?
A. The wagons drove up right in front of the office, though.
Q. Company wagons?
A. Company wagons and country wagons; they went to the plant for oil.
Q. You delivered all the oil, didn't you?
A. I had nothing to do with that.
Q. You didn't have anything to do with that?
A. With Mr. Clem's business?
Q. No, you were the manager there at Dallas?
A. Not when this sign was put up first.
Q. You weren't manager then?
A. No, sir.

Q. Well, was it the course of business for deliveries to be made both by Mr. Clem and by the other plant of the Waters Pierce Oil Company?

A. We were making tank wagon deliveries, and I presume he was doing it also.

Q. Wasn't any occasion for anybody to go there with wagons?

A. I don't know; but I had a great many people come there for barrels.

Q. You don't know of any cases——

A. I don't know of any specific case.

Q. That wasn't the ordinary course of business?

A. Yes, sir, great many customers came in from the coun-

1611 try for iron barrels, iron barreled oil.

Q. Is that the ordinary method of putting up signs of the Waters Pierce Oil Company. For instance, "C. W. Cahoon" in big letters; "Agent of the Waters Pierce Oil Company," in little letters?

A. At my office in Dallas, if I remember correctly, the lettering of the Waters Pierce Oil Company and my name are about the same size.

Q. You have got your name on it, then?

A. Yes, sir.

Q. "Waters Pierce Oil Company, A. W. Clem, Agent,—I mean—C. W. Cahoon, Agent"?

A. C. W. Cahoon, Manager, yes, sir.

Q. Now, those signs are made at St. Louis, are they?

A. My sign is painted on the marble slab at the entrance of the office in the hall.

Q. That is the up-town office?

A. Yes, sir.

Q. Now, down at the warehouse,—is it "C. W. Cahoon, Agent for the Waters Pierce Oil Company"?

A. I don't recall a sign on the down-town office.

Q. No sign down there?

A. Not that I recall, no, sir.

Q. This sign was painted in St. Louis, wasn't it?

A. I don't know where it was painted.

Q. You don't know about that. Now, the marble slab you are talking about is the directory in the building, directory of the building?

A. Yes, sir.

Q. Put there by you or by the owners of the building?

A. Put there by the owners of the building.

1612 Q. Now, you say on your warehouse there is no sign at all?

A. At our warehouse there is no sign that I recall.

Q. There is no sign on the warehouse then, with your name on it?

A. No, sir.

Q. I will ask you if it isn't a fact that at the different agencies, that whatever sign is put up is "Waters Pierce Oil Company"?

A. As I recall it, yes, sir.

Q. And that is all?

A. Yes, sir. Over half of the warehouses have signs, however.

Q. Do you know any reason why this sign was sent down there on the creek and put up?

A. I do not, unless it was to indicate to the public that it was the property of the Waters Pierce Oil Company.

Q. Couldn't that have been better accomplished if the larger letters had been used in the "Waters Pierce Oil Company" rather than the "A. W. Clem"?

A. I wouldn't think so, no, sir.

Q. You wouldn't think so? Now, as compared with the words "Waters Pierce Oil Company," what is the difference in the size of the letters and the letters "A. W. Clem"? (Shows sign to witness.)

A. I should say "A. W. Clem" is about twice the size.

Q. About twice the size; and the words, "Agent of the" in still smaller letters than the "Waters Pierce Oil Company"?

A. Yes, sir.

Q. That is the only case you know of where the name of the agent of the Waters Pierce Oil Company is put up on an agency of the company?

A. I don't recall any other instances where local agents——

Q. Don't recall any other instances?

A. No, sir, my name, however, is as I stated, on the slab at the office, and at that time Mr. Clem was in very much the same position I am.

1613 Q. Well, as I understand you, that the name at your office—you are in an office building there?

A. Yes, sir.

Q. And there are a number of other people who have offices there?

A. Yes, sir.

Q. And the owner of the building has caused the name of each one of those persons having an office to be put on a directory?

A. Yes, sir.

Q. And that is the way your name is there?

A. Our sign, however, covers somewhat more space than the others, because we occupy more space in the building.

Q. Because you occupy more space the owner gave you a bigger sign?

A. Yes, sir.

Q. But you had no sign at all painted by the Waters Pierce Oil Company, or through instructions from the Waters Pierce Oil Company, at Dallas?

A. At my up-town office. I said at the warehouse we have a very large sign.

Q. Waters Pierce Oil Company, without mentioning your name?

A. "Waters Pierce Company" and a number of the brands of goods we handle.

Q. Without your name at all?

A. My name doesn't appear on it, no, sir. Sign was painted before I became manager.

Q. Well, was the name of the other manager put on it?

A. The name of the other manager was on the office at the time.

Q. But I am talking about your warehouse?
A. Not that I recall, no, sir.

Redirect examination.

(By Mr. ODELL:)

Q. State whether or not Mr. Clem's warehouse and office
1614 was all together.
A. Just a few feet apart, yes, sir.

LOUIS FRIES, recalled by defendant, testified as follows:

Direct examination.

(By Mr. ODELL:)

Q. Your name is Louis Fries?
A. Yes, sir.
Q. Where do you live, Mr. Fries?
A. In Houston.
Q. Texas?
A. Texas.
Q. How long have you resided in this State?
A. Very nearly fifty-five years.
Q. How old are you, Mr. Fries?
A. Nearly fifty-five years.
Q. In what part of the State were you born and raised?
A. In San Antonio; raised in San Antonio and west of San Antonio.
Q. You are now in the employ of the Waters Pierce Oil Company?
A. I am.
Q. In what business were you engaged prior to the time of entering their employment, Mr. Fries?
A. Well, I was in the gin business in San Antonio; as clerk with Charley Hummel; I was a clerk in the dry goods business; I was bookkeeper and cashier of an oil mill; I was a stockman for about ten years; I farmed for seven years; and I did several other things.
Q. When did you commence working for the Waters Pierce Oil Company?
A. It will be twenty years on the 15th of August of this year.
1615 Q. In what capacity did you first enter their employ?
A. As agent.
Q. At what place?
A. At Laredo, Texas.
Q. How long did you serve in that capacity?
A. About three years; three years and three months.
Q. To what point were you then transferred?
A. San Antonio, Texas.
Q. In what capacity there?
A. As agent, local agent.
Q. Covering what period of time?

A. I was local agent about three years.
Q. In what capacity did you next serve them?
A. As assistant manager.
Q. Where?
A. San Antonio.
Q. For about how long?
A. About one year, about twelve months.
Q. During the twelve months that you have mentioned, Mr. Fries, when you were assistant to the manager, or assistant manager,—twelve months you stated.
A. Yes, sir.
Q. Where was the division headquarters of the company located then?
A. At Galveston.
Q. Well, in what capacity did you next serve them?
A. I was made manager with headquarters at San Antonio.
Q. How long did you serve them in that capacity?
A. I am still with them as manager.
Q. At what point?,
A. Houston, Texas. I was transferred from San Antonio in September, 1903.

1616 Q. Your headquarters were changed, were they?
A. Yes, sir.
Q. Mr. Fries, do you know Roy Campbell?
A. Yes, sir.
Q. How long have you known him?
A. Well, I have known him since he came to Texas. I don't remember exactly how long that is.
Q. Where did he come from?
A. His home is in Ohio
Q. Where did you know him, Mr. Fries?
A. I knew him in San Antonio.
Q. What business was he engaged in there?
A. Well, he went into the oil business; that is where I became acquainted with him; he went in as a retailer of oil.
Q. About when, Mr. Fries?
A. I can only say about.
Q. Well, do the best you can.
A. I think it must have been about '94.
Q. You remember the circumstances of the Waters Pierce Oil Company—the then Waters Pierce Oil Company, buying him out?
A. I remember the company buying him out, yes, sir.
Q. Well, about how long had he been engaged in business when they bought him out?
A. Well, he and a man by the name of Scover were partners for about six months; I think they were in business—or Roy, after he bought him out, was in business about a year or year and a half.
Q. During that time what were your relations with Campbell with reference to being friendly or intimate or otherwise?
A. We were very intimate; I think he was about the most intimate friend I had, Roy Campbell.

1617 Q. Now, at that time, in what capacity were you serving the Waters Pierce Oil Company?

A. As agent.

Q. State whether or not you associated much or little together?

A. Much.

Q. After the company bought him out, Mr. Fries, what did he then do?

A. He operated the retail department at San Antonio for the Waters Pierce Oil Company, under the name of the Texas Oil & Gasoline Company.

Q. Now, do you remember how long he continued to operate that agency for the Waters Pierce Oil Company under that name?

A. March 1, 1904, or about that time.

Q. Do you remember when the former Waters Pierce Oil Company was dissolved, Mr. Fries?

A. Yes, sir, I remember.

Q. Now, about what date was that?

A. May, 1900. Some time between the 20th and 30th, I believe.

Q. You recall what notices—notice was given of the dissolution of the former company and the organization of the present company?

A. I don't remember the wording of it.

Q. Well, as an agent of the company, state whether or not you received any notice.

A. I received notice of the dissolution of the company.

Q. Have you got that notice that you received?

A. I may have it in my files; I am not positive; I haven't my files with me.

Q. You remember who it was received from?

A. The notice of dissolution, I believe, was signed by H. C. Pierce.

Q. Well, in the first place, were you employed by the present company?

1618 A. I was notified of the fact—I was notified of the organizing of the new company and my employment by them, by the new company.

Q. Now, Mr. Fries, would you recognize the copies of the two notices that you received with reference to the former company and the present one?

A. Yes, sir; I don't know whether they would be the ones I received.

Q. Well, look at this one and see whether it is? (Hands witness paper.)

A. Substantially the same.

Q. Notice you received?

A. It is.

Q. (Hands witness another paper.) Well, I will get you to look at this one?

A. Yes, sir.

Mr. ODELL: We now offer these notices, Your Honor.

Mr. BATTS: We have no objection.

Mr. ODELL: I will read to you, gentlemen, the notices identified by this witness:

"Waters Pierce Oil Company.

ST. LOUIS, MO., *May* 29, 1900.

Managers, Agents and Representatives of the Waters Pierce Oil Company:

The Waters Pierce Oil Company, incorporated May 7, 1878, was on the 28th day of May, 1900, by unanimous vote of its stockholders dissolved, and you are hereby respectfully notified that your services will not be required and will cease and terminate upon the afternoon of May 31, next. This company has this day sold and arranged to transfer on May 31, 1900, all of its property to the Waters Pierce Oil Company, incorporated at St. Louis, Missouri, May 29, 1900, and after May 31, 1900, you will hold all of this company's property in your charge subject to the order of H. C. Pierce, president of
1619 the Waters Pierce Oil Company. And in the meantime you will continue making sales and remittances as heretofore, up to the evening of May 31, 1900. On behalf of the stockholders and officers of this company, I desire to thank you for your faithful attention to its interests.

Very truly yours, A. M. FINLAY, *President.*"

"Waters Pierce Oil Company. Incorporated May 29, 1900.
Office of President.

ST. LOUIS, MO., *May* 29, 1900.

Mr. Blank.

DEAR SIR: The Waters Pierce Oil Company, incorporated May 29, 1900, has purchased all of the property of the Waters Pierce Oil Company which was incorporated May 7, 1878, and dissolved by unanimous resolution of its stockholders May 28, 1900. Referring to the notice sent by Andrew M. Finlay, president of that company, you are advised that you are hereby employed by this company in the same capacity as you were employed by the old Waters Pierce Oil Company and at the same salary, and your services on behalf of this company will commence upon the morning of June 1, 1900. As soon as possible you will be advised concerning the details of the conduct of this company's business in your charge.

Yours truly, H. C. PIERCE, *President.*"

Q. Did I understand you to say that you remember approximately the date when Mr. Campbell ceased his connection with the present Waters Pierce Oil Company?

A. March 1, 1904.

MR. ALLEN: Your Honor, I don't know exactly what the habit of the Court is with reference to documents that have been introduced in evidence. Are they marked and filed by the Clerk?

THE COURT: Yes, sir.

MR. BATTS: We should like to have the documents——

1820 MR. ODELL: We would like to have all of the letters and documents that are offered in evidence, turned over.

MR. BATTS: We want the Clerk to have the documents just read.

Mr. ODELL: We would like to have all the letters that have been read, filed with the Clerk.

Mr. ALLEN: They have been filed.

The COURT: Yes, all documentary evidence that has been introduced is in the custody of the Clerk, and the Clerk is the proper custodian.

Q. (Hands witness paper with handwriting on it). I wish you would look at that contract, Mr. Fries. Did you ever see that contract before, Mr. Fries?

A. I don't recall having seen it.

Q. Sir?

A. I don't recall having seen it.

Q. Do you recall at any time seeing what purported to be a duplicate of a copy of the contract made between the Waters Pierce Oil Company and Roy Campbell?

A. Yes, sir, I have seen it.

Q. In whose possession was it at the time?

A. In Roy Campbell's.

Q. Where and under what circumstances did you see that contract?

A. At the request of Mr. Finlay, I called on Roy Campbell.

Q. Where did you see Roy Campbell, Mr. Fries, at the time you saw this contract in his possession?

A. In the Waters Pierce Oil Company's office in San Antonio on Navarro Street.

Q. Under what circumstances, that is to say, did he come to see you, or did you go to see him?

A. I went to see him. You want me to go on?

1621 Q. Yes.

A. I asked him to bring the contract to my office, that I wanted to erase a certain clause or paragraph, second clause, I believe.

Q. Did he do that, Mr. Fries?

A. Yes, he consented to it; if he hadn't consented, I couldn't have done it.

Q. Well, when did he bring the contract to your office?

A. He brought the contract to my office on the 7th of April, 1900.

Q. When was paragraph 2 erased from this Campbell copy of the contract, Mr. Fries?

A. On that date.

Q. State to the jury whether it was with or without his consent.

A. With his consent.

Q. You remember the manner in which it was erased?

A. I do.

Q. Well, I wish you would describe that.

A. The copy was in typewriting and the erasure was made all the way through with the capital "X" which covered all of the small letters in the — line for line; each letter was covered with the capital "X."

Q. Was that made, this capital "X" that you are speaking of, with the typewriter or was it——

A. With the typewriter.

Q. Who made it?
A. I am not positive; I think my stenographer did, in his presence.
Q. Well, now, after this paragraph 2 was erased from the Campbell contract, what became of the contract?
A. It was handed back to Mr. Campbell.
Q. You say that was on April 7, 1900?
A. 1900.
Q. What do you refresh your memory from that enables you to fix the date, Mr. Fries?
1622 A. Well, Mr. Johnson wrote me from St. Louis when Roy Campbell brought suit against the Waters Pierce Oil Company, for me to look up my correspondence, and that was about two years ago, and refresh my memory on some dates, and that was among the letters, a copy.

Mr. BATTS: We have a right to see the data from which the witness refreshes his memory and we shall ask that it be produced or that the testimony be excluded.

Q. (Hands witness letter.) I wish you would look at that letter, Mr. Fries.
A. This is dated April 9, 1900; I said April 7th; my memory wasn't very good.
Q. Now, the letter you received is in Houston, is it?
A. No, sir, I have no letters dated that far back.
Q. Sir?
A. I have no letters dated back to 1900.
Q. Referring to the letter that you received from Mr. Finlay, you know where it is, that that was in reply to?
A. The letter I received, it was destroyed; it was destroyed with a lot of old correspondence and old records when we moved into our present warehouse office building.
Q. I wish you would read that letter to the jury.

Mr. BATTS: Let me see it first, please. (Witness hands letter to counsel for State)
Mr. BATTS: I shall at the proper time ask for all the correspondence from which the witness refreshes his memory.
The COURT: Read the letter to the Jury.
The WITNESS:

"Waters Pierce Oil Company.

SAN ANTONIO, *Texas, April* 9, 1900.

Mr. A. M. Finlay, President, St. Louis, Mo.
1623 DEAR SIR: The instructions as per your favor of April 2nd, personal, have been complied with.
Your- truly, LOUIS FRIES, *Manager.*"

The COURT: What is the date of that letter?
The WITNESS: April 9th.

Q. You know what that letter referred to, Mr. Fries?
A. My letter?

Q. Yes.

A. Referred to Mr. Finlay's letter of instructions to me to call on Mr. Campbell and get his consent to cancel paragraph 2.

Q. Of this contract?

A. Of this contract.

Q. Mr. Fries, where did you say Mr. Campbell's warehouse was located in San Antonio?

A. It was located on the Aransas Pass tracks, west of the city; I don't know the name of the street.

Q. You remember anything about Mr. Campbell receiving a sign at any time?

A. Yes, sir.

Q. When was that?

A. I can't recall the date.

Q. You remember when it was with reference to the dissolution of the old company and the organization of the present company?

A. I believe it was just prior to the dissolution, prior to the change. I am not positive though.

Q. Have you seen this Clem sign?

A. Yes, sir.

Q. When that was exhibited here to the jury?

A. Yes, sir.

Q. A little while ago. I wish you would state to the Jury how the sign that Mr. Campbell received compared to this Clem sign.

1624 A. In size it was about the same, and it was black, gold letters on black ground.

Q. You remember the wording of that sign?

A. No, sir, I do not; it indicated that Roy Campbell or the Texas Oil & Gasoline Company were agents of the Waters Pierce Oil Company; one of the two, I don't remember which.

Q. Did you or not see this sign after it was put up?

A. Yes, sir.

Q. Where was it?

A. It was over Roy Campbell's office door, and afterwards I saw it at his warehouse; I don't know whether there were two separate and distinct signs or one and the same sign transferred; I don't remember that.

Q. Where was his office?

A. On the ground floor of one of the Maverick buildings on Navarro Street.

Q. You remember how long that sign remained on his office door, over the door?

A. No, sir, I do not.

Q. You remember how long the sign remained on the warehouse?

A. I do not know; it may still be there.

Q. Was or not this warehouse located in a public place, Mr. Fries?

A. Well, it was located on the Aransas Pass right-of-way, I believe, and it was on a street corner; it wasn't much of a warehouse; it was an old shack on Mexican *jacal* and he kept his horse-feed in

there and I believe a pump that he used in transferring oils, and his equipment consisted of two tanks out in the yard.

Q. Was there or not a considerable passing to and fro by this warehouse?

A. Not much, no, sir.

1625 Q. Mr. Fries, what capacity were you serving the defendant in at the time that Campbell ceased his San Antonio agency?

A. As manager, South Texas division.

Q. I wish you would state to the jury, Mr. Fries, what his feelings toward the company were at the time that he left the service of the company?

A. The very best; he was seeking employment with the company at the time; he wanted a position in Mexico.

Q. State whether or not he made any complaint of the company having violated any agreement or contract with him, to you as manager of that territory?

A. None at all; none of any kind; in fact, he said that he was glad he had the thing out of the way; that he knew he hadn't done the company or his business justice for a number of years, and he could not do so without sacrificing more in the other direction than his salary would amount to; he was a merchant, broker. During the last five years that he was with the Waters Pierce Oil Company, I don't think he knew what was going on; the business of the company was turned over to a second-rate bookkeeper and a stenographer; the bookkeeper was square and remitted the proceeds of the sales all right, but Campbell never knew what was going on.

Q. What was his habit with reference to being out of the city for a considerable part of the time?

A. Oh, he was gone for months at a time; his business called him out of the city; he handled the cabbage crop at Corpus Christi, which held him down there for three months; he was in the elevator and grain business at Fort Worth until the elevator was destroyed by fire; that kept him out of town for six months; he traveled in Mexico for the Rosenbaum Grain Company, and remained in Mexico for six months of the time; he handled the Cuero onion crop——

1626 Q. Was his salary going on all the time?

A. Yes, sir.

Q. His salary and his office expenses, his office rent?

A. I don't know whether he paid part of the rent or not; anyhow the company paid more than its share, and I believe they paid the stenographer.

Q. When did you first hear of any complaint that he had against the company?

A. I never heard of any complaint against the company; the first complaint that I heard—I don't know whether it was—would call it a complaint or not, but he came back from St. Louis and told me that he had a good notion to bring suit against the Waters Pierce Oil Company for damages. Damages for what? Well, he said, for checking me out, discharging me. What put that into your head at this late date, it was done with your consent? That is all right, he

says, I had a talk with Mr. Gruet, and Mr. Gruet told me that I had good cause for damages and said I was a damn fool if I didn't bring it.

Q. That Gruet, the former secretary of the Company?

A. J. P. Gruet.

Q. Now, if you know, about how long after that was it before he brought the suit against the company?

A. The thing rocked along for some time; he asked me several times how it would affect me personally, that if it would affect me personally he would rather sacrifice this thing and not bring suit. I told him if that was the only thing that stood in his way, to go ahead and crack his whip; that I wouldn't have my personal feelings to stand in the way; to go ahead, if he thought he had cause for action, and he went.

Q. Mr. Fries, have you been familiar with the company's business in Austin since the organization of the present company?

1627 A. Yes, sir.

Q. Has it or not maintained and kept a local agent here all the time?

A. Oh, yes, sir.

Q. Prior to that time, did or not the former Waters Pierce Oil Company have a local agent in Austin, for a period, say, of ten years?

A. Yes, sir.

Cross-examination.

(By Mr. Batts:)

Q. Mr. Campbell hasn't got any feelings against the company, so far as you know?

A. No, not against the company; he has some against some of the officers of the company.

Q. Do you get all of your signs from St. Louis?

A. All my signs?

Q. Yes.

A. No, sir.

Q. Is the company in the habit of sending signs out to Texas to be put up?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. From St. Louis?

A. Yes, sir.

Q. What character of signs?

A. Well, we have a very nice blue enameled sign, white raised lettering on a blue field.

Q. Metal sign?

A. Yes, sir, steel.

1628 Q. Indicating the name of the agent?

A. No, sir.

Q. Just, "Waters Pierce Oil Company"?

A. Yes, sir, and sometimes we have "Eupion oil best on earth" on it, something of that kind.

Q. Down there at Houston, the name is general manager or division manager?

A. No, sir, my name is on my office door—no, it isn't there, it is on the stenographer's door; my office is, "Private".

Q. In an office building there?

A. In the company's office building, yes, sir.

Q. At your tank station, "The Waters Pierce Oil Company, Louis Fries, Agent"?

A. There is no sign.

Q. On your warehouse, "Louis Fries, Agent for the Waters Pierce Oil Company"?

A. No, there is no sign on the warehouse.

Q. No sign at all on your warehouse?

A. No, sir.

Q. Any of your wooden signs sent down from St. Louis?

A. I don't think we have a wooden sign outside of probably Austin; I think I had one painted here about ten years ago.

Q. Did you ever have any sign to be sent from St. Louis except the one to Roy Campbell?

A. I don't even know positively that that was sent from St. Louis.

Q. If that was sent from St. Louis, that is the only one you have heard of being sent from St. Louis?

A. The only wooden sign?

Q. Yes.

A. I couldn't say.

1629 Q. The only other signs are these metallic signs, were made and enameled at St. Louis—at San Antonio, I mean, at the time the sign was sent down?

A. Yes, sir.

Q. Have any correspondence with reference to the sign?

A. The sign, no, sir.

Q. You don't know then, the reason why that particular sign should have been prepared in St. Louis?

A. No, I really don't know, except that I had no direct dealings of any kind with Roy Campbell; he was working under St. Louis, as an independent agency, you might say.

Q. He didn't even refer to you?

A. I checked up their equipment for the company and I bought the equipment for the company, but I never bought anything for Roy Campbell.

Q. Why not?

A. Because he was operating as a separate agency; the only retail agency we had in the territory, in my territory.

Q. He didn't sell to merchants or jobbers?

A. Well, he didn't make a strong effort to sell to them. He had one or two personal friends that bought from him. Before he went to work for the Waters Pierce Oil Company he found it impossible to sell to them, and he quit; went to work for the company and drew his salary.

Q. And the company didn't object to his doing business and drawing his salary?

A. No, they objected and checked him out when it got too bad.

Q. How many years did he work for them?

A. For about ten years.

Q. Well, most of the time giving his attention to other business?

A. Yes, sir, increasing his gallonage, though, his sales.

1630 Q. And was supplying some merchants all the time?

A. Yes, sir, I suppose that he had one or two men that he supplied.

Q. What was the reason for buying him out?

A. I suppose because it was a good investment.

Q. What was the reason for keeping the business up in that name or the name of the Texas Oil Company?

A. That is a very good retail name.

Q. Anything to prevent you from going into the retail business there, if you wanted to, at the other office?

A. Yes.

Q. What?

A. I don't think that St. Louis wanted me to go into the retail business.

Q. That is the reason; they didn't want you to?

A. Yes, sir; if I had had my way about it I would take the whole thing and put it in retail.

Q. And the only reason you know for maintaining Campbell there, was that the St. Louis office wanted it done that way?

A. Yes, sir.

Q. The St. Louis office knew all about the matter?

A. What matter?

Q. The Waters Pierce Oil Company maintaining this separate business over there in the name of the Texas Oil & Fuel Company or Roy Campbell?

A. Yes, sir.

Q. You had no responsibility for it, at all?

A. No, sir, not for Roy Campbell and his doings, no, sir.

Q. Paid him how much?

A. If I had been responsible for Roy Campbell, in spite of personal friendship, I would have checked him out a whole lot earlier.

Q. Now, at the time you brought out Roy Campbell, you

1631 had been running another little concern there in another name, hadn't you?

A. Retail concern?

Q. Retail concern and seller to jobbers?

A. Yes, sir, no, he wasn't selling to jobbers directly.

Q. What was the name of that concern?

A. Consumers Oil & Gasoline Company.

Q. Did you have an agency for selling to retailers when you bought Roy Campbell out?

A. Well, when Roy Compbell went to work for us there was no use in having two.

Q. Did you put up over the Consumers Oil & Gasoline Company, whatever it was, "Agent of the Waters Pierce Oil Company"?

A. I don't think we had any sign on it at all, I don't remember; I know we had a long sign showing what we handled.

Q. Did you disclose to the people that that was a concern of yours?

A. We didn't run around and advertise it; we had that to push our goods. It was known that we had an interest in them; I know it was pretty well known because there was a roast from the retail merchants——

Q. They got to suspecting that fact?

A. Yes, sir, I suppose they knew it.

Q. Now, you stated that you remembered independently of these letters the date upon which you had that conference with Roy Campbell?

A. What conference?

Q. With reference to drawing lines through certain part of the contract.

A. The 7th of April.

Q. I say, do you remember it independently of the letters and data etc., that you have looked at?

A. No, I know it from the copy of the letter which is on file; I have that copy in my office, I believe I have that copy; I know I have it.

1631½ Q. When did you first see the letter?

A. Which, this letter?

Q. Yes.

A. I saw it here; I have the copy of it.

Q. Well, do you remember having seen it before?

A. No, sir.

Q. That was in the possession of counsel here, was it?

A. Which?

Q. That letter.

A. This letter that is here now?

Q. Yes.

A. I saw the Judge take it out of the——

Q. You hadn't seen it prior to that time?

A. No, sir.

Q. You recognized it as the letter you had written?

A. Yes, sir, it is my signature and I recognize the wording.

Q. You say the other letter, the letter you got from Mr. Finlay, is destroyed?

A. Yes, sir.

Q. When did you destroy it?

A. I destroyed it when we moved into our new office building, about a year ago last February.

Q. About the time the suit was instituted?

A. I don't know; I destroyed all of the old correspondence I had; the chief clerk and myself went through the old correspondence, took us a couple of days, and destroyed a number of old stock books and other records we had no further use for.

Q. Did you receive instructions to burn this up?

A. No, sir; Oh, no; we had more of theirs than we could store in the new warehouse.

1632 Q. Didn't you get any personal letters with reference to that matter?

A. No, sir.

Q. This letter you did?

A. This was a personal letter, yes.

Q. A personal letter?

A. Yes, sir.

Q. Not written to you in your capacity down there as agent of the company?

A. Yes, sir, it was addressed to me as manager.

Q. Well, how did it become personal?

A. Well, the personal cover.

Q. What do you mean by that?

A. The usual cover is an envelope, and that was addressed "Personal" "Louis Fries, Manager," and then "Personal" written across the face of it.

Q. And in that you got the information to get the contract with Roy Campbell and mark lines through a certain part of it?

A. Yes, sir.

Q. That was all?

A. Through the second paragraph.

Q. Mark lines through the second paragraph, and that was all the letter?

A. Yes, sir.

Q. You told Roy Campbell you wanted his contract?

A. Yes, sir, I told him I had been requested——

Q. Now, wait a minute; you had been requested to get hold of that contract and mark lines through the second paragraph or clause in that, and that is all that took place between you as to that?

A. Yes, sir, that is all.

1632½ Q. Now, Mr. Fries, talking about signs, I will ask you to state whether or not C. W. Robinson also secured a sign from the company painted in the same way?

A. I don't know C. W. Robinson.

Q. Well, H. P. or H. K. Cochran?

A. I don't know him; I don't how of him.

Q. Well, isn't it a fact that those men were running sham concerns like Clem?

A. I don't know anything about them.

Q. Those facts were not disclosed to you?

A. No, sir, if they are facts, they were not.

Q. Now, down at Houston, the lampstore there, did they get a sign of the same sort from the Waters Pierce Oil Company?

A. I din't know, sir, I wasn't in Houston at that time; I was in San Antonio; that wasn't in my territory.

Q. It is now, isn't it?

A. Yes, sir, it is now.

Q. And is the store now run in the name of the company?

A. No, sir.

Q. The company owns a store there which it runs in somebody else's name?

A. The Lamp Store.
Q. Yes, sir.
A. No, sir.
Q. The Oil & Lamp Store, when did it close out?
A. I think it was January, 1904; shortly after I came there. I went there in September, 1903.
Q. You closed it out?
A. Yes, sir.
Q. It had been theretofore run in the name of what?
A. Texas Lamp & Oil Company.
1633 Q. Belonged to the Waters Pierce Oil Company?
A. Yes, sir.
Q. Did they send them down a sign?
A. I couldn't tell you.
Q. Don't know about that?
A. No, sir.
Q. Same concern at Galveston?
A. Was or is there?
Q. Was or is?
A. There was a Texas Lamp & Oil Company there.
Q. Run by the Waters Pierce Oil Company?
A. Yes, sir.
Q. In another name?
A. Well, it was run as the Texas Lamp & Oil Company.
Q. Don't know about the signs down there?
A. No, sir.
Q. Are there any businesses at this time run by the Waters Pierce Oil Company that you have been informed about, in the name of somebody else, in the State of Texas?
A. No, sir.
Q. If there are businesses of that kind, the fact is kept concealed from you?
A. I don't know it.
Q. Now, about what time did this change of policy take place?
A. What policy?
Q. Policy of running concerns in somebody's else's name in a kind of a sham competition?
A. I don't know anything about that policy.
Q. Those concerns down at Houston and Galveston were discontinued about the time Mr. Tinsley came down from the Standard Oil Company to run the Waters Pierce Oil Company?
1633½ A. Prior to that time.
Q. You remember about when that was?
A. I know about when it was; I met Mr. Tinsley up there at the Fair, and this was before the Fair.
Q. How long did he stay up there at St. Louis, running the——
A. I don't know, I only saw him there on one visit.
Q. Now, Mr. Fries, I notice these letters—this particular letter here is dated April 9, 1900; you have written a letter here that didn't at all indicate what it is about; is it the ordinary course of business

to write letters that didn't at all disclose what the letter is written abou?

A. I think the body of the letter always discloses what it is written about.

Q. This simply refers to a personal letter of a certain date. There is a place up here to name the subject, isn't there?

A. I see there is, yes, sir.

Q. Now, this is the only letter that we have got in regard to this particular transaction, you saying that this is in regard to this particular transaction, and upon the face of it, it don't at all indicate whether it is with reference to it or not?

A. No, sir, it doesn't.

Q. Now, I notice "Waters Pierce Oil Company, San Antonio, Texas," that was the stationery you had been using prior to the re-incorporation, was it not?

A. Yes, sir.

Q. You subsequently got a rubber stamp, "Incorporated under the laws of the State of Missouri" on May sometime—1900—and used that and used the same old stationery with that change?

A. I don't remember that; I know we used a rubber stamp on some stationery; I don't know whether I used it on my letter-heads or not.

1634 Q. And that is the only change made in your business, using a rubber stamp on your stationery?

A. We made a number of changes.

Q. As a result of that re-incorporation?

A. I don't know; there was lots and lots of instructions received from St. Louis.

Q. Well, when?

A. We received them daily.

Q. Well, you had been making changes all along prior to that time?

A. Yes, sir, still making them.

Q. Was the business conducted the same *was* as it had been before?

A. No, sir.

Q. Well, in what respect was it different?

A. I couldn't go into details; the instructions were a little more specific than they used to be, and a good deal of authority was taken away from the agents and managers that they used to have.

Q. When was that?

A. About that time, about the reorganization.

Q. Well, wasn't that about the time Mr. Tinsley came down from——

A. No, sir, prior to his coming.

Q. Now, you had a lot of books in the company's office there at San Antonio?

A. We had a lot of books, yes, sir; all the records.

Q. You closed those up on May 31, 1900?

A. We close them up every month.

Q. Well, I mean did you close them up and put those books aside, and get new books?

A. Not all the way through, no, sir.

Q. Well, did you at all?

A. Yes, sir, we arranged for new ledgers.

Q. On May 31, 1900?

A. No, sir, on June 1st.

1634½ Q. On June 1st, 1900, you transferred the old accounts over to the new ledger?

A. Yes, sir.

Q. And sent out statements?

A. We were paid a good many of the accounts, and the balance we transferred to the new ledger.

Q. And then you sent out notices to them, to the persons with whom you had accounts, and said, "the account owned by you to the Waters Pierce Oil Company has been transferred to us, and we ask that the account be paid to us?"

A. I don't remember sending any such notices.

Q. Did you communicate to your customers that there had been any change at all in the business?

A. No, sir, I don't remember that I did.

Q. You do not?

A. No, sir.

Q. Accounts just went right along, items from day to day, as theretofore?

A. Yes, sir.

Q. Did you get those two notices in the same envelope that were read to you this morning?

A. No, sir, I don't believe I did; I think I got a package by one mail and a package by another.

Q. Don't know which came first?

A. I could mighty near guess it.

Q. You could guess from what you assume to be the course that would be pursued, which you got first?

A. Yes, sir.

Q. And did you get a batch of them and send out to your employees or did they send them out?

A. I sent them out.

1635 Q. They sent you down a batch to send out to your employees?

A. Yes, sir.

Q. Did you get yours from them direct or did you deliver yourself one?

A. Mine was not in the batch; mine was addressed to me as the manager.

Q. Did you get that batch a week or ten days prior to the dissolution?

A. I think I got it about two days. Regular course of mail.

Q. I am talking about this batch you got by express?

A. That is what I am talking about.

Q. And then the other employees were not notified until you were actually doing business as the new Waters Pierce Oil Company?

A. That is about the size of it.

Q. They had been running along there for several days for the new corporation, doing business, corporation having $400,000.00 capital stock, and forty or fifty million capital, for three or four days and didn't know it?

A. I don't know anything about the capital stock, and so forth.

Q. Well, whatever this concern is, they were doing business for it and didn't know it?

A. I don't remember that distinctly.

The COURT: We will adjourn until half past two o'clock.

Court re-opened at 2.30 o'clock.

1635½ Counsel for defendant next introduced in evidence the charge of the Court in the case of the State of Texas *vs.* Waters Pierce Oil Company, *et al.*, Cause No. 12,578, in the District Court of Travis County, Texas.

Judge PENN: If the Court please, it is agreed between the plaintiff and the defendant, that the annual franchise taxes required by the laws of the State of Texas have been paid by the defendant, the Waters Pierce Oil Company for the year 1900, and for each succeeding year up to this time

Mr. BATTS: This agreement is subject to the objection that it is irrelevant and immaterial. That is true is it not? (To Judge Penn). I suppose that if it is not material or relevant, that you could not get it in anyhow, and the objection is urged that it is immaterial.

The COURT: What is the purpose of this evidence?

Judge PENN: The purpose is, Your Honor,—We contend that at the time of the granting of the permit to this company, the State entered into a contract with this company, permitting it to do business in this State for ten years, one of the conditions, of course, being the payment of the annual franchise tax, and we introduce this for the purpose of showing the performance by the defendant of the contract, and the fact that the State has recognized it during these years as a corporation, and permitted it to do business in this State,—recognized the issuance of the new charter.

The COURT: The objection is sustained.

Judge PENN: The defendant excepts.

1636 *Stenographer's Certificate.*

AUSTIN, TEXAS, *July 5th*, 1907.

I, H. P. Bickler, Official Stenographer of the District Court of Travis County, Twenty Sixth Judicial District, hereby certify that the foregoing on pages — 958 is a true and correct report of the testimony introduced and proceedings had upon the trial of cause No.

24,551, of The State of Texas *vs.* Waters Pierce Oil Company, in said Court, May Term, 1907.

H. P. BICKLER,
*Official Stenographer, Twenty-sixth Judicial District.*

AUSTIN, TEXAS, *July* 16, 1907.

The foregoing transcript of the testimony in the above entitled and numbered cause having been made at the request of the defendant, Waters Pierce Oil Company has been submitted to the Attorneys of record for both parties therein, and said attorneys having made no objection thereto, and said transcript of the testimony having been examined by the Court and found correct, the same is hereby approved and ordered filed as a part of the record in said cause.

V. L. BROOKS,
*Judge Twenty-sixth Judicial District.*

(Endorsed on cover:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Company. Stenographer's report. Filed July 18th, 1907. D. J. Pickle, Clerk Dist. Court Travis County, Texas. By E. Huppertz, Deputy. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Sep. 10 1907. R. H. Connerly, Clerk. With 4212.

1637 No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

I, D. J. Pickle, Clerk of the District Court in and for the County of Travis and State of Texas, do hereby certify that the within papers contain all original documents to be sent up with the Transcript in cause No. 24551, The State of Texas *vs.* The Waters Pierce Oil Company in accordance with the agreement of parties and order of Court made thereon.

Witness my hand and seal of office at Austin, this the 13th day of August, A. D. 1907.

[SEAL.]

D. J. PICKLE,
*Clerk District Court, Travis County, Texas.*

No. 21.

The Standard Oil Company.

Know all men by these presents: That we, John D. Rockefeller, Henry M. Flagler, Samuel Andrews and Stephen V. Harkness, of Cleveland, Cuyahoga County, Ohio, and William Rockefeller, of the city, county and state of New York, have associated ourselves together under the provisions of the act of the Legislature of the State of Ohio, entitled an act to provide for the creation and regulation of incorporated companies in the State of Ohio, passed May 1, 1852, and the acts supplementary thereto, passed April 8th, 1856, and the act to amend the last named act, passed February

14th, 1861, and the other laws of the State of Ohio applicable thereto, for the purpose of forming a body corporate for
1638 manufacturing petroleum and dealing in petroleum and its products, under the corporate name of The Standard Oil Company.

And we do certify, that the purpose for which said body corporate is formed, is the manufacture of petroleum, and to deal in petroleum and its products.

That the capital stock necessary for said company, and the amount agreed on as composing the capital stock is the sum of One Million Dollars.

That the amount of each share of capital stock is One Hundred Dollars.

That the name of the place where said manufacturing establishment shall be located for doing business, is Cleveland City, Cuyahoga County, State of Ohio.

That the name and style by which said manufacturing establishment shall be known is, "The Standard Oil Company."

Cleveland, Ohio, January 10th, 1870.

JOHN D. ROCKEFELLER. [SEAL]
HENRY M. FLAGLER. [SEAL]
SAMUEL ANDREWS. [SEAL]
STEPHEN V. HARKNESS. [SEAL]
WILLIAM ROCKEFELLER. [SEAL]

5c I. R. Stamp Cancelled.

THE STATE OF OHIO, *Cuyahoga County, ss:*

At Cleveland, in said county, this 10th day of January, 1870, personally appeared before me the undersigned, a Justice of the Peace in and for said county John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Stephen V. Harkness, and William Rockefeller,
1639 signers and sealers of the foregoing instrument and acknowledged the signing, sealing and execution thereof, to be their free act and deed.

In witness whereof, I have hereunto set my name officially, at Cleveland, in said county, this 10th day of January, A. D. 1870.

FREDK. A. BRAND,
*Justice of the Peace.*

5c I. R. Stamp cancelled.

THE STATE OF OHIO, *Cuyahoga County, ss:*

I, Frederick S. Smith, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County aforesaid, do hereby certify that Fredk. A. Brand, before whom the annexed acknowledgment was taken, was, at its date, a Justice of the Peace in and for said county, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In testimony whereof, I hereunto subscribe my name

and affix the seal of said court, at Cleveland, this 10th day of January, A. D. 1870.

[SEAL] FREDERICK S. SMITH, Clerk.

5c I. R. Stamp cancelled.

Increase of capital stock to $2,500,000.00

To the Secretary of the State of Ohio:

1640 The undersigned being a majority of the Board of Directors of the Standard Oil Company of Cleveland, Ohio, do hereby certify that on the first day of January, A. D. 1872, at the annual meeting of the stockholders of said company held at its office in Cleveland, Cuyahoga County, Ohio, by a vote then and there taken all the stockholders of said company being present and voting therefor, it was resolved and agreed by all of them that the Capital Stock of said company be increased the sum of One Million Five Hundred Thousand Dollars thereby making the Capital Stock of said Company Two Million Five Hundred Thousand Dollars, which action by the stockholders was as follows, to-wit:

Resolved and it is hereby agreed by each and all of us, that the Capital Stock of this Company, namely, the Standard Oil Company of Cleveland, Ohio, be increased to the sum of Two Million Five Hundred Thousand Dollars, and it is also agreed and the proper officers of this Company are hereby instructed to take the requisite steps to so increase said Capital Stock.

JOHN D. ROCKEFELLER,
O. B. JENNINGS,
B. BREWSTER,
WM. ROCKEFELLER,
S. V. HARKNESS,
H. M. FLAGLER,
S. P. HANDY,
S. ANDREWS,
A. STONE, JR.,
S. WITT,

*Stockholders.*

CLEVELAND, OHIO, *January 1st*, 1872.

And afterwards said meeting was adjourned.

HENRY M. FLAGLER, *Secretary.*

1641 And we further certify that the whole amount of such increase of Capital Stock has been paid to said Company, in money—that no note, bill, bond, or other security, has been taken for the same, or any part thereof, and that the credit of the Company has not been used directly or indirectly to raise the funds, to pay the same or any part thereof.

In witness whereof we have hereunto set our names at Clevelapd, Ohio, this ninth day of February.

JOHN D. ROCKEFELLER,
HENRY M. FLAGLER,
SAMUEL ANDREWS,
STEPHEN V. HARKNESS,

*Directors.*

THE STATE OF OHIO, *Cuyahoga County, ss:*

The undersigned John D. Rockefeller, Henry M. Flagler, Samuel Andrews, and Stephen V. Harkness, being duly sworn say they are Directors in The Standard Oil Company of Cleveland, Ohio, that they compose a majority of the said Board of Directors and that all and singular the matters and things set forth in the foregoing certificate are true in substance and in fact.

JOHN D. ROCKEFELLER,
HENRY M. FLAGLER,
SAMUEL ANDREWS,
STEVEN V. HARKNESS,
*Directors.*

Subscribed by John D. Rockefeller, Henry M. Flagler, Samuel Andrews, and Stephen V. Harkness, in my presence and sworn to by each of them at Cleveland, Ohio, this 9" day of February, A. D. 1872.

[SEAL.] M. R. KEITH,
*Notary Public of Cuyahoga County, O.*

1642 STATE OF OHIO, *Cuyahoga County, ss:*

I, Frederick S. Smith, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County aforesaid, do hereby certify that M. R. Keith before whom the annexed affidavit was taken, was at its date a Notary Public in and for said county, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at Cleveland, this 9" day of February, 1872.

[SEAL.] FREDERICK S. SMITH, *Clerk.*

Standard Oil Company.

Increase of Capital Stock to $3,500,000.

To the Secretary of the State of Ohio:

The undersigned being a majority of the Board of Directors of the Standard Oil Company of Cleveland, Ohio, do hereby certify that on the tenth day of March, A. D. 1875, at a Special Meeting of the Stockholders of said Company held at its office in Cleveland, Guyahoga County, Ohio, by a vote then and there taken, all the stockholders of said company being present and voting therefor, it was resolved and agreed by each and all of them, that the Capital Stock of said Company be increased the sum of One Million Dollars thereby making the capital stock of said Company Three Million Five Hundred Thousand Dollars, which action of the Stockholders was as follows to-wit:

1643 Resolved, and it is agreed by each and all of us that the Capital Stock of this company, viz—the Standard Oil Company of Cleveland, Ohio, be increased to the sum of Three Million Five Hundred Thousand Dollars—and it also agreed and the proper

officers of this company are hereby instructed to take the requisite steps to so increase said Capital Stock.

J. D. ROCKEFELLER.
S. V. HARKNESS.
H. M. FLAGLER.
S. ANDREWS.
J. D. ROCKEFELLER, *Agent.*
J. D. ROCKEFELLER, *Trustee.*
O. H. PAYNE.
B. BREWSTER,
By J. D. ROCKEFELLER, *His Att'y.*
T. P. HANDY,
By J. D. ROCKEFELLER, *His Att'y.*
O. B. JENNINGS,
By J. D. ROCKEFELLER, *His Att'y.*
WM. ROCKEFELLER,
By J. D. ROCKEFELLER, *His Att'y.*
JOS. STANLEY,
By O. H. PAYNE, *His Att'y.*
A. M. McGREGOR,
By J. D. ROCKEFELLER, *His Att'y.*
W. C. ANDREWS.
A. J. POUCH,
By J. D. ROCKEFELLER, *His Att'y.*
F. A. ARTER,
By J. D. ROCKEFELLER, *His Att'y.*
P. H. WATSON,
By H. M. FLAGLER, *His Att'y.*
I. A. BOSTWICK,
By J. D. ROCKEFELLER, *His Att'y.*
J. HUNTINGTON,
By O. H. PAYNE, *His Att'y.*
D. M. HARKNESS,
By H. M. FLAGLER, *His Att'y.*
JOSIAH MACEY,
By J. D. ROCKEFELLER, *His Att'y.*
W. H. MACEY,
By J. D. ROCKEFELLER, *His Att'y.*
W. T. WARDWELL,
By H. M. FLAGLER, *His Att'y.*
D. P. EELLS,
By J. D. ROCKEFELLER, *His Att'y.*
S. F. BARGER,
By J. D. ROCKEFELLER, *His Att'y.*
W. H. VANDERBILT,
By J. D. ROCKEFELLER, *His Att'y.*
H. W. PAYNE,
1644 By O. H. PAYNE, *His Att'y.*
I. J. VANDEGRIFT,
By O. H. PAYNE, *His Att'y.*
JOHN PITCAIRN, JR.,
By O. H. PAYNE, *His Att'y.*
L. G. HARKNESS,
By H. M. FLAGLER, *His Att'y.*

And afterwards said meeting was duly adjourned.

H. M. FLAGLER, *Secretary.*

Cleveland, Mar. 10, 1875.

And we further certify that the whole amount of such increase of Capital Stock has been paid to said company in money—that no note, bill, bond or other security has been taken for the same or any part thereof, and that the credit of the company has not been used directly or indirectly to raise funds to pay the same or any part thereof.

In witness whereof we hereunto set our names at Cleveland this 10 day of March, A. D. 1875.

JOHN D. ROCKEFELLER.
HENRY M. FLAGLER.
SAMUEL ANDREWS,
OLIVER H. PAYNE.
STEPHEN V. HARKNESS.

THE STATE OF OHIO, *Cuyahoga County, ss:*

The undersigned John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Oliver H. Payne and Stephen V. Harkness being duly sworn say that they are Directors of the Standard Oil Company of Cleveland, Ohio,—that they compose a majority of said Board of Directors and that all and singular the matters and things set forth in the foregoing certificate are true in substance and in fact.

1645

JOHN D. ROCKEFELLER.
HENRY M. FLAGLER.
SAMUEL ANDREWS.
OLIVER H. PAYNE.
STEPHEN V. HARKNESS.

Subscribed by John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Oliver H. Payne and Stephen V. Harkness in my presence and sworn to by each of them before me at Cleveland, Ohio, this 10th day of March, A. D. 1875.

[SEAL.]

M. R. KEITH,
*Notary Public for Cuyahoga Co., O.*

THE STATE OF OHIO, *Cuyahoga County, ss:*

I, Benjamin S. Cogswell, Clerk of the Court of Common Pleas, a Court of record of Cuyahoga County, aforesaid, do hereby certify that M. R. Keith, before whom the annexed affidavit was taken, was, at its date, a Notary Public in and for said County, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this 12th day of March, A. D. 1875.

[SEAL.]

BENJAMIN S. COGSWELL, *Clerk.*

(*Certificate under Section* 906, *Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
*State of Ohio, Office of the Secretary of State:*

1646 I, Carmi A. Thompson, Secretary of State of the State of Ohio, and being the officer who, under the constitution and laws of said State, is duly constituted the keeper of the records of articles of incorporations of all companies and incorporated under the laws thereof, and the records of all papers relating to the creation of said incorporated companies, and empowered to authenticate exemplifications of the same, do hereby certify that the annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct of the articles of incorporation of "The Standard Oil Company" filed in this office on the 10th day of January, A. D. 1870, and recorded in Volume 7, page 60; and of the certificate of increase of Capital Stock of said company, filed in this office on the 10th day of February, A. D. 1872, and recorded in Volume 9, page 463; and of the certificate of increase of Capital Stock of said Company, filed in this office on the 13th day of March, A. D. 1875, and recorded in Volume 14, page 500, respectively, of the records of incorporations; that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof I have hereunto attached my official signature and The Great Seal of the State of Ohio, at Columbus, this 14th day of April, A. D. 1907.

[SEAL.] CARMI A. THOMPSON,
*Secretary of State.*

Endorsed: #24551. State of Texas *vs.* Waters Pierce Oil Co. Filed May 21, 1907. D. J. Pickle, Clerk, by J. A. Belger, Deputy.

1647 No. 17.

(*Certificate under Section* 906, *Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
*State of Missouri, Office of Secretary of State:*

I, John E. Swanger, Secretary of State of the State of Missouri, having the custody of the Great Seal of said State, and being the officer who, under the Constitution and Laws of said State, is duly constituted the keeper of the records of articles of incorporation of all companies incorporated under the laws thereof, and the records of all papers relating to the creation of said incorporated companies, and empowered to authenticate exemplifications of the same, do hereby

certify that the annexed instrument is an exemplified copy, carefully compared by me with the original files and records now in my official custody as Secretary of State, and found to be true and correct, of the Articles of Association of the Waters, Pierce Oil Company, filed May 7th, 1878; of Certificate of Incorporation issued to said company, on the date aforesaid; of Statement increasing its Capital Stock to $400,000.00, filed June 20, 1882; and of Certificate increasing its Capital Stock to $400,000.00, issued June 20, 1882, and recorded in the records of incorporations in this office; that said exemplification is in due from and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at office in the City of Jefferson, this 6th day of April, A. D. 1907.

JNO. E. SWANGER,

[SEAL.] *Secretary of State.*

1648 *Articles of Association of the Waters, Pierce Oil Company.*

Be it Known that we William H. Waters of St. Louis, Missouri, Henry C. Pierce of St. Louis, Missouri, Horace A. Hutchins of Cleveland, Ohio, Frank D. Carley of Louisville, Kentucky, and William P. Thompson of Parkersburg, West Virginia, do by these presents form a body corporate under the name and style of "Waters Pierce Oil Company" pursuant to and in conformity with chapter 37 article 7 of Wagner's Statutes of Missouri, and the several acts of the General Assembly supplementary and amendatory thereof, and we hereby make the following certificate of facts, in connection with said corporation, pursuant to the provisions of said statutes chapter and acts.

First. The corporate name of the said company is hereby certified to be "Waters, Pierce Oil Company."

Second. The objects for which said company is formed, are dealing in naval stores and dealing in and compounding petroleum and other oils and all the products thereof and buying and selling the same in the State of Missouri and other states.

Third. The Capital Stock of said company is hereby certified to be One Hundred Thousand Dollars, which shall be divided into One Thousand shares of One Hundred dollars each.

Fourth. The number of directors shall be five.

Fifth. The name of the directors who shall manage the affairs of said company during the first year shall be William H. Waters of St. Louis, Missouri, Henry C. Pierce of St. Louis, Missouri, Horace A. Hutchins of Cleveland, Ohio, Frank D. Carley of Louisville, Kentucky, and William P. Thompson of Parkersburg, West Virginia.

Sixth. The name of the place in which the business operations of the company shall or may be carried on is the City of St.
1649 Louis, State of Missouri, where its principal office shall be located.

Seventh. Said Company shall exist the term of fifty years.
Witness our hands and seals this 1st day of May, 1878.

W. H. WATERS. [SEAL.]
H. C. PIERCE. [SEAL.]
H. A. HUTCHINS. [SEAL.]
FRANK D. CARLEY. [SEAL.]
W. P. THOMPSON. [SEAL.]

STATE OF MISSOURI, *City of St. Louis, ss:*

Be it Remembered that on this first day of May, 1878, before me a notary public within and for the city and state aforesaid personally appeared William H. Waters, Henry C. Pierce, Horace A. Hutchins, Frank D. Carley and William P. Thompson who are personally known to me to be the same persons whose names are subscribed to the foregoing certificate as parties thereto, and severally acknowledged that they executed the same for the purposes and uses therein mentioned. Qualified May 18/78 Term Expires May 15, 1882, and I further certify that the word "and" was erased in the name of the above corporation and the words "naval stores and dealing in" were interlined above before signature. Witness my hand & seal notarial the place and date first above written.

[Copy of Seal: James F. Duncan, Notary Public, St. Louis County Mo.]

JAS. F. DUNCAN,
*Notary Public.*

Filed & Recorded May 1st 1878 at 12:31 P. M.

D. H. MACADAM, *Recorder.*

NOTE.—The words "naval stores and dealing in" on lines 35 & 36 page 300 & "notarial" on line 11 page 301 of this Record are interlined in the original instrument.

1650 STATE OF MISSOURI, *City of St. Louis, ss:*

I, the undersigned Recorder of deeds do hereby certify the foregoing to be a true copy of the Articles of Incorporation of the Waters Pierce Oil Company, together with the acknowledgment &c thereof as fully as the same appears of record in my office in Corporation Book Vol. 1, page 300.

Witness my hand and official seal this 1st day of May, 1878.

[SEAL.] D. H. MACADAM, *Recorder.*

Filed and certificate of corporate existence issued May 7th, 1878.

MICHL. McGRATH,
*Secretary of State.*

STATE OF MISSOURI:

No. 1309.

*Certificate of Corporate Existence.*

Whereas, William H. Waters; Henry C. Pierce; Frank D. Carley and others have filed in this office a certificate, in writing, as provided by law, and have in all respects complied with the requirements of the law governing the formation of Private Corporations for Manufacturing and Business purposes.

Now, therefore, I, Michael K. McGrath, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said parties, their associates and successors, have become a body politic and corporate, and are duly organized under the name of "Waters, Pierce Oil Company," and have all the rights and privileges granted to Manufacturing and Business Corporations under the laws of this State.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Missouri. Done at the City of
1651 Jefferson, this seventh day of May, A. D. eighteen hundred and seventy eight.

[SEAL.] MICHL. K. McGRATH,
*Secretary of State.*

*Statement in the Matter of Increase of the Capital Stock of the Waters Pierce Oil Company.*

At a meeting of the stockholders of the Waters Pierce Oil Co. held at the office of the Company No. 600 North 4th St., in the City of St. Louis, State of Missouri at 10 o'clock A. M. on the thirteenth day of June, 1882, pursuant to the notice hereinafter set out there were present in person or by proxy William H. Waters, representing 400 shares, F. D. Carley, representing 200 shares, H. A. Hutchins, representing one share, W. P. Thompson, representing one share, and George H. Vilas, M. R. Keith and George F. Chester, Trustees by proxy representing 398 shares, the same being all the shares of the stock of the Company, and thereupon said meeting organized by the election of Wm. H. Waters, Chairman, and C. M. Adams, Secretary.

There was presented the following affidavit of Wm. H. Waters showing that printed copies of the notice of the calling of this meeting directed to be given by resolution of the Board of Directors the 10th day of April, 1882, were by him deposited in the Post Office at St. Louis, Missouri, on the 11th day of April, 1882, addressed to each of the stockholders of this company at his usual place of residence, postage prepaid, said affidavit is in the words and figures following.

CITY OF ST. LOUIS, *State of Missouri:*

William H. Waters being duly sworn on oath says that on the 11th day of April, 1882, affiant as President of the Waters
1652 Pierce Oil Company, and in pursuance of the order of the Board of Directors thereof, deposited in the Post Office at St. Louis, Missouri, a printed copy of the annexed notice addressed to each of the stockholders of said company at his usual place of residence, postage prepaid. Said notice was signed by a majority of the Directors of said Company and was in the words and figures following:

Stockholders Meeting.—The stockholders of the Waters Pierce Oil Company will take notice that on Tuesday, June 13th, 1882, at 10 o'clock A. M. there will be held at the office of the company No. 600 North Fourth St. in the City of St. Louis, a meeting of said stockholders, for the purpose of increasing the capital stock of the company from the amount of the present capital of one hundred thousand dollars to an aggregate amount of four hundred thousand dollars capital.

WILLIAM H. WATERS, H. C. PIERCE,
W. P. THOMPSON, H. A. HUTCHINS,
*Directors of the Waters Pierce Oil Company.*

W. H. WATERS.

Subscribed and sworn to before me, this 13th day of June, 1882.
[SEAL.] A. A. PAXTON,
*Notary Public.*

And there was also presented at said meeting the following proof of publication of said meeting:

STATE OF MISSOURI, *City of St. Louis, ss:*

Personally appeared before the undersigned (a notary public within and for the City of St. Louis) John M. McGuffin, who being duly sworn deposeth and saith that the annexed advertisement was published in the "St. Louis Post Dispatch (printed within the said City and State, the newspaper of which he is one of the publishers) for ten times, the first insertion being on the tenth day of April, and the last insertion being on the twelfth day of June 1882, as follows:

1st time April 10th
1653 2nd time April 17th
3rd time April 24th
4th time May 1st
5th time May 8th
6th time May 15th
7th time May 22nd
8th time May 29th
9th time June 5th
10th time June 12th

Stockholders Meeting.—The stockholders of the Waters Pierce Oil Company will take notice that on Tuesday, June 13th, 1882, at 10 o'clock A. M. there will be held at the office of the company No. 600 North Fourth St., in the City of St. Louis, a meeting of said stockholders, for the purpose of increasing the capital stock of the company from the amount of the present capital of one hundred thousand dollars to the *an* aggregate amount of four hundred thousand dollars capital

W. H. WATERS, H. C. PIERCE,
W. P. THOMPSON, H. A. HUTCHINS,
*Directors of the Waters Pierce Oil Company.*

JOHN M. McGUFFIN.

Sworn and subscribed before me this 13th day of June, 1882.
[SEAL.] I. G. KAPPNER,
*Notary Public, City of St. Louis.*

| | |
|---|---|
| Printers' Fee..... | $21.00 |
| Affidavit ..... | .50 |
| | $21.50 |

Thereupon on motion it was unanimously resolved that the capital stock of this company be increased from the amount of the present capital of one hundred thousand dollars to an aggregate amount of four hundred thousand dollars capital. And thereupon said addition- stock was subscribed and paid for in cash as follows:

| | | | |
|---|---|---|---|
| Chess-Carley Co..... | 600 | shares..... | $60,000.00 |
| Wm. H. Waters..... | 1200 | " ..... | 120,000.00 |
| Trustees of Standard Oil Trust ..... | 1200 | " ..... | 120,000.00 |
| | 3000 | | $300,000.00 |

1654 And on motion it was further resolved that the Board of Directors of this company cause to be issued to said subscribers certificates for said additional stock so subscribed.

The amount of the original capital stock of the Company $100,000.00 in 1000 shares of $100.00 each has all been paid in. The whole amount of the assets of the corporation is $628,435.22 and the whole amount of the liabilities thereof is $260,745.93. The amount to which the capital stock is increased as aforesaid is $400,000.00 divided into 4000 shares of $100.00 each and has all been paid in.

W. H. WATERS, *Chairman.*

C. M. ADAMS, *Secretary.*

STATE OF MISSOURI, *City of St. Louis, ss:*

William H. Waters being first duly sworn on oath says he is president of the Waters Pierce Oil Company, and a director thereof,

and was chairman of the stockholders' meeting mentioned in the foregoing statement, and that the said statement is true as he verily believes.

W. H. WATERS.

Sworn to and subscribed before me this 19th day of June, A. D. 1882.

CHAPMAN S. CHARLOT,
*Notary Public, City of St. Louis.*

[Copy of Seal: Chapman S. Charlot, Notary Public, City of St. Louis, Missouri. Term expires June 27, 1885.].

STATE OF MISSOURI, *City of St. Louis, ss:*

Before me Chapman S. Charlot, a notary public within and for the City and State personally appeared William H. Waters who is personally known to be the same person whose name is signed to the foregoing statement, as chairman and acknowledged the said statement to be his voluntary act and deed as such chairman.

1655 CHAPMAN S. CHARLOT,
*Notary Public, City of St Louis.*

[Copy of Seal: Chapman S. Charlot, Notary Public, City of St. Louis, Missouri. Term expires June 19, 1885.].

Filed and recorded June 19, 1882, a- 2:43 P. M.
C. W. IRWIN, *Recorder.*

STATE OF MISSOURI, *City of St. Louis, ss:*

I, the undersigned Recorder of Deeds certify that the foregoing is a true copy of the certificate of increase of capital stock of the Waters Pierce Oil Company, together with the acknowledgment date of filing and recording thereof as the same remains of record in my office in Book of Corporations Vol. 2, page 397.

Witness my hand and official seal this 19th day of June, 1882.
[SEAL.] C. W. IRWIN, *Recorder.*

Filed and Certificate of Increase of Capital Stock issued June 20, 1882.

MICHL. K. McGRATH,
*Secretary of State.*

STATE OF MISSOURI,
DEPARTMENT OF STATE.

(1309)

Whereas, on the Twentieth day of June eighteen hundred and eighty two was filed in the office of the Secretary of State, as required by law, a duly certified copy of the statement of the proceedings of a meeting held for the purpose of increasing the capital stock of the Waters Pierce Oil Company a corporation organized and existing under the laws of the State of Missouri, and said

corporation having, in all things, complied with the law made and provided for the increase of capital stock and increasing its capital stock to Four Hundred Thousand Dollars.

Now, therefore, I, Michael K. McGrath, Secretary of State
1656 of the State of Missouri, in virtue and by authority of law, hereby certify that the capital stock of said corporation is increased and that the amount of the capital stock of said Waters Pierce Oil Company is Four Hundred Thousand Dollars.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Missouri. Done at the City of Jefferson, this Twentieth day of June, A. D. Eighteen Hundred and Eighty two.

[SEAL.] MICHL. K. McGRATH,
*Secretary of State.*

Endorsed: No. 24,551. State of Texas *vs.* Waters Pierce Oil Company. Filed May 21, 1907, D. J. Pickle, Clerk, By J. A. Belger, Deputy. Charter 1st W. P. O. Co., (17).

No. 6.

*Certificate of Incorporation of the Standard Oil Company of New Jersey.*

We, Henry M. Flagler, Thomas C. Bushnell and James McGee, being desirous to form a company under and pursuant to the Act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations" approved April 7, 1875, and the several Acts amendatory thereof and supplemental thereto Do Hereby Certify

1st. The name assumed to designate said company and to be used in its business and dealings shall be "Standard Oil Company of New Jersey."

2nd. The business of such company shall be carried on at Bayonne, Communipaw and other points in the State of New
1657 Jersey, and in the City of New York. The principal part of the business within the State shall be transacted at Bayonne, in the County of Hudson.

3rd. The objects for which said company shall be formed are the refining of petroleum; the manufacturing of various products thereof; the purchasing of the crude material and the sale of the manufactured products thereof; the manufacture of barrels, boxes, cans and other packages in which the manufactured products may be kept or transported; the manufacture and restoration of acids and whatever other substances may be used in the manufacture of the products of petroleum.

4th. The total amount of the capital stock of said company shall be Three Million Dollars, and business shall be begun with the full amount of capital. The capital shall be divided into Thirty Thousand shares of the par value of One Hundred Dollars each. Twenty One Thousand seven hundred and twenty four (21,724) shares shall be issued for the purchase of property necessary for

the business of said company, and at a cash value equal to the par value of the shares so issued.

5th. The following is a list of the names and residences of stockholders, and of the number of shares held by each.

H. M. Flagler of New York City One share.
Baul Babcock Jr. of Jersey City One share.
James McGee of Plainfield, New Jersey, One share.
Thos. C. Bushnell of Morristown, New Jersey, One share.
John D. Rockefeller, of Cleveland Ohio.
Wm. Rockefeller of New York City.
J. A. Bostwick of New York City.
John D. Archbold of New York City.
O. H. Payne of Cleveland, Ohio.
Wm. G. Warden of Philadelphia, Pa.
Benj. Brewster of New York City.
Chas. Pratt of Brooklyn, N. Y.
and H. M. Flagler of New York City.

1658 Trustees of Standard Oil Trust, and twenty nine thousand, nine hundred and ninety six shares, of which twenty one thousand, seven hundred and twenty four shares are issued for property purchased and necessary for the business of this corporation.

6th. The company shall begin business on the 1st day of August, 1882, and shall continue for fifty years.

In Witness Whereof the said parties have hereunto set their hands and seals this first day of August, A. D. 1882.

H. M. FLAGLER. [L. S.]
T. C. BUSHNELL. [L. S.]
JAS. McGEE. [L. S.]

STATE OF NEW YORK, *County of New York, ss:*

Be it remembered that on this first day of August, 1882, before the subscriber, a commissioner for the state of New Jersey for taking the acknowledgment and proof of deeds, personally came Henry M. Flagler, Thos. C. Bushnell, and James McGee, known to me to be the subscribers to the foregoing instrument, and the contents thereof being by me first made known to them severally, they and each of them acknowledged that they signed sealed and delivered the same as their voluntary act and deed, all of which I certify under my hand and official seal.

[SEAL.] JAS. W. HALE,
*Com'r for New Jersey in New York, 4 Hanover St.*

Endorsed: "Recorded in the Hudson County N. J. Clerk's office August 2, 1882, in Clerk's Record No. 3 page 85 &c. H. K. Van Horn, Clerk."

"Filed August 5, 1882,
HENRY C. KELSEY,
*Secretary of State.*"

Endorsed: State of New Jersey, Department of State, Comparing and — Division. Copy Correct, compared by J. L. Hendricks, Original read by E. H. Weatherby. J. L. Hendricks in charge of Division.

1659 This is to certify that the Standard Oil Company of New Jersey proposes to increase its capital stock by adding thereto Seven Million dollars, divided into Seventy Thouand shares of One Hundred dollars each, making the entire capital stock of the said Company Ten Million dollars, that amount having been determined by the Board of Directors of said Company at a meeting held March 4th, A. D. 1892, to which increase stockholders owning more than two-thirds in value of the existing capital stock of said company have assented.

In witness whereof this certificate is signed by the President of said company, and its corporate seal is hereto affixed and attested by its Secretary on the fifth day of March, A. D. 1892.

PAUL BABCOCK, JR., *Pres't.*

Attest:

L. D. CLARKE, *Secretary.* [CORPORATE SEAL.]

We the subscribers, stockholders owning more than two-thirds in value of the existing capital stock of the Standard Oil Company of New Jersey, do hereby assent to the proposed increase of said capital stock to Ten Million dollars, the amount determined by the Board of Directors of said company at a meeting held March fourth, 1892.

PAUL BABCOCK, JR.,
H. M. FLAGLER,
W. H. TILFORD,
J. D. ROCKEFELLER,
JNO. D. ARCHBOLD,
H. H. ROGERS,
WM. ROCKEFELLER,
O. B. JENNINGS,
J. H. ALEXANDER.
T. C. BUCHNELL.

*Trustees of Standard Oil Trust.*

STATE OF NEW YORK, *City and County of New York, ss:*

Louis D. Clarke, Secretary of the Standard Oil Company of New Jersey, being first duly sworn says that the foregoing signatures are the true signatures of the parties therein named, and that the said parties own more than two-thirds of the capital stock of the Standard Oil Company of New Jersey.

L. D. CLARKE.

1660 Sworn and subscribed before me this eighth day of March, 1892.

[SEAL.] JAS. W. HALE,

*Com'r for New Jersey in New York, 4 Hanover Street.*

Endorsed: "Filed March 19, 1898. Henry C. Kelsey, Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and — Division. Copy Correct. Compared by J. L. Hendricks. Original Read by Dolton. Hendricks in charge of Division.

*Certificate of Change of Name of Standard Oil Company of New Jersey to Standard Oil Company.*

The Directors of the Standard Oil Company hereby certify: That a meeting of the Directors of the said company was called for the purpose of changing its name and was held at the office of said company on the Seventeenth day of March, A. D. 1892, at which meeting all of said Directors voted to change the name of said Company, and they further certify.

I. That the name of such corporation in use immediately preceding the said vote and making and filing this certificate was Standard Oil Company of New Jersey.

II. That the name assumed to designate such corporation and to be used in its business and dealings in the place and stead of that referred to in the last preceding paragraph is Standard Oil Company.

PAUL BABCOCK, JR.
J. H. ALEXANDER.
T. C. BUCHNELL.

STATE OF NEW YORK, *City and County of New York, ss:*

Before me, a notary public in and for said City and County, personally appeared L. D. Clarke to me personally known, who being duly sworn saith he is Secretary of the Standard Oil Com-
1661 pany above referred to; and that the foregoing certificate is made by the authority of the Board of Directors of said corporation, as expressed by a two-thirds vote of the members of such Board at a special meeting called for that purpose.

L. D. CLARKE.

Sworn and subscribed before me this 18th day of March, A. D. 1892.

[SEAL.] JAS. W. HALE,
*Public Notary, 4 Hanover Street.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, William J. McKenna, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a court of Record, do hereby certify, That Jas. W. Hale before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the

handwriting of said Notary, and that his signature thereto is genuine, as I verily believe.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 18th day of Mch. 1892.

[SEAL.] WM. J. McKENNA, *Clerk.*

Endorsed: "Received in the Hudson Co., N. J. Clerk's Office Mch. 18th A. D. 1892 and Recorded in Clerk's Record No. 18 on page —. Dennis McLaughlin, Clerk."

"Filed March 19, 1892.

HENRY C. KELSEY,
*Secretary of State.*"

Endorsed: State of New Jersey. Department of State. Comparing and Certifying Division. Copy Correct. Compared by J. L. Hendricks. Original Read by Pycraft. J. L. Hendricks in charge of Division.

*Certificate Relative to the Issue of Additional Capital Stock of the Standard Oil Company.*

The Standard Oil Company a corporation of the State of New Jersey, hereby certifies:

1. The original authorized capital stock of said Company
1662 was Three Million Dollars ($3,000,000).

2. In accordance with the provisions of Chapter 105 of the Laws of New Jersey of 1889 the Board of Directors determined, on the fifth day of March 1892; that the capital stock of said Company should be increased Seven Million Dollars ($7,000,000), making the total authorized capital stock Ten Million Dollars ($10,000,000) and a certificate thereof, as also the assent of stockholders owning more than two-thirds (⅔) in value of the then existing capital stock was filed in the department of State, on the 19th day of March A. D. 1892.

3. In accordance with the provisions of Chapter 177 of the Laws of New Jersey of 1891 the Board of Directors of said Company, on the 23rd day of March 1892, authorized the issue of Sixty Thousand (60,000) shares of said increased capital stock. The par value of each share being one hundred dollars ($100.00). The total increase Six Million Dollars ($6,000,000). And the total amount of stock issued, including said increase, Nine Million Dollars ($9,000,000).

In Witness Whereof, this certificate is signed by the president of said company, and its corporate seal is hereto affixed, and attested by its Secretary, the Twenty third day of March A. D. eighteen hundred and ninety two.

[SEAL.] PAUL BABCOCK, JR., *President.*

Attest:
L. D. CLARKE, *Secretary.*

Endorsed: "Filed Mar. 25, 1892. Henry C. Kelsey, Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and Certifying Division. Copy Correct. Compared by J. L. Hendricks. Original Read by Dolton. J. L. Hendricks in charge of Division.

*Certificate of Increase of Directors of Standard Oil Co.*

The undersigned, stockholders owning two-thirds in value
1663 of the existing capital stock of the Standard Oil Company, hereby assent to an increase of the number of Directors of said Company, from three, the present number, to nine.

PAUL BABCOCK, JR.,
J. H. ALEXANDER,
T. C. BUSHNELL,
W. H. TILFORD,
JNO. D. ARCHBOLD,
H. H. ROGERS,
O. R. JENNINGS,
WM. ROCKEFELLER,
*Trustees of Standard Oil Trust,*
By WM. ROCKEFELLER,
*Attorney in Fact.*

The Standard Oil Company hereby certifies that in accordance with the above assent of its stockholders at a meeting of its Directors, held on the 29th day of March, A. D. 1892, the number of Directors of said Company was increased from three, the present number, to nine.

Witness the corporate seal of said Company, attested by its President and Secretary, this 30th day of March A. D. 1892.

STANDARD OIL CO.,
By PAUL BABCOCK, JR., *Pres't.*

Attest:
L. D. CLARKE, *Secretary.* [CORPORATE SEAL.]

Endorsed: "Filed March 31, 1892. Henry C. Kelsey, Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and Certifying Division. Copy Correct. Compared by Lycraft. Original Read by Dolton. Hendricks in charge of Division.

(10¢ Internal Revenue Stamp Cancelled.)

Resolved, That it is advisable to alter the Charter of this Company to read as below stated, and that a meeting of the stockholders be called to meet at the principal office of the Company at Bayonne, New Jersey, on the 14th day of June, 1899, at 11 A. M. to take action thereon, notice of such meeting to be signed by the President and Secretary and given to each stockholder in person or mailed

to his proper post office address at least ten days previous to
1664 the time of meeting as provided by the By-Law.

First. The name of the Corporation is Standard Oil Company.

Second. The location of the principal office in the State of New Jersey is at the Company's Refinery in the City of Bayonne and County of Hudson. The name of the agent therein and in charge thereof and upon whom process against this company may be served, is J. H. Alexander.

Third. The objects for which this company is formed are: To do all kinds of mining, manufacturing and trading business; transporting goods and merchandise by land or water in any manner; to buy, sell, lease, and improve lands; build houses, structures, vessels, cars, wharves, docks and piers; to lay and operate pipe lines; to erect and operate telegraph and telephone lines and lines for conducting electricity; to enter into and carry out contracts of every kind pertaining to its business; to acquire, use, sell and grant licenses under patent rights; to purchase or otherwise acquire, hold, sell, assign and transfer shares of capital stock and bonds or other evidences of indebtedness of corporations, and to exercise all the privileges of ownership including voting upon the stocks so held, to carry on its business and have offices and agencies therefor in all parts of the world, and to hold, purchase, mortgage and convey real estate and personal property outside the State of New Jersey.

Fourth. The total authorized stock of the corporation is One Hundred and Ten Million Dollars, divided into One Million and One Hundred Thousand shares of the par value of One Hundred Dollars each. Of said stock the One Hundred Thousand shares now issued and existing shall be preferred stock, and the increase of One Million shares shall be common stock. Said preferred stock shall entitle the holder thereof to receive out of the net earnings a dividend of and not exceeding one and one-half per centum quarterly before any dividend shall be paid on the common stock. Com-

mon stock may at the discretion of the Company be issued in
1665 exchange for preferred stock, and all preferred stock so received by the Company shall be cancelled. Common stock may also be issued in payment for such property as the Company has authority to purchase. Holders of preferred and of common stocks shall have like voting power.

Fifth. The names and post office addresses of the incorporators and the number of shares subscribed for by each shall remain as set forth in the original certificate of incorporation.

Sixth. The duration of the Corporation shall be unlimited.

Seventh. The corporation may use and apply its surplus earnings, or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall determine; and neither the property nor the capital stock so purchased or acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation,

shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the Board of Directors, or a majority of the stockholders.

The Corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the Board of Directors which may be less than a majority of the whole number.

The number of Directors at any time may be increased or diminished by vote of the Board of Directors, and in case of any such increase the Board of Directors shall have power to elect such additional directors, to hold office until the next meeting of stockholders, or until their successors shall be elected.

The Board of Directors shall have power to make, alter, amend and rescind the By-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation; and from time to time to sell, assign, transfer
1666 or otherwise dispose of any or all of the property of the corporation, but no such sale of all of the property shall be made except pursuant to the votes of at least two-thirds of the Board of Directors.

The Board of Directors, by resolution passed by a majority of the Whole Board, may designate three or more Directors to constitute an Executive Committee, which committeee, to the extent provided in said resolution or in the By-laws of the corporation, shall have, and may exercise, the power of the Board of Directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors, or by a resolution of the stockholders.

The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of the State, at such places as may be from time to time designated by them.

I certify that the above resolution was adopted by the Board of Directors of the Standard Oil Company, at a meeting held on the 26th day of May A. D. 1899, a majority of Directors being present and voting in favor thereof. Witness the seal of said corporation.

[CORPORATE SEAL.] L. D. CLARKE, *Secretary.*

Standard Oil Company.

You are hereby notified that the Board of Directors of said company have passed a resolution declaring that it is advisable
1667 to change the charter of said company in several respects fully set forth in said resolution, and have called a meeting

of the stockholders to take action thereon, which meeting will be held at the principal office of the Company in Bayonne, New Jersey, on Wednesday the 14th day of June, A. D. 1899, at eleven o'clock A. M. where you are requested to attend in person or by proxy. If unable to attend please sign and return the enclosed proxy.

H. M. FLAGLER, *President.*
L. D. CLARKE, *Secretary.*

I certify that a notice of which the foregoing is a copy, was served personally or by mail upon each stockholder of the Standard Oil Company, ten days prior to said meeting, said notice being in accordance with the provision of the by-laws of said company. Witness the corporate seal of said corporation.

[CORPORATE SEAL.] L. D. CLARKE, *Secretary.*

The Standard Oil Company, a corporation of the State of New Jersey, doth hereby certify that it has altered and amended its charter to read as above set forth, said alterations and amendments having been declared by resolution of the Board of Directors to be advisable, and having been duly and regularly assented to by a vote of two-thirds in interest of stockholders having voting powers, at a meeting duly called by the Board of Directors for that purpose as above set forth, and written assent of said stockholders is hereto appended.

In witness whereof said corporation has caused this certificate to be signed by its President and Secretary, and its corporate seal to be hereto affixed this 14th day of June, A. D. 1899.

[CORPORATE SEAL.] H. M. FLAGLER, *President.*
L. D. CLARKE, *Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

1668 Be it remembers, that on this 14th day of June, A. D. 1899, before me the subscriber a Notary Public in and for said State & County personally appeared L. D. Clarke the Secretary of the Standard Oil Company, the corporation mentioned in and which executed the foregoing certificate, who being by me duly sworn, on his oath says that he is such secretary, and that the seal affixed to said certificate is the corporate seal of said corporation, the same being well known to him; that H. M. Flagler is president of said corporation, and signed said certificate and affixed said seal thereto, and delivered said certificate by authority of the board of directors and with the assent of at least two-thirds in interest of the stockholders of said corporation having voting powers as and for his voluntary act and deed, and the voluntary act and deed of said corporation, in presents of deponent, who thereupon subscribed his name thereto as witness.

And he further says that the assent thereto appended is signed by at least two-thirds in interest of the sockholders of said corporation having voting powers, either in person or by their several duly constituted attorneys in fact, thereunto duly authorized in writing.

L. D. CLARKE, *Secretary.*

Sworn and subscribed before me this 14th day of June A. D. 1899.

[L. S.] JOHN BENSINGER,
*Notary Public for Kings Co.*

Certificate filed in New York Co.
(10¢ Internal Revenue Stamp Cancelled.)

STATE OF NEW YORK, *County of New York, ss:*

I, William Schmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a court of record, do hereby certify, that John Bensinger has filed in the Clerk's Office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with
1669 his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court and County, the 15th day of June, 1899.

[L. S.] WM. SCHMER, *Clerk.*

We, the subscribers, being over two-thirds in interest of the stockholders of the Standard Oil Company having voting powers, having at a meeting regularly called for the purpose, voted in favor of the alteration and amendment of the charter of said Company, as the same is above set forth, do now, pursuant to the statute, hereby give out written assent to said change.

Witness our hands this 14th day of June A. D. 1899.

| Stockholders. | No. of Shares. |
|---|---|
| John D. Archbold, By Paul Babcock, Att'y, | 822 Shares. |
| Emma B, Auchencloss, By Paul Babcock, Att'y, | 243 " |
| Charles C. Burke, by Paul Babcock, Att'y, | 83 " |
| Fred'k F. Brewster, by Paul Babcock, Att'y, | 260 " |
| E. T. Bedford, By Paul Babcock, Att'y, | 257 " |
| W. H. Beardsley, By Paul Babcock, Att'y, | 128 " |
| Wm. V. Brokaw, By Paul Babcock, Att'y, | 411 " |
| W. E. Bemis, By Paul Babcock, Att'y, | 51 " |
| George B. Bonnell, By Paul Babcock, Att'y, | 56 " |
| Henry H. Bonnell, By Paul Babcock, Att'y, | 6 " |
| James M. Constable, By Paul Babcock, Att'y, | 318 " |
| Charles M. Chapin, By Paul Babcock, Att'y, | 102 " |
| Wm. F. Cochran, By Paul Babcock, Att'y, | 51 " |
| John J. Carter, By Paul Babcock, Att'y, | 51 " |
| E. W. Conley, By Paul Babcock, Att'y, | 20 " |
| Robert Darling, By Paul Babcock, Att'y, | 2 " |
| Jessie E. Donald, By Paul Babcock, Att'y, | 8 " |
| Josephine W. Dean, By Paul Babcock, Att'y, | 24 " |

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|---|---|---|
| H. M. Flagler, By Paul Babcock, Att'y, | 2879 | Shares. |
| H. C. Folger, Jr., By Paul Babcock, Att'y, | 102 | " |
| Martha T. Fisk, By Paul Babcock, Att'y, | 231 | " |
| The Farmers' Loan & Trust Co., Trustee, By Paul Babcock, Att'y, | 483 | " |
| C. A. Griscom, By Paul Babcock, Att'y, | 102 | " |
| Chas. W. Harkness, By Paul Babcock, Att'y, | 5932 | " |
| Lamon V. Harkness, By Paul Babcock, Att'y, | 1343 | " |
| W. L. Harkness, By Paul Babcock, Att'y | 1437 | " |
| H. A. Hutchins, By Paul Babcock, Att'y, | 208 | " |
| Marie Antonette Heye, Ex'r, By Paul Babcock, Att'y, | 380 | " |
| Helen Jewett Hunt, By Paul Babcock, Att'y, | 41 | " |
| Annie D. Hogg, By Paul Babcock, Att'y, | 10 | " |
| Chas. B. Hogg, By Paul Babcock, Att'y, | 133 | " |
| Katherine Hogg, By Paul Babcock, Att'y, | 2 | " |
| Robert Hogg, By Paul Babcock, Att'y, | 66 | " |
| C. M. Higgins, By Paul Babcock, Att'y, | 122 | " |
| Anna J. Houston, By Paul Babcock, Att'y, | 42 | " |
| Geo. B. Bonnell, Ex'r, By Paul Babcock, Att'y, | 1210 | " |
| Annie B. Jennings, By Paul Babcock, Att'y, | 243 | " |
| Esther J. Jennings, By Paul Babcock, Att'y, | 562 | " |
| Frederick B. Jennings, By Paul Babcock, Att'y, | 51 | " |
| Mary B. Jennings, By Paul Babcock, Att'y, | 260 | " |
| Oliver G. Jennings, By Paul Babcock, Att'y, | 243 | " |
| Walter Jennings, By Paul Babcock, Att'y, | 247 | " |
| Helen J. James, By Paul Babcock, Att'y, | 243 | " |
| Salome M. Jones, By Paul Babcock, Att'y, | 112 | " |
| William Kennon Jewett, By Paul Babcock, Att'y, | 41 | " |
| John S. Kennedy, By Paul Babcock, Att'y, | 308 | " |
| Mary Lily Kenan, By Paul Babcock, Att'y, | 102 | " |
| Charles Lockhart, By Paul Babcock, Att'y, | 1756 | " |
| Kate M. Ladd, By Paul Babcock, Att'y, | 213 | " |
| Malcolm Lloyd, By Paul Babcock, Att'y, | 96 | " |

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|---|---|---|
| Ambrose M. McGregor, By Paul Babcock, Att'y, | 205 | Shares. |
| V. Everitt Macy, By Paul Babcock, Att'y, | 769 | " |
| Wm. H. Macy, Jr., Ex'r., By Paul Babcock, Att'y, | 503 | " |
| Wm. H. Macy, Jr., By Paul Babcock, Att'y, | 51 | " |
| D. O. Mills, By Paul Babcock, Att'y, | 133 | " |
| Alexander McDonald, By Paul Babcock, Att'y, | 446 | " |
| John G. McCullogh, By Paul Babcock, Att'y, | 51 | " |
| Lizzie D. Moffat, By Paul Babcock, Att'y, | 10 | " |
| The New York Life Insurance and Trust Co., Trustee, By Paul Babcock, Att'y, | 544 | " |
| Daniel O'Day, By Paul Babcock, Att'y, | 180 | " |
| O. H. Payne, By Paul Babcock, Att'y, | 4112 | " |
| C. M. Pratt, Trustee, By Paul Babcock, Att'y, | 5141 | " |
| C. M. Pratt, By Paul Babcock, Att'y, | 514 | " |
| Elizabeth T. Preston, By Paul Babcock, Att'y, | 102 | " |

| | | |
|---|---|---|
| A. J. Pouch, By Paul Babcock, Att'y, | 51 | Shares. |
| Henry H. Rogers, By Paul Babcock, Att'y, | 1933 | " |
| John D. Rockefeller, By Paul Babcock, Att'y, | 26411 | " |
| William Rockefeller, By Paul Babcock, Att'y, | 1336 | " |
| Sarah Jewett Robbins, By Paul Bobcock, Att'y, | 41 | " |
| Francis F. Robbins, By Paul Babcock, Att'y, | 10 | " |
| L. H. Severance, By Paul Babcock, Att'y, | 549 | " |
| Joseph Seep, By Paul Babcock, Att'y, | 102 | " |
| George W. Smith, By Paul Babcock, Att'y, | 51 | " |
| James Stillman, By Paul Babcock, Att'y, | 87 | " |
| William T. Scheide, By Paul Babcock, Att'y, | 102 | " |
| Charles A. Sterling, By Paul Babcock, Att'y, | 63 | " |
| Charles Stone, By Paul Babcock, Att'y, | 102 | " |
| Joseph W. Sandford, By Paul Babcock, Att'y, | 23 | " |
| William M. Sandford, By Paul Babcock, Att'y, | 9 | " |
| W. H. Tilford, By Paul Babcock, Att'y, | 308 | " |
| Catherine H. Tilford, By Paul Babcock, Att'y, | 61 | " |
| Lewis S. Thompson, By Paul Babcock, Att'y, | 114 | " |
| United States Trust Co. of New York Trustee, By Paul Babcock, Att'y, | 329 | " |

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|---|---|---|
| William T. Wardwell, By Paul Babcock, Att'y, | 82 | Shares. |
| T. H. Wheeler, By Paul Babcock, Att'y, | 35 | " |
| Howard Willets, By Paul Babcock, Att'y, | 154 | " |
| Joseph Bushnell, Ex'r, By Paul Babcock, Att'y, | 540 | " |
| Charles E. Welling, By Paul Babcock, Att'y, | 5 | " |
| Howard Wood, By Paul Baabcock, Att'y, | 66 | " |
| Julia H. York, By Paul Babcock, Att'y, | 139 | " |
| Paul Babcock, | 1 | " |
| J. H. Alexander, | 71 | " |

Endorsed: "Filed Jun- 16, 1899. George Wurts, Secretary of State."

Endorsed: State of New Jersey. Department of State. Comparing and Certifying Division. Copy Correct. Compared by Lycraft. Original Read by Dalton. Hendricks in charge of Division.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby certify, That the foregoing are true copies of the certificate of incorporation of the Standard Oil Company of New Jersey, filed in this Department August 5th, 1882; and certificates of amendment of said certificate of incorporation, filed respectively March 19th, 1892, March *March 19th, 1892, March* 25th, 1892, March 31st, 1892 and June 16th, 1899, and the endorsements thereon, as the same are taken from and compared with the originals now remaining on file and of record therein.

In testimony whereof, I have hereunto set my hand and affixed

my official seal, at Trenton, this twenty-sixth day of February, A. D. 1907.

[SEAL.] S. D. DICKINSON,
*Secretary of State.*

1673 STATE OF NEW JERSEY:

I, Edward C. Stokes, Governor of the State of New Jersey, do hereby certify that S. D. Dickinson, Esquire, who hath signed the annexed Certificate, and whose official seal is thereto annexed, was, at the doing thereof, and now is, Secretary of State of the State of New Jersey, duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations; that the said signature is in the proper handwriting of the said S. D. Dickinson, and the seal his seal of office, and that the said Certificate is in due form of law and by the proper officer.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of New Jersey to be hereunto affixed at the City of Trenton in said State, this twenty sixth day of February, in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty first.

By the Governor,

E. C. STOKES.

[SEAL.] S. D. DICKINSON,
*Secretary of State.*

Endorsed: Exemplified Copy of Certificate of Incorporation and Amendments of the Standard Oil Company. New Jersey. 24551. Filed May 21, 1907. D. J. Pickle, Clerk; By J. A. Belger, Deputy. (6.)

No. 1.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

Suit Pending in the 26th Judicial District Court, Travis County, Texas.

1674 It is agreed, for the purposes of this case, only, upon the following facts, subject to all legal objections by either party:

First. That the Standard Oil Company of New Jersey is a corporation organized under the laws of New Jersey; that since its organization in 1882 it has not conducted any business in the State of Texas; that it has not applied for or been granted a permit to transact any of its corporate business in the State of Texas.

Second. That said Standard Oil Company of New Jersey did own in the Waters Pierce Oil Company, a corporation organized

under the laws of the State of Missouri, in May, 1878, 2,747 shares out of a total of 4,000 shares of the said company, and that since about the 24th day of September, 1900, it has owned 2,748 shares of the capital stock out of a total of 4,000 shares of the Waters Pierce Oil Company organized under the laws of Missouri, May 29, 1900.

Third. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of Indiana, a corporation organized under the laws of the State of Indiana, on the 11th day of June, 1889, and that said Standard Oil Company of Indiana does business in Indiana, a part of Missouri, Illinois, Iowa, Wisconsin, Michigan, Kansas, South Dakota and North Dakota, but has at no time since its organization transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Fourth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of New York, a corporation organized under the laws of the State of New York, on the 10th day of August, 1882; that the Standard Oil Company of New York does business in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont and New Hampshire, and it has at no time transacted any busi-
1675 ness in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in the said State of Texas.

Fifth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Standard Oil Company of Kentucky, a corporation organized under the laws of the State of Kentucky, on the 7th day of October, 1886, and that the said Standard Oil Company of Kentucky does business in the following states: Kentucky; Tennessee, Georgia, Florida, Alabama, Mississippi and part of Louisiana; that the said Standard Oil Company of Kentucky has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do business in said State of Texas.

Sixth. That the said Standard Oil Company of New Jersey owns a majority of the shares of the capital stock of the Continental Oil Company, a corporation organized under the laws of the State of Iowa, in December 1884, and that the said Continental Oil Company has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Seventh. That the said Standard Oil Company of New Jersey owns a majority of the shares of capital stock of the Republic Oil Company, a corporation organized under the laws of the State of New York on the 4th day of June, 1901; and that said Republic Oil Company has at no time transacted any business in the State of Texas and has not applied for nor has it been granted a permit under the laws of Texas to do any business in said State of Texas.

Eighth. That said Standard Oil Company of New Jersey has owned the said majority shares of the capital stock of the Standard

Oil Company of New York, and of the Standard Oil Company of Kentucky, and of the Continental Oil Company of Iowa, and
1676 of the Standard Oil Company of Indiana, and of the Republic Oil Company of New York, since practically the dates of their respective organizations.

Witness our hands this 30th day of April, 1907.

J. P. LIGHTFOOT,
G. W. ALLEN,
*Attorneys for Plaintiff.*

J. D. JOHNSON,
H. S. PRIEST, AND
D. W. ODELL,
*Attorneys for Defendant.*

Endorsed: No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Company. Stipulation. Filed May 10, 1907. D. J. Pickle, Clerk.

No. 2.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the 26th Judicial District Court, Travis County, Texas.

It is hereby stipulated and agreed by and between the counsel in this cause that the agreement signed and entered into by the Eagle Refining Company, S. S. Drake, President, S. S. Drake, A. G. Carpenter, W. A. Smith, William H. K. Rose and A. W. Clem, on the 5th day of October, 1894, and the memorandum of agreement dated St. Louis, Missouri, September 13, 1894, and signed by H. C. Pierce, President, and William H. K. Rose, and the acceptance signed by W. A. Smith, Secretary, dated Cleveland, Ohio October 1, 1894, and the memorandum of agreement made and entered into in the City of St. Louis on the 5th day of October, 1894, and signed by the Waters Pierce Oil Company, by H. C. Pierce, P. T., and A. W. Clem, all of which are attached to plaintiff's first original amended petition in this cause and marked exhibit C, are true copies of each of said documents and may be offered in evidence in this cause with the same force and effect as if they were originals and properly proven up.

1677 It is further stipulated and agreed that the said agreements and contracts were executed and carried out; that if the defendant shall produce the originals of said documents, as set forth in exhibit C as aforesaid, upon the trial of said cause, that said originals may be substituted in lieu of said copies, and this stipulation and said original documents or this stipulation and the copies herein agreed to, in the event defendant does not so produce said

originals, shall be offered in evidence in said cause subject to all legal objections that may be offered against the originals if the same were introduced.

Witness our hands this 30th day of April, 1907.

J. P. LIGHTFOOT,
G. W. ALLEN,
*Attorneys for Plaintiff.*

J. D. JOHNSON,
D. W. ODELL,
H. S. PRIEST,
*Attorneys for Defendant.*

Endorsed: No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Stipulation. Filed May 10, 1907. D. J. Pickle, Clerk.

No. 3.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Suit Pending in the 26th Judicial District Court, Travis County, Texas.

In lieu of the testimony of Mr. John D. Archbold and to avoid the expense of taking his testimony, it is agreed between the respective counsel for plaintiff and defendant in the above cause as follows:

That the copy of the agreement commonly called the Standard Oil Trust Agreement, entered into as of the date of January 2, 1882, and the supplemental argeement dated the 4th of January, 1882, marked respectively Exhibits A and B of plaintiff's 1678 first amended original petition in said cause and set forth therein, are true copies of said agreements and may be read in evidence in this cause with the same force and effect as the originals of said agreements if properly proven up, subject to all objections that could be urged against the originals if offered in evidence, except the proof of its execution, and the correctness of the copy and the production of the original is waived. All other objections may be urged against the introduction of this copy that could be urged against the introduction of the original.

It is further stipulated and agreed that the Waters Pierce Oil Company, as a corporation, did not sign either the agreement or the supplemental agreement; that Mr. Henry Clay Pierce, who at that time owned substantially 40 per cent. of the stock of the Waters Pierce Oil Company, did not sign either of said agreements nor deposit any part of his stock under either of them.

It is further stipulated and agreed that Mr. Horace A. Hutchins and Mr. W. P. Thompson, at the date of said agreement, owned

substantially 40 per cent. of the stock of the Waters Pierce Oil Company, signed said agreement and deposited their stock thereunder; that the Chess-Carley Company, at said date, owned substantially 20 per cent. of the stock of the Waters-Pierce Oil Company, did not sign said agreement, but deposited said shares under said agreement.

It is further stipulated and agreed that from the date of the organization of the Standard Oil Trust, in accordance with the agreements herein referred to, the Trustees of the Standard Oil Trust owned and held substantially 60 per cent. of the capital stock of the Waters-Pierce Oil Company and continued to hold and own the same until the year 1892.

It is further stipulated and agreed that the Waters-Pierce Oil Company alluded to in this stipulation is the corporation organized under the laws of Missouri in May, 1878.

This stipulation and the original trust agreements, as set
1679 forth in plaintiff's first amended original petition, shall be offered in evidence with the same force and effect and subject to all the objections as if the same were the testimony of said John D. Archbold and given in accordance with law in this cause.

Witness our hands this 30th day of April, 1907.

J. P. LIGHTFOOT,
G. W. ALLEN,
*Attorneys for Pl'ff.*

J. D. JOHNSON,
D. W. ODELL,
H. S. PRIEST,
*Attorneys for Defendant.*

Endorsed: No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Stipulation. Filed May 10, 1907. D. J. Pickle, Clerk.

No. 4.

No. 24551.

STATE OF TEXAS, Plaintiff,
*vs.*
WATERS PIERCE OIL COMPANY, Defendant.

Suit Pending in District Court, Travis County Texas, 26th Judicial District.

It is hereby stipulated and agreed for the purposes of this case only, that the letters attached hereto and marked with the initials "J. P. L." and "J. D. J.," being the initials of Mr. Lightfoot counsel for the State and Mr. Johnson counsel for the defendant, bear the genuine signature of Wade Hampton, said letters being generally designated as follows:

Letter dated New York, July 7th, '99, addressed to Mr. H. C.

Pierce, Pres't Waters Pierce Oil Company, St. Louis, Missouri, and signed "Wade Hampton, Jr.," and marked Exhibit "A."

Letter dated New York, February 8, 1901, addressed to Mr. J. P. Gruet, Vice Pres., Waters Pierce Oil Company, St. Louis, Missouri, and signed "Wade Hampton" and marked Exhibit "B."

Letter dated New York, November 7th, 1902, addressed to Mr. J. P. Gruet, Waters Pierce Oil Co., St. Louis, Missouri, signed "Wade Hampton" and marked Exhibit "C."

1680 Letter dated New York, November 12th, 1902, addressed to Mr. J. P. Gruet, Waters Pierce Oil Company, St. Louis, Missouri, signed "Wade Hampton" and marked Exhibit "D."

Letter dated New York, November 24th, 1902, addressed to Mr. J. P. Gruet, V. P. Waters Pierce Oil Co., St. Louis, Missouri, signed "Wade Hampton" and marked Exhibit "E."

Letter dated New York, November 10th, 1903, addressed to "My dear Mr. Gruet" and signed "Wade Hampton" and marked Exhibit "F."

It is further stipulated and agreed that said letters were written and the respective persons therein mentioned were sent at the instance of the Standard Oil Company, a corporation organized under the laws of the State of New Jersey, and commonly referred to as the Standard Oil Company of New Jersey, which at the time said letters were written and said parties were sent, was the owner of shares of stock of the Waters Pierce Oil Company, and for the purpose of getting such information as would be revealed by an audit of the books and accounts of the Waters Pierce Oil Company by the respective parties designated in the respective letters.

It is further stipulated that the letters made an exhibit to this stipulation may be offered in evidence subject to such legal objections as may be made to them as evidence.

It is further stipulated that either party may use the deposition of Wade Hampton heretofore taken on interrogatories propounded by the State in the trial of this cause, subject to all legal objections as to competency and relevancy, &c.

J. P. LIGHTFOOT,
G. W. ALLEN,
*Counsel for the Pl'ff.*

J. D. JOHNSON,
H. S. PRIEST,
*Counsel for the Defendant.*

1681 26 Broadway, Room 800.

Wade Hampton. NEW YORK, *Feb. 8th,* 1901.

Mr. J. P. Gruet, Vice-Pres. Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: Our Mr. Conrey will probably arrive at your office on Monday next, the 11th inst., to take up the audit of the books and accounts of your general office.

For reasons which you undoubtedly will appreciate, it is best

that Mr. Conrey be considered an employee of your company during his examination. Therefore kindly enter his name on your pay roll from the date of his arrival at $191.67 per month, also kindly pay what expenses he is under from the time he left New York.

Yours truly, WADE HAMPTON.

(No Copy Taken) (Transmitted Feb. 11, 1901. To A. M. F., H. C. P. Pt.) (Received Feb. 11, 1901, Answered — J. P. Gruet,) Exhibit "B." J. P. L. J. D. J.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

26 Broadway, Room 800.

Wade Hampton.
(Personal.)

NEW YORK, *Nov. 7th,* 1902.

Mr. J. P. Gruet, Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: Our Mr. C. W. Norman bears with him a letter of introduction to you from Mr. McNall. Mr. Norman will be assisted in the work of auditing the books and accounts of the General Office of your company by our Messrs. W. H. Henderson and W. J. Higgs. I will give them letters of introduction to Mr. Norman, who in turn will introduce them to you.

Please place Mr. Norman's name on your pay roll at the rate of $2500.00 per annum, beginning with the time he leaves his
1682 home for St. Louis, and also pay his expense bills monthly as he renders them to you.

Yours very truly, WADE HAMPTON.

(No Copy Taken) (Transmitted Nov. 10, 1902, To A. M. F. V. P. & G. M.) (Received Nov. 10, 1902, Answered 10, J. P. Gruet.) (Transmitted Nov. 10, 1902, To C. M. A. & J. D. J.) Exhibit "C." J. P. L. J. D. J.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

26 Broadway, Room 800.

Wade Hampton.
Personal.

NEW YORK, *Nov. 12th,* 1902.

Mr. J. P. Gruet, Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of 10th inst. Answering your inquiry. Please place Mr. Henderson's name on your pay roll when he arrives in St. Louis, also that of Mr. Higgs, treating them the same as Mr. Norman, so far as salary and expenses are concerned, during their stay in St. Louis. The full names are—

| | Salary per annum. |
|---|---|
| W. H. Henderson | $1800.00 |
| W. J. Higgs | $1800.00 |

Mr. Henderson should arrive in St. Louis in a few days, but Mr. Higgs will probably not reach there for 10 days or so.

I have instructed the gentlemen named above to date their commencement with your company from the time they buy their tickets, and to include the railroad fare &c., to St. Louis in their expenses to your company.

Trusting you are in good health, and with kind regards, I remain.

Yours truly, WADE HAMPTON.

(Received Nov. 14, 1902, Answered 26 J. P. Gruet.) Exhibit "D." J. P. L. J. D. J.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1683 26 Broadway, Room 800.

Wade Hampton.

NEW YORK, *Nov. 24th*, 1902.

Mr. J. P. Gruet, V. P. Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: This letter will serve to introduce to you our Mr. W. J. Higgs, who visits St. Louis for the purpose of assisting Mr. Norman in the auditing work. I wrote you some days ago concerning him. Please place his name on your pay roll at the rate mentioned in my former letter. Any courtesies extended to Mr. Higgs will be much appreciated by

Yours truly, WADE HAMPTON.

(Received Nov. 26, 1902. Answered 26, J. P. Gruet.) Exhibit "E." J. P. L. J. D. J.

Endorsed No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

26 Broadway, Room 800.

Wade Hampton.

NEW YORK, *Nov. 10th*, 1903.

MY DEAR MR. GRUETT: I am sending our Mr. R. B. Backus to St. Louis to take up the audit of the books and accounts of the General office of W. P. O. Co. Please place his name on your pay roll at $3000 per annum, to begin with date he leaves Pittsburg for St. Louis. I have said to him also to commence his expense acct. for your company with the purchase of his railroad tickets for St. Louis, from Pittsburg.

I will send two other men to assist Mr. Backus as soon as they are relieved at other points. Mr. Backus is a very intelligent and agreeable man, and has had a great deal of experience in his line of work. I have no doubt you will be pleased with him.

Yours very truly, WADE HAMPTON.

Mr. Backus will probably be in St. Louis about the 20th inst.

(Copy Sent H. C. P. 11/14/03. M. J. B. Ans. Nov. 20/03.) (Read at Executive Committee Meeting Nov. 13, 1903. C. A. P. Secretary.) Notified W. H. that R. B. B. had arrived Nov. 20, 1903. Exhibit "F." J. P. L. J. D. J.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1684 26 Broadway, Room 800.

Wade Hampton, Jr.

NEW YORK, *July 7th,* '99.

Mr. H. C. Pierce, Pres't Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: This letter will introduce to you our Mr. John B. L. Hornberger, who visits St. Louis at my request for the purpose of auditing the books, acc'ts &c., of your General Office. I will, in a short time, send him one or two auditors to assist him in the work. Any favors extended to Mr. Hornberger will be much appreciated by

Yours truly, WADE HAMPTON, JR.

(Received Jul- 12, 1899. Ans.—By A. M. F.) (Received Jul- 12, 1899. Answered—J. P. Gruet.) Exhibit "A." J. P. L. J. D.J.

Endorsed: No. 24551. The State of Texas *vs.* Waters Pierce Oil Company. Filed May 31, 1907. D. J. Pickle, Clerk, By J. A. Belger, Deputy.

Endorsed: No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Stipulation. Filed May 10, 1907. D. J. Pickle, Clerk.

No. 20.

Know all men by these presents that we, whose names are undersigned desiring to become incorporated under and in the mode provided by the laws of Kentucky, do sign, seal and adopt these Articles of Incorporation, to-wit:

1st. The names of the incorporators are W. H. Tilford, New York City. W. T. Jordan, Louisville, Kentucky. L. T. Rosengarten, Louisville, Kentucky. The name of the proposed corporation is Standard Oil Company. The principal place of business is Louisville, Kentucky.

2nd. The general nature of the business proposed to be transacted is the manufacturing refining buying and selling of petroleum and all its products and naval stores.

3rd. The amount of capital stock shall be Six Hundred Thousand Dollars divided into shares of One Hundred Dollars each
1685 which shall be fully paid in cash at the date of organization of the Company.

4th. The Company shall begin its existence on November 1st, A. D. 1886 and continue for twenty five years.

5th. Its affairs shall be conducted by five directors of whom three shall constitute a quorum. Its officers shall be a President,

a Vice President, a Secretary and a Treasurer. One person may hold two of said offices. The Directors shall be elected by the stockholders on the first Thursday of February of each year and shall hold until their successors are duly elected. The Directors shall cho-se the officers and remove them at pleasure.

6th. The Directors and officers to hold until the first Thursday of February, A. D. 1887, shall be as follows:

Directors: W. H. Tilford, Geo. H. Vilas, H. H. Rogers, I. D. Archbold, W. P. Thompsan.

President, W. H. Tilford. Vice President, Geo. H. Vilas. Secretary, W. T. Jordan. Treasurer, L. T. Rosengarten.

7th. The indebtedness of the corporation whether direct or contingent shall at no time exceed the sum of Four Hundred Thousand Dollars.

8th. Private property of the stockholders of the corporation shall be exempt from liability for corporate debts.

In witness whereof, the said parties have hereunto set their hands and seals this seventh day of October, A. D. 1886.

W. H. TILFORD. [SEAL.]
W. T. JORDAN. [SEAL.]
L. T. ROSENGARTEN. [SEAL.]

I, Geo. H. Webb, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day the foregoing Articles of Incorporation *was* produced to me in my office, and acknowledged and delivered by W. H. Tilford, W. T. Jordan and L. T. Rosengarten, parties thereto to be their act and deed and that I have recorded them and this certificate in my said office.

1686 Witness my hand and official seal this 7 day of October, 1886.

[SEAL.] GEO. H. WEBB, *Clerk.*

*Amendment to the Articles of Incorporation of the Standard Oil Company of Kentucky.*

The Articles of Incorporation of the Standard Oil Company of Kentucky which are recorded in Corporation Book No. 4 page 70, of the County Clerk's Office of Jefferson County, Kentucky, are hereby amended as follows, to-wit:

The amount of capital stock of said corporation shall be One Million ($1,000,000) Dollars, to be divided into shares of One Hundred ($100.00) dollars each and the $400,000 of increase of capital hereby authorized shall be paid in in property at its cash value within four months after the date hereof. The number of directors of said corporation shall be nine.

Witness the signature and seal of said corporation by its President hereto duly authorized this 1st day of April, 1892.

[SEAL.] STANDARD OIL COMPANY,
By C. M. PRATT, *President.*

Attest:
L. D. CLARKE, *Ass't Sec'y.*

STATE OF NEW YORK, *County of New York, ss:*

I, Wm. H. Erwin, a Notary Public in and for said City and County do hereby certify that C. M. Pratt to me personally known appeared before me this 9th day of April, 1892, and being by me duly sworn said that he is President of the Standard Oil Company that the corporate seal affixed to the foregoing instrument is the corporate seal of said company, that the same was affixed thereto by order of the Board of Directors and that the signature of the officers of said company in attestation thereof are their true and proper signatures.

Sworn and subscribed before me this 9" day of April, 1892.

[SEAL.] WM. H. ERWIN,
*Notary Public, Kings Co.*

1687 *Certificate for Kings Co. Filed in New York Co.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, William J. McKenna, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, do hereby certify that Wm. H. Irwin has filed in the Clerk's office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings, with his autograph signature and was at the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take the same. And further that I am well acquainted with the handwriting of said Notary and verily believe the signature to the said certificate of proof or acknowledgment to be genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of New York. In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 12 day of Apl. 1892.

[SEAL.] WM. J. McKENNA, *Clerk.*

I, Geo. H. Webb, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day at 12:15 O'clock P. M. the foregoing articles of Incorporation were produced to me in my office, and that I have recorded them, this and the foregoing certificates in my said office.

Witness my hand this 15th day of Apl. 1892.

GEO. H. WEBB, *Clerk.*

I, W. J. Semonin, Clerk of the County Court of Jefferson County in the State of Kentucky, certify that the foregoing four pages contain a true copy of Articles of Incorporation of Standard Oil Company, together with certificate of acknowledgment and record thereof, as the same appear of record in my office in Corporation Book 4 page 70; also a true copy of Amendment to the Arti-
1688 cles of Incorporation of the Standard Oil Company of Kentucky, together with certificate of acknowledgment and

record thereof, as the same appear of record in my office in Corporation Book 7, page 543.

In Testimony Whereof, I hereunto set my hand and affix the official seal of Jefferson County, Kentucky, of which I am the custodian, at Louisville, Kentucky, this 13th day of April, 1907.

W. J. SEMONIN,

[SEAL.] *Clerk Jefferson County Court, Kentucky.*

COMMONWEALTH OF KENTUCKY,
*Office of Secretary of State, Frankfort:*

I, H. V. McChesney, Secretary of State of the Commonwealth of Kentucky, hereby certify that on the dates shown on the foregoing Articles of Incorporation the corporation law of the state did not require that corporations of the character shown in these articles should file their papers with the Secretary of State, the statutes at that time requiring that they be filed with the county clerk only; and I further certify that W. J. Semonin, whose genuine signature appears on the foregoing certificate is the duly elected and acting Clerk of the County Court of Jefferson County, that said court is a court of record, having a seal, and that said Clerk is the custodian of said seal, which said seal is affixed to the foregoing certificate.

Witness my hand and official seal, and the Great Seal of the Commonwealth, this April 15, 1907.

H. V. McCHESNEY,
*Secretary of State.*

[SEALS.]

Endorsed: Copy Articles of Incorporation of Standard Oil Company. Corporation Book 4, page 70. Copy Amendment to Articles of Incorporation of Standard Oil Company of Kentucky. Corporation Book 7 page 543. No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter, S. O. of Ky. (20)

1689

STATE OF IOWA,
EXECUTIVE DEPARTMENT.

I, Albert B. Cummins, Governor of the State of Iowa, and keeper of the great seal,

Do hereby certify, that W. C. Hayward is the duly elected and qualified Secretary of State of the State of Iowa; that he is the keeper of the corporate records of said state; that he is duly authorized under the laws of the State of Iowa to make certification of copies of such records; that the attached certificate of the said W. C. Hayward is in due form and made by the proper officer; that the seal attached thereto is the seal of his office; that I am well acquainted with the handwriting of the said W. C. Hayward, and that I verily believe the signature thereto attached to be genuine.

In witness whereof, I have hereunto affixed my signature and an impression of the great seal of the State of Iowa, on this third day of April, A. D. 1907.

[SEAL.]

ALBERT B. CUMMINS,
*Governor of Iowa.*

No. 33.

STATE OF IOWA,
SECRETARY OF STATE.

I, W. C. Hayward, Secretary of State of the State of Iowa, do hereby certify that the attached instrument of writing is a true and correct copy of Articles of Incorporation and Amendments Thereto of the Standard Oil Company. Council Bluffs, Pottawattamie County, Iowa as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Secretary of State of the State of Iowa. Done at Des Moines, the Capital of the State April 3, A. D. 1907.

[SEAL.] W. C. HAYWARD,
*Secretary of State.*

1690 EXHIBIT D.

A special meeting of the stockholders of the Standard Oil Company was held at the office of the company, Council Bluffs, Iowa, on Thursday, the 11th day of May, 1905, in pursuance of the following call issued by a majority of the Directors of said company, in pursuance of its by-laws:

Resolved, that a special meeting of the stockholders of this company be, and is hereby, called to meet at the office of the company, Council Bluffs, Iowa, on May 11th, 1905, at eleven o'clock A. M., for the following purposes:

First. To change Section VI of the Articles of Incorporation so that the same shall read as follows:

SECTION VI. The highest amount of indebtedness to which the corporation is at any time to subject itself is Six Hundred and Sixty-six thousand, Six Hundred and Sixty-six Dollars ($666,-666.00).

Second. *The* renew the charter of said corporation for the term of twenty (20) years.

Resolved, that ten days' notice of said meeting be given personally, or mailed to, each stockholder.

At such meeting, stockholders owning the entire capital stock of said company were represented in person or by proxy.

Mr. C. L. Alleman was appointed Chairman and Mr. Charles T. White Secretary of the meeting. On motion, the following resolutions were adopted by the unanimous vote of the stockholders owning all of the stock of said Standard Oil Company.

Resolved: That the Articles of Association of the Standard Oil Company be, and are hereby, renewed for twenty years from July 1st, 1905.

Resolved, that Mr. W. H. Tilford, President, and Mr. Charles T. White, Assistant Secretary, of the Standard Oil Company, be, and are hereby, designated to certify, execute and make affidavit to the above proceedings and renewal of the charter of said company.

1691 We certify that the above is a correct transcript showing the proceedings of the said meeting of stockholders, resulting

in the renewal of the Articles of Association of the Standard Oil Company for the period of twenty years from July 1st, 1905.

W. H. TILFORD, *President.*
CHARLES T. WHITE,
*Ass't Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

On this 11th day of May, 1905, before me A. T. Doremus, a Notary Public in and for said County, appeared Mr. W. H. Tilford, President, who being by me first duly sworn, deposes and says that the above is a correct transcript of the proceedings of the meeting of the stockholders of the Standard Oil Company, resulting in the renewal of the Articles of Association of said company for the period of twenty years.

Witness my hand and official seal the day and year first aforesaid.

[SEAL.]

A. T. DOREMUS,
*Notary Public, Richmond County.*

Certificate filed in New York County.

STATE OF NEW YORK, *County of New York, ss:*

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said county, the same being a court of record, do hereby certify, that A. T. Doremus has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Richmond with his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and believe that the signature to the annexed certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 12 day of May, 1905.

[SEAL.]

THOS. L. HAMILTON, *Clerk.*

1692 STATE OF IOWA, *County of Pottawattamie, ss:*

On this 15th day of May, 1905, before me, Clerk Dist. Court in and for said county, appeared Mr. Charles T. White, Assistant Secretary, who being by me first duly sworn, deposes and says that the above is a correct transcript of the proceedings of the meeting of the stockholders of the Standard Oil Company, resulting in the renewal of the Articles of Association of said Company for the period of twenty years.

Witness my hand and official seal the day of year first aforesaid.

[SEAL.]

H. V. BATTEY,
*Clerk Dist. Court.*

*Articles of Incorporation of Standard Oil Company.*

We, John D. Archbold, W. H. Tilford and Samuel C. T. Dodd, desiring to form a corporation under and in accordance with the laws of the State of Iowa, do hereby adopt the following Articles of Incorporation.

1. The name of the corporation shall be Standard Oil Company, and its principal place of transacting business shall be Council Bluffs, Iowa.

2. The general nature of the business to be transacted shall be that of dealing in petroleum and its products, oils and naval stores, lead and paints.

3. The amount of the capital stock shall be Six Hundred Thousand Dollars to be paid in cash at the date of the organization of the company.

4. The time of the commencement of the corporation shall be July 1st, 1885, and it shall terminate twenty years from that date.

5. The affairs of the corporation shall be conducted by five Directors, one of whom shall be President and one Vice President of the Company a Secretary and Treasurer. One person may fill
1693 the office of both Secretary and Treasurer. Elections shall be held on the second Thursday of May in each year. On the organization of the Company Directors shall be elected who shall hold office until the second Thursday of May, 1886.

6. The highest amount of indebtedness to which the corporation is at any time to subject itself is One Hundred and Fifty Thousand Dollars.

7. Private property of the stockholders shall be exempt from liability for corporate debts.

In witness whereof, we have hereunto set our hands this tenth day of June, A. D. 1885.

JOHN D. ARCHBOLD.
W. H. TILFORD.
SAMUEL C. T. DODD.

STATE OF NEW YORK, *City and County of New York, ss:*

This is to certify, that on this tenth day of June, A. D. 1885, before me, J. W. Hale, a commissioner of deeds for the State of Iowa in the City of New York, personally appeared John D. Archbold, W. H. Tilford and Samuel C. T. Dodd, personally known to me to be the identical individuals whose names are affixed to the foregoing Articles of Incorporation and severally acknowledged the same to be their voluntary act and deed for the purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

[COM'R'S SEAL.] J. W. HALE,
*Comm'r for the State of Iowa Residing in New York.*

Endorsed.

STATE OF IOWA, *ss:*

Filed for record in office of Secretary of State, June 15th, A. D. 1885, and recorded in Book S, page 459.

E. D. JACKSON,
*Secretary of State.*

1694 STATE OF IOWA, *Pottawattamie Co., ss:*

Filed for record the 13th day of June, A. D. 1885, at 2 o'clock P. M. and recorded in Book 104, page 407 of County Records.

H. J. CHAMBERS, *Recorder.*

*Amendment of Charter.*

Whereas John D. Archbold, W. H. Tilford and Samuel C. T. Dodd did on the 10th day of June, 1885, in accordance with the laws of the State of Iowa, adopt Articles of Incorporation of the Standard Oil Company, which Articles were filed on the 13th day of June, 1885, in Pottawattamie County in Book 104, page 407 of County Records and on the 15th day of June, 1885, in the office of the Secretary of State in Book S, page 459, and

Whereas there are no stockholders of said company save the promoters thereof aforesaid

Now we, the said John D. Archbold, W. H. Tilford and Samuel C. T. Dodd, do hereby, in accordance with the laws aforesaid adopt the following amendment to said Articles, to be added to Section 1, to-wit: The said corporation shall have the right to carry on its business at any point in the State of Iowa and in any other states and Territories.

In witness whereof we have hereunto set our hands the 27th day of June, 1885.

JOHN D. ARCHBOLD.
W. H. TILFORD.
SAMUEL C. T. DODD.

STATE OF NEW YORK, *City and County of New York, ss:*

This is to certify that on this 27th day of June, A. D. 1885, before me, James W. Hale, a Commissioner of Deeds for the State of Iowa, in the City of New York, personally appeared John D. Archbold, W. H. Tilford, and Samuel C. T. Dodd, personally known to me to be the identical individuals whose names are affixed
1695 to the foregoing instrument and severally acknowledged the same to be their voluntary act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal the day and year above written.

[COM'R'S SEAL.]

J. W. HALE,
*Com'r for Iowa in New York and Public Notary, 4 Hanover Street.*

Endorsements on Above.

STATE OF IOWA, *ss:*

Filed for Record in office of Secretary of State Aug. 11th, A. D. 1885, and recorded in Book T, page 8.

FRANK D. JACKSON,
*Secretary of State.*
D. W. SMITH, *Deputy.*

STATE OF IOWA, *Pottawattamie Co., ss:*

Filed for record the 5th day of Aug., A. D. 1885, at 4/10 o'clock P. M. and recorded in Book 104, page 433 of County Records.

H. J. CHAMBERS, *Recorder.*

*Copy of Certificate of Increase of Capital.*

Whereas, John D. Archbold, W. H. Tilford and Samuel C. T. Dodd, did on the 10th day of June, 1885, in accordance with the laws of the State of Iowa, adopt Articles of Incorporation of the Standard Oil Company, which Articles were filed on the 13th day of June, 1885, in Pottawattamie County in Book 104, page 407, of County Records and on the 15th day of June, 1885, in the office of the Secretary of State in Book S, page 459, and,

Whereas, the present stockholders of said company have unanimously agreed to increase the capital stock of said company from the sum of Six Hundred Thousand Dollars as fixed by said Articles to the sum of One Million Dollars.

1696 Now we, the undersigned, being all the stockholders of said company, do hereby adopt the following amendment to said Articles to-wit: Section III of said Articles shall be changed to read as follows: "The amount of capital stock of said company shall be One Million Dollars and the full amount of said capital stock not already paid in, shall be paid in cash on or before the first day of April, A. D. 1892."

In witness whereof we have hereunto set our hands this 24th day of February, A. D. 1892.

(Signed by)

H. L. TEVIS, *Trustee.*
W. H. TILFORD.
H. H. ROGERS.
JOHN D. ARCHBOLD.
BENJAMIN BREWSTER.
HENRY M. FLAGLER.
O. B. JENNINGS.
WM. ROCKEFELLER,
By J. D. ROCKEFELLER,
*Attorney in Fact.*
J. D. ROCKEFELLER.

STATE OF NEW YORK, *City and County of New York, ss:*

This is to certify that on this 25th day of February, A. D. 1892, before me a notary public, in and for said City and County, per-

sonally appeared H. L. Tevis, W. H. Tilford, H. H. Rogers, John D. Archbold and John D. Rockefeller; and J. D. Rockefeller Attorney in Fact for Benjamin Brewster, Henry M. Flagler, O. B. Jennings, and Wm. Rockefeller, personally known to me to be the identical individuals whose names are affixed to the foregoing instrument and severally acknowledged the same to be their voluntary act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal the day and year above written.

(Signed) S. MARSHALL BUSSELLE,
[SEAL.] *Notary Public, New York.*

1697 STATE OF NEW YORK,
*City and County of New York, ss:*

I, William J. McKenna, Clerk of the City and County of New York, and also Clerk of the Supreme Court of the said City and County, the same being a court of record, do hereby certify, that S. Marshall Busselle, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time — taking such proof of acknowledgment, a notary public in and for the City and County of New York, dwelling in said city, commissioned and sworn and duly authorized to take the same. And further that I am well acquainted with the handwriting of said notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 26th day of February, 1892.

[SEAL.] (Signed) WM. J. McKENNA, *Clerk.*

STATE OF IOWA, *Pottawattamie Co., ss:*

Filed for record the 29th day of February, A. D. 1892, at 11 o'clock A. M. and recorded in Book 307, Page 237 of county records.

(Signed) W. H. THOMAS, *Recorder.*

STATE OF IOWA, *ss:*

Filed for record in office of Secretary of State March 12th, A. D. 1892, and recorded in Book ½, page 275.

(Signed) W. M. McFARLAND,
*Secretary of State,*
By C. S. BYRKIT, *Deputy.*

1698 EXHIBIT C.

A special meeting of the stockholders of the Standard Oil Company was held at the office of the company, Council Bluffs, Iowa, on Thursday, the 11th day of May, 1905, in pursuance of the following call issued by a majority of the Directors of said Company, in pursuance of its by-laws:

Resolved, that a special meeting of the stockholders of this company be, and is hereby, called to meet at the office of the company, Council Bluffs, Iowa, on May 11th, 1905, at eleven o'clock A. M. for the following purposes:

First. To change Section VI of the Articles of Incorporation so that the same shall read as follows:

SECTION VI. The highest amount of indebtedness to which the corporation is at any time to subject itself is Six Hundred and Sixty-six Thousand, Six Hundred and Sixty-six Dollars ($666,666.00).

Second. To renew the charter of said corporation for the term of twenty (20) years.

Resolved, that ten days' notice of said meeting be given personally, or mailed to, each stockholder.

At such meeting stockholders owning the entire capital stock of said company were represented in person or by proxy.

Mr. C. L. Alleman was appointed Chairman, and Mr. Charles T. White, Secretary of the meeting. On motion, the following resolutions were put by the Chairman and adopted by a unanimous vote of the stockholders owning all the stock of said company.

Resolved, that Section VI of the Articles of Association of this company be amended to read as follows: Section VI. The highest amount of indebtedness to which the corporation is at any time to subject itself is Six Hundred and Sixty-six Thousand, Six Hundred and Sixty-six Dollars ($666,666.00).

Resolved, that Mr. W. H. Tilford, President and Mr. Charles T. White, Assistant Secretary, of this company be, and are hereby designated to certify, sign and acknowledge the foregoing
1699 proceedings and alterations of the Articles of Association.

The meeting thereupon adjourned.

We certify the above to be a correct record of the transaction of said meeting and the alteration of the Articles of Association then adopted.

Witness our hands this 11th day of May, 1905.

W. H. TILFORD, *President.*
CHARLES T. WHITE,
*Ass't Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

On this 11th day of May, 1905, before me personally appeared Mr. W. H. Tilford, President, to me known to be the person named in and who executed the foregoing instrument as President of said Standard Oil Company, and acknowledged that he executed the same as his voluntary act and deed.

[SEAL.]

A. T. DOREMUS,
*Notary Public, Richmond County.*

Certificate filed in New York County.

STATE OF NEW YORK, *County of New York, ss:*

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being

a Court of Record, Do Hereby Certify, that A. T. Doremus has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Richmond with his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and believe that the signature to the annexed certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 12 day of May, 1905.

[SEAL.] THOS. L. HAMILTON, *Clerk.*

1700 STATE OF IOWA, *County of Pottawattamie, ss:*

On this 15th day of May, A. D. 1905, before me personally appeared Mr. Charles T. White, Assistant Secretary, to me known to be the person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

[SEAL.] H. V. BATTEY,
*Clerk Dist. Court.*

STATE OF IOWA, *Pottawattamie County, ss:*

Filed for record the 15th day of May, A. D. 1905, at 10:00 o'clock A. M. and recorded in Book 435 page 192 of County Records.

G. G. BAIRD, *Recorder,*
Per E. A. LATHROP, *Deputy.*

STATE OF IOWA, *ss:*

Filed for record in the office of Secretary of State May 16th, A. D. 1905, and recorded in Book F-4, page 103.

W. B. MARTIN,
*Secretary of State.*
D. A. HITES, *Deputy.*

Proof of publication filed July 1, 1905.

Endorsed: Certified Copy. No. 24551. Filed May 31, 1907, D. J. Pickle, Clerk. State of Iowa, Secretary of State. Charter. S. O. Co. of Iowa. (33.)

No. 31.

We the undersigned, do by this agreement associate ourselves together as a body corporate under the provisions of an Act of the General Assembly for the Commonwealth of Pennsylvania relating to corporations for Mining, Manufacturing, Mechanical & Quarrying purposes, approved July 18th, A. D. 1863, By the name and title of

1701 Standard Oil Company.

The objects for which this corporation is formed are the production or purchase and sale of petroleum or coal oil, also the refining of the same, and the buying and selling of the products thereof and to buy and lease lands for and by said corporation for the purpose aforesaid and also to buy, sell trade and deal in pretroleum and its products and minerals or other substances from which oil can be produced, and to manufacture and transport the same to market or cause the same to be procured, manufactured and transported to market and generally to do and perform all manner of things necessary to the carrying on of such business as aforesaid as well as to erect, buy or rent suitable buildings, tenements, railroads, cars, boats or machinery and the purchase of suitable tools and implements for the purpose of carrying on the business aforesaid. And also to manufacture tanks, stills, pipes and other work used in connecting with the oil business either for our own use or for sale. The refinery of such corporation and their office for the transaction of corporate business will be located in the City of Pittsburgh, Allegheny County, Penna. The capital stock of said Company shall be limited to Three Hundred Thousand dollars and the par value of each share shall be one hundred dollars, and the undersigned severally agree to take the number of shares set oposite their respective names.

(5 cent Int. Rev. Stamp.)

(5 cent Int. Rev. Stamp.)

Witness our hands this 15th day of August, A. D. 1868.

| Names. | No. of Shares. | | Amount. |
|---|---|---|---|
| A. A. Sumner..... | 850 | Eight Hundred & Fifty.. | 85,000 |
| Lockhart & Frew..... | 600 | Six Hundred ..... | 60,000 |
| James A. Hutchison.... | 500 | Five Hundred ..... | 50,000 |
| Jas. P. Hanna..... | 250 | Two Hundred & Fifty.... | 25,000 |
| M. Graver ..... | 250 | Two Hundred & Fifty... | 25,000 |
| R. Robison & Co..... | 250 | Two Hundred & Fifty... | 25,000 |
| N. Holmes Sons..... | 300 | Three Hundred ..... | 30,000 |

1702 We the undersigned stockholders in the Standard Oil Company do hereby agree that there shall be a meeting for the purpose of organization and the election of officers of said Company, and we accept notice of the fact that said meeting will be held at the office of the Hutchison Oil & Refin'g Company No. 2 Duquesne Way in the City of Pittsburgh on Thursday, Aug. 20th, 1868.

Pittsburgh, Aug. 15th, 1868.

(5 cent Int. Rev. Stamp.)

A. A. SUMNER.
LOCKHART & FREW.
JAMES A. HUTCHISON.
JAS. P. HANNA.
M. GRAVER.
N. ROBISON & CO.
N. HOLMES SONS.

STATE OF PENNSYLVANIA, *Allegheny County, ss:*

James A. Hutchison, President, Chas. Lockhart, Vice President, Jas. H. Wright, Treasurer, R. Robison, M. Graver and James P. Hanna directors of the Standard Oil Company, being each duly sworn doth depose and say, that in pursuance of an Act entitled "An Act relating to corporations for Mechanical, Manufacturing, Mining and Quarrying purposes" passed in General Assembly for the Commonwealth of Pennsylvania, and approved July 18th, 1863, affiants have organized themselves with others by article of agreement in writing (copy of which article is hereto annexed) into an Association entitled as above. That at a meeting of said Association held pursuant to notice (a copy of which notice is also hereunto annexed) affiants were elected President, Treasurer and Directors of such Association. That the purposes of such Association are the production or purchase and sale of Petroleum or Coal Oil, also the Refining of the same and the buying and selling of the products thereof and to buy or lease lands for and by said corporation for the purpose aforesaid, and also to buy, sell, trade and deal in petroleum and its products, and minerals or other substance from which oil can be produced, and to manufacture and transport the same to market, or cause the same to be procured, manufactured and transported to market and generally to do and perform all manner of things necessary to the carrying on of such business as aforesaid, as well as to rent, buy or erect suitable buildings, tenements, railroads, cars, boats, and machinery and the purchase of suitable tools and implements for the purpose of carrying on the business aforesaid. And also to manufacture tanks, stills, pipes, and other work used in connection with the oil business either for our own use or for sale, as set forth in the accompanying Articles of Association. That the amount of the capital stock of such association is Three Hundred Thousand Dollars and the amount already paid in is One Hundred and Twenty Thousand Dollars and that the Par Value of each share in the corporation is One Hundred Dollars.

(5 cent Int. Rev. Stamp.)

1703

(5 cent Int. Rev. Stamp.)

Pittsburgh August 31, 1868.

(Signed) JAMES A. HUTCHISON, *Pres.*
CHARLES LOCKHART, *V. P.*
JAS. H. WRIGHT, *Treas.*
M. GRAVER, *Director.*
N. ROBISON, "
JAS. P. HANNA, "
A. A. SUMNER, "

STATE OF PENNSYLVANIA, *Allegheny County, ss:*

On the 31st day *day* of August, A. D. 1868, appeared before me, an alderman of the City of Pittsburgh, in said county Jas. A. Hutchison, President, Chas. Lockhart, Vice President, Jas. H. Wright, Treasurer, R. Robison, M. Graver and Jas. P. Hanna, the Board

of Directors of the Standard Oil Company who being each duly sworn, do severally depose and say that the foregoing certificate is correct and true in all matters therein stated to the best of their knowledge and belief.

Sworn and subscribed this 31st day of Aug., 1868.

(Signed) J. DONALDSON, *Alderman.* [SEAL.]

1704 ALLEGHENY COUNTY, *ss:*

I, Henry Snively, Recorder of Deeds, &c., in and for said county do hereby certify that there was filed and also recorded in Book of the certificate- of organization of manufacturing and other companies, Vol. 1, page 307, in my office this day a copy of the foregoing certificate of the organization of the Standard Oil Co. under the provisions of an Act of Assembly approved July 18, 1863, and the Supplements thereto.

(5 cent Int. Rev. Stamp.)

Witness my hand and official seal this 5th day of Sep., 1868.

(Signed) HENRY SNIVELY.

Endorsed: Standard Oil Company. Certified to Governor, Sept. 9, 1868.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, PA., *April* 5, 1907.

I Hereby Certify that the foregoing is a true copy of the original Articles of Association of the Standard Oil Company of Pittsburgh, remaining on file in this Department.

Witness my hand and seal of office, the day and year above written.

[SEAL.]

W. P. SNYDER,
*Auditor General,*
Per N. E. HAUSE,
*Chief Clerk.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter S. O. Co. of Pittsburgh. (31.)

UNITED STATES OF AMERICA, *State of Indiana:*

OFFICE OF THE SECRETARY OF STATE.

(32) I, Fred A. Sims, Secretary of State of the State of Indiana hereby certify that the annexed pages contain a full true and complete copy of the articles of association, or agree-
1705 ment in writing of Standard Oil Company and certificate of Increase of Capital Stock, with the several certificates thereon, filed June 18, 1889; April 14, 1892, as the same appears on file, as the law directs, in this office.

In Testimony Whereof, I hereunto set my hand and affix the Great Seal of the State of Indiana. Done at my office in the City of Indianapolis, this 13th day of April, A. D. 1907.

[SEAL.]

FRED A. SIMS,
*Secretary of State.*

*Certificate of Incorporation of Standard Oil Co.*

The undersigned desiring to form a company to carry on manufacturing business as provided by chapter 35 of the Revised Statutes of Indiana, do make the following certificate.

1. The corporate name adopted by the company is Standard Oil Company.

2. The object of its formation is to manufacture the products of Crude Petroleum to transport and sell the same, to manufacture barrels and packages for containing said products, to erect necessary buildings and manufacture the necessary machinery and to do all business found to be necessary or convenient in carrying on the business specified.

3. The amount of capital stock of said company is fixed at Five Hundred Thousand Dollars ($500,000.00).

4. The term of existence of said company is fixed at fifty years.

5. The number of directors is fixed at five and the following are the names of the persons who shall manage the affairs of said company for the first year.

W. P. Cowan.
Frank Q. Barstow.
Ambrose M. McGregor.
George H. Vilas.
W. H. Tilford.

1706 The operations of said company shall be carried on in the town of Whiting, County of Lake and State of Indiana.

In Witness Whereof, we hereto set our hands this eleventh day of June A. D. 1889.

W. H. TILFORD.
A. M. McGREGOR.
F. Q. BARSTOW.
GEO. H. VILAS.
W. P. COWAN.

STATE OF NEW YORK, *County of New York*, ss:

Before me, James W. Hale, a Notary Public, this eleventh day of June, A. D. 1889, appeared Frank Q. Barstow, Ambrose M. McGregor, Geo. H. Vilas and W. H. Tilford to me personally known and severally acknowledged the execution of the foregoing certificate of incorporation.

JAS. W. HALE, [SEAL.]
*Public Notary*, 4 *Hanover Street.*

STATE OF NEW YORK, *City and County of New York*, ss:

I, Edward F. Reilly, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said city and county, the same being a court of record, do hereby certify, that Jas. W. Hale whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the City and county of New York, dwelling in the

said City, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court and county, the 11 day of June, 1889.

EDWARD F. REILLY, *Clerk.* [SEAL.]

1707 STATE OF ILLINOIS, *Cook County, ss:*

Before me James A. Marshall a notary public this 15th day of June, A. D. 1889, appeared W. P. Cowan and to me personally known to me and acknowledged the execution of the foregoing certificate of incorporation.

[SEAL.] JAMES A. MARSHALL,
*Notary Public.*

STATE OF ILLINOIS, *Cook County, ss:*

I, Henry Wulff, Clerk of the County Court of Cook County, the same being a court of record, do hereby certify that James A. Marshall, Esq., whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment, a Notary Public in and for Cook County, duly commissioned, sworn and acting as such and authorized to take the same; that I am well acquainted with his handwriting and verily believe that the signature to the said proof or acknowledgment is genuine; and further that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In Testimony whereof, I have hereunto set my hand and affixed the seal of the said court at the City of Chicago, in the said county, this 17th day of June, 1889.

HENRY WULFF, *Clerk.* [SEAL.]

Filed June 18, 1889.

CHARLES F. GRIFFIN,
*Secretary of State.*

*Minutes of Adjourned Annual Meeting of the Stockholders of the Standard Oil Company, held at Whiting, Indiana, Wednesday, March 16th,* 1892.

The following stockholders being present: Standard Oil Trust, by proxy to W. P. Cowan, F. Q. Barstow, by proxy to Geo. W. Stahl, W. H. Tilford, by proxy to T. M. Towl, A. M. McGregor, by proxy to T. M. Towl.

1708 The meeting was called to order by W. P. Cowan, Vice President, who was chosen Chairman of the meeting. George W. Stahl, representing F. Q. Barstow by proxy, was chosen Secretary.

The following resolution was offered by Mr. Cowan:

"Resolved, that the capital stock of this company be increased to the sum of one million (1,000,000) dollars, the same to be divided

into shares of one hundred (100) dollars each, and that such increase of capital stock take effect April 2nd, 1892."

Mr. W. H. Smith was then appointed Teller and the following shares were voted:

| | Number of shares. |
|---|---|
| In the Affirmative: | |
| Standard Oil Trust | 4,995 |
| F. Q. Barstow | 1 |
| W. H. Tilford | 1 |
| A. M. McGregor | 1 |
| W. P. Cowan | 1 |
| Total | 4,999 |
| In the Negative: None. | None. |

The resolution being therefore unanimously carried.

We, W. P. Cowan, Chairman, and George W. Stahl, Secretary, do hereby certify that the foregoing is a correct copy of the record and proceedings of the adjourned annual meeting of the stockholders of the Standard Oil Company, held at Whiting, Indiana, Wednesday, March 16th, 1892, authorizing an increase of capital stock.

W. W. COWAN, *Chairman.*
GEORGE W. STAHL, *Sec'y.*

Filed 4/14/92.
CLAUDE MATTHEWS, *Secretary of State.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter S. O. Co. of Ind. (32.)

1709 No. 27.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It Is Hereby Certified, that James L. Whalen was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attest-ion and Certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State, is in his own proper handwriting, and is genuine; and that full faith and credit may and ought to be given to his official acts; and further, that the Secretary of State is the Custodian of the

original certificate of Increase of Capital Stock so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, The Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JOHN S. WHALEN,
*Secretary of State.*

*Agreement by Unanimous Consent of the Stockholders of the Standard Oil Company of New York to Increase Its Capital Stock.*

We, the undersigned, being all the stockholders of the Standard Oil Company of New York, a corporation duly organized under the laws of New York, do hereby in compliance with Chap. 354 of the laws of 1901, Secs. 45 & 46 by unanimous consent authorize an increase of the capital stock of said company from the sum of Seven Million ($7,000,000) dollars, its present capital stock which
1710 is actually issued, to the sum of Fifteen Million ($15,000,000) dollars. And we hereby direct that a copy of this consent shall be entered upon the minutes of the said corporation, and also filed in the office of the Secretary of State, and in the office of the Clerk of the County of New York in which the principal business office of the said corporation is located.

In Witness Whereof, we subscribe our names hereto this — day of December, A. D. 1903.

[CORPORATE SEAL.] STANDARD OIL COMPANY,
By JNO. D. ARCHBOLD,
*Vice-President.*

Attest:
CHARLES T. WHITE, *Asst. Secretary.*

WM. ROCKEFELLER.
H. M. FLAGLER.
JNO. D. ARCHBOLD.
H. H. ROGERS.
W. H. TILFORD.
F. Q. BARSTOW.
E. T. BEDFORD.
J. A. MOFFETT.
W. D. McMILLAN.
JOS. H. LECOUR.
A. L. WILKINSON.
C. M. PRATT.

STATE OF NEW YORK, *County of New York, ss:*

On the 5th day of December, 1903, before me A. T. Doremus a Notary Public personally appeared Chas. T. White, who being by me duly sworn, saith; I am Assistant Secretary of the Standard Oil Company of New York, a corporation organized under the laws of New York, and I am custodian of the stock-book of said corporation. I have personally examined all the signatures subscribed to the "Agreement by Unanimous Consent of the Stockholders of the Standard Oil Company of New York to increase its capital stock," filed herewith and I hereby depose and say that said subscribers are

all the owners of all the outstanding capital stock of the said corporation.

CHARLES T. WHITE.

Sworn and subscribed before me this 5th day of December, 1903.
[SEAL.]
A. T. DOREMUS,
*Notary Public, Richmond County.*

Certificate filed in New York County.

1711 (Endorsed:) Agreement by unanimous consent of the stockholders of the Standard Oil Company of New York to increase its capital stock. Tax for privilege of increase of capital of this corporation. $4,000. Under Chapter 448, Laws of 1901. Paid to State Treasurer before filing. State of New York. Office of Secretary of State. Filed and Recorded Dec. 7, 1903. J. B. H. Mongin, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate to Increase the Capital Stock of Standard Oil Company of New York, filed and recorded in this office on the 7th day of December, 1903, and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.
[SEAL.]
JAMES L. WHALEN,
*Deputy Secretary of State.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Inc. (27.)

No. 28.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It Is Hereby Certified, that James L. Whalen was, on the day of the date of the annexed Certificate and Attestation, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attestation and Certificate and to perform the duties belonging to the Secretary of State in making such
1712 Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State, is in his own proper handwriting, and is

genuine; and that full faith and credit, may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the Original Certificate of Increase of Number of Directors so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, the Great Seal of the State is hereunto affixed.

Witness my hand at the city of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JAMES S. WHALEN,
*Secretary of State.*

No. 28.

*Meeting of the Stockholders of Record of the Standard Oil Company of New York, held at 26 Broadway, New York, on the 31st day of March, A. D.* 1892.

A writing signed by all the stockholders of record admitting thirty days' notice of the meeting and its purposes was presented and filed. J. D. Archbold was elected Chairman and L. D. Clarke as Secretary.

The following resolutions was offered:

Resolved: That the number of Directors of this company be increased to nine.

A vote was taken by ballot and the tellers announced that 49,998 shares of stock were voted in favor of the resolution and none against, whereupon the Chairman announced that the stockholders owning a majority of the stock of the company had voted in favor of
1713 the resolution, and it was thereupon adopted. On motion the meeting adjourned.

JNO. D. ARCHBOLD, *Chairman.*
L. D. CLARKE, *Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

J. D. Archbold and L. D. Clarke being duly sworn say that they were the Chairman and Secretary of the meeting above referred to and that the foregoing is a correct transc-ipt of the minutes of said corporate meeting.

JNO. D. ARCHBOLD.
L. D. CLARKE.

Sworn and subscribed before me this 31st day of March, 1892.

[SEAL.] MARTIN JUDGE,
*Notary Public, Kings Co.*

Certificate filed in N. Y. Co.

(Copied by M. E. L. Compared by E. M. & O.)

Endorsed: Certificate of Increase of Directors Standard Oil Co. of N. Y. State of New York. Office of Secretary of State, Filed and Recorded Apr. 9, 1892. Th. E. Benedict, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate to Increase the number of Directors of Standard Oil Company of New York, filed and recorded in this office on the 9th day of April, 1892, and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.]

JAMES L. WHALEN,
*Deputy Secretary of State.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Inc. (28)

1714 No. 34.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It is Hereby Certified that James L. Whalen was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attest-ion and Certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper office-; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State is in his own proper handwriting, and is genuine; and that full faith and credit, may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the Original Certificate of Extension of Corporate Powers, so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, the Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the sixth day of April in the year of our Lord one thousand nine hundred and seven.

[SEAL.]

JOHN S. WHALEN,
*Secretary of State.*

*Certificate of Extension of Business of the Standard Oil Company of New York.*

We, the undersigned, a majority of the trustees of the Standard Oil Company of New York, a stock corporation organized under and pursuant to the Act of the Legislature of the State of New
1715 York, entitled "An Act to authorize the formation of Corporations for Manufacturing, Mining, Mechanical or Chemical

purposes," passed the 17th of February, A. D. 1848, and the several acts amendatory thereof and supplimental thereto; desiring to extend its business and powers, pursuant to the provisions of the Stock Corporation Law of the State of New York, do hereby make and file this amended certificate for such purpose, and do certify as follows:

That the name of the corporation, whose business and powers are hereby extended is Standard Oil Company of New York.

That the business for which it was incorporated, and is now carrying on, is the business of the refining of petroleum; the manufacturing of the various products thereof, the purchasing of the crude material and the sale of the manufactured products thereof, the manufacture of barrels, boxes, cans, and other packages in which the manufactured products may be kept or transported, the manufacture and restoration of acids and whatever other substances may be used in the manufacture of petroleum.

That the extension of business, and powers, and rights purposed and intended to be effected by the execution and filing of this certificate, includes the following purposes and powers, to-wit:

The purchase and sale of the products of petroleum, and of all products entering into the manufacture thereof, and the purchase and sale of utensils and packages in which said products and materials are used, stored and transported, and of the materials used in the manufacture of such utensils and packages; said business of buying and selling to be done in all countries in which markets may be found; also the purchasing, acquiring, holding and disposing of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, engaged in a similar business or engaged in the manufacture or sale of property useful in the business of this corporation or in which the manufactured articles, product or property of this Corporatoin are or may be used.

1716 The amount of Capital Stock of said Company shall be Seven Million Dollars.

The Term of existence of said Company shall be fifty years from the date of the original certificate.

The said Capital Stock shall be divided into Seventy Thousand Shares of One Hundred Dollars each.

The number of Trustees who shall manage the concerns of the Company shall be nine.

The following persons are Directors:

| | |
|---|---|
| William Rockefeller. | W. H. Tilford. |
| John D. Rockefeller. | A. M. McGregor. |
| H. M. Flagler. | Paul Babcock. |
| John D. Archbold | C. M. Pratt. |
| H. H. Rogers. | |

The principal place of business of said Company shall be New York City. The manufacturing shall be carried on in Brooklyn, Long Island City and at other points in the State of New York, with the right to establish branch manufactories in other states and countries.

That the aforesaid extension has been duly authorized by a vote of stockholders representing at least three fifths of the capital stock

1053

of said corporation, at a meeting of the stockholders, called for the purpose, in the manner provided in section 45 of the Stock Corporation Law, as more fully appears in a copy of the proceedings of such meeting, verified by the affidavit of one — the directors present thereat, annexed hereto and filed with this amended certificate.

In Witness Whereof, we have made and executed this certificate in duplicate, and have hereunto set our hands this 21st day of March, 1898.

WM. ROCKEFELLER.
HENRY H. ROGERS.
JNO. D. ARCHBOLD.
W. H. TILFORD.
JOHN D. ROCKEFELLER.
PAUL BABCOCK.

1717 STATE OF NEW YORK, *County of New York, ss:*

On this 22d day of March, 1898, before me personally came William Rockefeller, Henry H. Rogers, John D. Archbold, W. H. Tilford, John D. Rockefeller and Paul Babcock, to me severally known to be the persons described in and who made and signed the foregoing certificate and severally duly acknowledged to me that they had made, signed and executed the same for the uses and purposes therein set forth.

[SEAL.]

JOHN BENSINGER,
*Notary Public for Kings Co.*

Certificate Filed in New York Co.

A special meeting of the stockholders of this company was held at the principal office of the company, No. 26, Broadway, New York City, on Thursday, March 17th, 1898, at 11 o'clock in the forenoon, for the purposes of considering a proposition to extend the business and powers and rights of the corporation.

The meeting having been called to order, stockholders appeared in person or by proxy representing 42,731 shares of stock, being at least three-fifths of the capital stock of the corporation, and organized by electing John D. Archbold and Louis D. Clarke, stockholders of the corporation, as Chairman and Secretary, respectively, of said meeting.

The Chairman read the notice of the meeting, which notice stated the time, place and object thereof, and the proposed extension of the business and powers and rights of the corporation, and also read the proof that such notice was published once a week for at least two successive weeks in the New York Law Journal, a newspaper of the County of New York, the County where the principal business office of the corporation is located, and that a copy of such meeting was duly mailed to each stockholder at his last known postoffice address at least three weeks before the meeting.

1718 Upon motion, duly seconded, Messrs. Alfred H. Brainard and Frederick Fischer were appointed Inspectors of Election

and duly sworn to faithfully perform the duties devolving upon them as such Inspectors.

Upon motion, duly seconded, a vote was taken upon the following resolution:

Resolved That the business and rights of the Standard Oil Company of New York be extended as follows: "The purchase and sale of the products of petroleum, and of all products entering into the manufacture thereof, and the purchase and sale of utensils and packages in which said products and materials are used, stored, and transported, and of the materials used in the manufacture of such utensils and packages, said business of buying and selling to be done in all countries in which markets may be found; also the purchasing, acquiring, holding and disposing of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, engaged in a similar business, or engaged in the manufacture or sale of property useful in the business of this corporation, or in which the manufactured articles, product or property of this corporation are or may be used, with the right to establish branch manufactories in other states and countries", and that the board of Directors of this corporation be authorized and instructed to execute and file proper certificates, as provided by law, and *and* to take such other steps as may be necessary to carry out and effect the objects and purposes of this resolution.

The Inspectors having counted the ballots reported that forty-two thousand seven hundred thirty-one (42,731) shares of stock, being more than three-fifths of the capital stock of the company, had voted in favor of the adoption of the resolution, and that no vote had been cast against its adoption, and thereup- the resolution was declared duly adopted, and the meeting adjourned.

JOHN D. ARCHBOLD, *Chairman.*
LOUIS D. CLARKE, *Secretary.*

1719 STATE OF NEW YORK, *County of New York, ss:*

John D. Archbold, being duly sworn, says that he is one of the directors of the Standard Oil Company of New York, and was present at a special meeting of the stockholders of said company, held at its office, at 26 Broadway, New York City, at eleven o'clock in the forenoon, and that the foregoing is a true copy of the proceedings of such special meeting and of the whole thereof.

JNO. D. ARCHBOLD.

Sworn to before me this 22 day of March, 1898.
[SEAL.] JOHN BENSINGER,
*Notary Public for Kings Co.*

Certificate filed in New York Co.

*Notice of Meeting.*

Notice is hereby given that a special meeting of the stockholders of the Standard Oil Company of New York will be held at 26 Broadway, New York City, on Thursday, March 17th, 1898, at eleven

o'clock A. M., to act upon a proposition to authorize an extension of the business, and power, and rights of said corporation, so as to include; "The purchase and sale of the products of petroleum, and of all products entering into the manufacture thereof, and the purchase and sale of utensils and packages in which said products and materials are used, stored and transported, and of the materials used in the manufacture of such utensils and packages; said business of buying and selling to be done in all countries in which markets may be found; also the purchasing, acquiring, holding and disposing of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, engaged in a similar business or engaged in the manufacture or sale of property useful in the business of this Corporation or in which the manufactured articles, product or
1720 property of this corporation are or may be used, with the right to establish branch manufactories in other states and countries," in addition to those now set forth in the certificate of incorporation of said corporation.

Dated, 26 Broadway, New York, February 19th, 1898.

JNO. D. ARCHBOLD,
HENRY H. ROGERS,
WM. ROCKEFELLER,
*Directors.*

STATE OF NEW YORK, *County of New York, ss:*

Louis D. Clarke, being duly sworn, says, that on the 19th day of February, 1898, he deposited in the post office at the City of New York, a copy of the annexed notice to stockholders of the Standard Oil Company of New York, contained in a duly post paid wrapper directed to each stockholder of said Company at his last known post office address, and further that he caused said notice to be published in The New York Law Journal, a newspaper printed and published in the City of New York, once a week for two successive weeks, commencing on March 5th, 1898.

LOUIS D. CLARKE.

Sworn to before me this 22 day of March 1898.
[SEAL.]
JOHN BENSINGER,
*Notary Public, for Kings County.*

Certificate filed in New York Co.

(Endorsed:) Certificate of Extension of Business of the Standard Oil Company of New York. State of New York. Office of Secretary of State, Filed and Recorded Mar. 23, 1898. Andrew Davidson, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate of Extension of Corporate Powers of Standard Oil Company of
1721 New York, filed and recorded in this office on the 23rd day of March, 1898, and do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.] JAMES L. WHALEN,
*Deputy Secretary of State.*

Copied by M. E. L. Compared by A. H. & O.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Amend. (34.)

No. 35.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It Is Here- Certified that James L. Whalen, was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said state to make such attestation and certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State is in his own proper handwriting, and is genuine; and that full faith and credit may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the Original Certificate of Incorporation, so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, The Great Seal of the State is hereunto affixed.

1722 Witness my hand at the City of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JOHN S. WHALEN,
*Secretary of State.*

*Certificate of Incorporation of the Standard Oil Company of New York.*

We, Wm. Rockefeller, J. A. Bostwick, Benj. Brewster, O. B. Jennings and Charles Pratt, being desirous to form a company under and pursuit to the Act of the Legislature of the State of New York, entitled, "An Act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed 17th February, A. D. 1848, and the several acts amendatory thereof and supplemental thereto.

Do Here- Certify:

1st. The corporate name of said Company shall be "Standard Oil Company."

2nd. The objects for which the said Company shall be formed are the refining of petroleum; the manufacturing of the various products thereof, the purchasing of the crude material and the sale of the manufactured products thereof; the manufacture of barrels, boxes, cans and other packages in which the manufactured products may be kept or transported; the manufacture and restoration of acids and whatever other substances may be used in the manufacture of the products of petroleum.

3rd. The amount of Capital Stock of said Company shall be Five Million Dollars.

4th. The term of existence of said Company shall be fifty years from the date of this certificate.

5th. The said Capital Stock shall be divided into Fifty Thousand Shares of One Hundred Dollars each.

6th. The number of Trustees who shall manage the concerns of the company shall be five.

1723 The following persons are named as Trustees for the first year, viz: Wm. Rockefeller, J. A. Bostwick, Benj. Brewster, O. B. Jennings and Chas. Pratt.

7th. The principal place of business of said company shall be New York City. The manufacturing shall be carried on in Brooklyn, Long Island City and at other points in the State of New York.

8th. A portion of the stock of said company shall be issued for the purchase of various refineries and manufactories now existing in the State of New York, belonging to the Standard Oil Company of Cleveland, Ohio, and other refining and manufacturing companies.

In Witness Whereof, the said parties have hereunto set their hands and seals this first day of August, 1882.

WM. ROCKEFELLER. [SEAL.]
J. A. BOSTWICK. [SEAL.]
BENJ. BREWSTER. [SEAL.]
O. B. JENNINGS. [SEAL.]
CHAS. PRATT. [SEAL.]

STATE OF NEW YORK, *City of New York, ss:*

On this seventh day of August, A. D. 1882, before me, Jas. W. Hale, a Notary Public in and for the City of New York, personally came, Wm. Rockefeller, J. A. Bostwick, Benj. Brewster, O. B. Jennings and Chas. Pratt, to me known to be the individuals described in and who executed the above instrument, and acknowledged that they executed the same for the purposes therein mentioned.

Witness my hand and seal the day and year aforesaid.

[SEAL.]

JAS. W. HALE,
*Notary Public, 4 Hanover Street.*

Endorsed: Certificate of Incorporation of the Standard Oil Company of New York. State of New York, Office of Secretary of State, Filed and Recorded Aug. 10, 1882. Anson S. Wood, Deputy Secretary of State.

1724 STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate of Incorporation of "Standard Oil Company of New York", filed and recorded in this office on the 10th day of August, 1882, and do Hereby Certify the same to be a correct transcript therefrom and the whole of said original.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.] JAMES L. WHALEN,
*Deputy Secretary of State.*

Copied by M. E. L. Compared by A. H. & O.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter S. O. of N. Y. (35)

No. 36.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It is Hereby Certified, That James L. Whalen was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attest-ion and Certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secreary of State, is in his own proper handwriting, and is genuine; and that full faith and credit, may and
1725 ought to be given to his official acts, and, further, that the Secretary of State is the Custodian of the Original Certificate of Increase of Capital Stock, so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In Testimony Whereof, the Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

[SEAL.] JOHN S. WHALEN,
*Secretary of State.*

STATE OF NEW YORK, *City of New York, ss:*

We, J. D. Archbold, Chairman, and L. D. Clarke, Secretary, of a special meeting of the stockholders of the Standard Oil Company of New York held for the purpose of increasing the capital stock do hereby certify:

That the Standard Oil Company of New York is a stock corporation formed under the laws of the State of New York, and that the capital stock of said company was fixed by its certificate of incorporation at Five Million Dollars and was divided into fifty thousand shares of the par value of One Hundred Dollars each.

That the said Company desiring to increase its capital stock the Directors thereof did publish a notice signed by a majority of them in the Evening Sun, a newspaper in the City of New York, in which said City the principal business office of said Company is situated, once a week for three successive weeks prior to the date of the meeting called thereby, which said notice was in the words following:

NEW YORK, *March 18th*, 1892.

A special meeting of the stockholders of the Standard Oil Company of New York will be held at the office of the said Company at No. 26 Broadway, New York City, on the 31st day of March,
1726 A. D. 1892, at 11 o'clock A. M. to determine whether the capital stock of the Company shall be increased to the total amount of Seven Million Dollars to consist of seventy thousand shares of the par value of One Hundred Dollars each.

WILLIAM ROCKEFELLER,
JOHN D. ARCHBOLD,
W. H. TILFORD,
*Directors.*

That at least three weeks before said meeting a copy of said notice was personally served upon each stockholder.

That at the time and place specified in the notice published and served as aforesaid there appeared in person and by proxy stockholders representing at least two-thirds of all the shares of stock of the said Company, and that the meeting organized by choosing from among their number the said J. D. Archbold as Chairman, and the said L. D. Clarke, as Secretary thereof.

That the call for the meeting having been read, and the proof of the proper publishing and service thereof having been presented, the following resolution was adopted.

Resolved: That the Standard Oil Company of New York does increase its capital stock from the present amount thereof, viz, the sum of Five Million Dollars consisting of fifty thousand shares of the par value of One Hundred Dollars per share, to the amount of Seven Million Dollars to consist of seventy thousand shares of the par value of One Hundred Dollars per share, and that the officers of this meeting are hereby instructed to perfect such increase of capital.

That the note of those present in person and by proxy upon said resolution being duly canvassed, it appeared that 49,998 shares of the capital stock of said Company being more than two-thrids of all the stock thereof voted in favor of said resolution.

And we do further certify:

That the amount of the capital of the said Company actually paid in is Five Million of Dollars; and that the whole amount of
1727 the debts and liabilities of the corporation is $1,856,639.23 dollars; and that the amount to which the capital stock of said company is increased in Seven Million Dollars.

In witness whereof We have made and signed this certificate this 31st day of March A. D. 1892.

JNO. D. ARCHBOLD, *Chairman.*
L. D. CLARKE, *Secretary.*

Sworn before me this 31 day of March A. D. 1892.

[SEAL.] MARTIN JUDGE,
*Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

STATE OF NEW YORK, *City of New York, ss:*

On this thirty-first day of March A. D. 1892, before me personally came J. D. Archbold and L. D. Clarke, to *be* personally known to be the individuals described in and who executed the foregoing certificate, and they acknowledged to me that they executed the same.

Witness my hand and seal this 31st day of March A. D. 1892.

[SEAL.] MARTIN JUDGE,
*Notary Public, Kings Co.*

Certificate filed in N. Y. Co.

(Endorsed:) Certificate of Increase of Capital Stock Standard Oil Company of New York. Tax for privilege of increase of Capital of this Corporation. $2,500.00. Under Chapter 143, Laws of 1886. Paid to State Treasurer before filing. State of New York, Office of Secretary of State. Filed and Recorded Apr. 9, 1892. Th. E. Benedict, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the original Certificate to Increase the Capital Stock of Standard Oil Company of New York, filed and recorded in this office on the 9th day of April 1892, and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

1728 Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.] JAMES L. WHALEN,
*Deputy Secretary of State.*

Copied by M. E. L. Compared by A. H. & O.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Inc. (36.)

No. 37.

UNITED STATES OF AMERICA, *State of New York:*

By John S. Whalen, Secretary of State and Custodian of the Great Seal Thereof.

It is hereby certified, That James L. Whalen was, on the day of the date of the annexed Certificate and Attest-ion, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attest-ion and Certificate and to perform the duties belonging to the Secretary of State in making such Attest-ion and Certificate, in like manner as said Secretary of State; that the said Certificate and Attest-ion are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attest-ion is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State, is in his own proper handwriting and is genuine; and that full faith and credit, may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the Certified Copy of Certificate of Reduction of Number of Directors so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

In testimony whereof, The Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the sixth day of April, in the year of our Lord one thousand nine hundred and seven.

1729 [SEAL.] JOHN S. WHALEN,
*Secretary of State.*

We, William Rockefeller, Charles Pratt, John D. Archbold and W. H. Tilford, constituting a morjority of the Trustees of the Standard Oil Company of New York, a corporation duly created and formed under and in pursuance of an Act of the Legislature of the State of New York, entitled "An Act relative to incorporations for manufacturing purposes," in order to reduce the number of trustees of said company from five as at present constituted, to three, in the manner provided by Chapter 316 of the laws of 1878, do hereby certify and declare that the said corporation shall have three trustees in the future management of its business, the number being reduced from five to three as aforesaid.

WM. ROCKEFELLER.
CHAS. PRATT.
JOHN D. ARCHBOLD.
W. H. TILFORD.

STATE OF NEW YORK, *City and County of New York, ss:*

On this 26th day of November, A. D. 1890, personally appeared before me, a Notary Public in and for said City and County, William Rockefeller, Charles Pratt, John D. Archbold and W. H. Tilford directors of the Standard Oil Company of New York, to me person-

ally known and known to me to be the individuals described in and who signed the foregoing certificate, and severally acknowledged the same for the purposes therein mentioned.

Witness my hand and official seal this 26th day of November A. D. 1890.

[SEAL.] S. MARSHALL BUSSELLE,
*Notary Public, New York.*

Filed and Recorded 26th Nov. 1890 2h. 21 M.

STATE OF NEW YORK, *City and County of New York, ss:*

I, P. Joseph Scully, Clerk of the said City and County, and
1730 Clerk of the Supreme Court of said State for said County, Do Certify That I have compared the preceding with the original certificate to reduce number of the directors of the Standard Oil Co. of New York.

Filed and Recorded Nov. 26th, 1890 2h. 21 M. on file in my office, and that the same is a correct transcript therefrom and the whole of such original.

In witness whereof, I have hereunto subscribed my name, and affixed my official seal, this 28th of November 1890.

[SEAL.] P. JOSEPH SCULLY, *Clerk.*

(Endorsed:) Certificate to Reduce number of the directors of The Standard Oil Co. of New York. State of New York. Office of Secretary of State. Filed and Recorded Dec. 5, 1890. Th. E. Benedict, Deputy Secretary of State.

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the Certified Copy of Certificate to reduce the number of Directors of Standard Oil Company of New York, filed and recorded in this office on the 5th day of December, 1890, and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of April, one thousand nine hundred and seven.

[SEAL.] JAMES L. WHALEN,
*Deputy Secretary of State.*

(M. H. O. A. H. & O.)

Endorsed: No. 24551. The State of Texas *vs.* The Waters Pierce Oil Co. Filed May 31, 1907. D. J. Pickle, Clerk. S. O. of N. Y. Amend. (37.)

1731

## No. 14.

*Amendment to Charter.*

The Atlantic Refining Company.

To His Excellency, Robert E. Pattison, Governor of Pennsylvania.

SIR: In compliance with the authority and requirements of an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "A supplement to an act entitled 'An Act to provide for the incorporation and regulation of certain corporations.' approved April 29, one thousand eight hundred and seventy-four, providing for the improvement, amendment and alteration of the charters of corporations of the second class and authorizing the incorporation of traction motor companies," approved June 13, 1883, and known as the Corporation Amendment Act of 1883, The Atlantic Refining Company hereby certifies under its corporate seal that it is a corporation organized originally under the Act of Assembly entitled "An Act relating to corporations for mechanical, mining and quarrying purposes," approved July 18 1863; That it subsequently, to-wit, on the eighth day of October, A. D. 1889, by certificate filed in the office of the Secretary of the Commonwealth at Harrisburg, accepted the Constitution of 1874 and the General Corporation Act of 1874 and its supplements, as by reference to the records of the office of the Secretary of the Commonwealth will more fully appear; that said corporation hereby applies for an improvement, amendment and alteration of its charter by adding thereto the following provision, to-wit:

The Directors may authorize the lease or sale and conveyance by deed under the seal of the corporation of any real estate of said company or interests therein which in their opinion is at the time of such lease or sale not necessary for the carrying on of the business of the company.

In Witness Whereof the said corporation hereunto affixes its corporate seal attested by the signature of its President and Secretary this tenth day of June, A. D. 1893.

JAS. McGEE, *President.*

Attest:
[SEAL.] C. E. BUSHNELL, *Sec'y.*

1732 COMMONWEALTH OF PENNSYLVANIA,
*City and County of Philadelphia, ss:*

Be it remembered that on this 10" day of June, A. D. 1893, personally appeared before me, the Recorder of Deeds in and for said City and County, James McGee, President, and Charles E. Bushnell, Secretary of the Atlantic Refining Company, a corporation of said Commonwealth, having its principal office in the City of Philadelphia, and acknowledged that the foregoing certificate was and is the act and deed of said Atlantic Refining Company, and being by me respectively sworn the said deponents say that the

seal affixed thereto is the corporate seal of said company, that said James McGee is the President and Charles E. Bushnell is the Secretary of said Company, that their signatures as said officers are in their handwriting respectively, and that said seal and signatures were affixed to said certificate by order of the Board of Directors of said Company.

JAS. McGEE.
C. E. BUSHNELL.

Acknowledged sworn and subscribed before me this tenth day of June, A. D. 1893.

[SEAL.] JOS. K. FLETCHER,
*Deputy Recorder.*

EXECUTIVE CHAMBER.
HARRISBURG, *June 24th*, 1893.

Hon. William F. Harrity, Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and that the improvements, amendments or alterations therein asked for will be lawfully and beneficial and not injurious to the community, and are in accord with the purposes of the charter I hereby approve the same, and direct that Letters Patent issue in the usual form according to law.

ROB'T E. PATTISON, *Governor.*

SECRETARY'S OFFICE, *Pennsylvania, ss:*

Enrolled in Charter Book No. 36, page 559.

1733 Witness my hand and seal of office, at Harrisburg, this twenty-fourth day of June, A. D. 1893.

[SEAL.] A. L. TILDEN,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I do hereby certify, That the foregoing and annexed is a full, true and correct copy of an amendment to the charter of the Atlantic Refining Company, as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BEITLER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do

Hereby Certify, That the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioner, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.]

ROBERT McAFEE,
*Secretary of the Commonwealth.*

1734 Endorsed: Filed May 31, 1907. D. J. Pickle, Clerk. Atl. Ref. Co. (14).

No. 15.

(*Amendment.*)

Atlantic Refining Company.

Know all men by these presents, That the Atlantic Refining Company, a corporation of the State of Pennsylvania, being desirous of amending its charter in accordance with the provisions of the Corporation Amendment Act, approved the 13th day of June, 1883, and having obtained the authority of its stockholders to make such amendment, by virtue of a resolution of said stockholders adopted at a meeting held in Philadelphia on the twenty-first day of October, A. D. 1889, does hereby certify, That the charter of said corporation shall be and hereby is amended by striking out from its present Articles of Association or charter all of the second paragraph thereof in which is stated the purposes for which said corporation is established and inserting in lieu thereof the following:

The purposes for which this corporation is established is the manufacture of illuminating and lubricating oils and all other products of petroleum the manufacture of packages for holding the same and all the business necessarily incident thereto.

In witness whereof, The Atlantic Refining Company does hereto affix its corporate seal attested by the signature of its proper officers this thirteenth day of October, A. D. 1889.

WILLIAM G. WARDEN, *Pres't.*

[SEAL.] C. E. BUSHNELL, *Sec'y.*

COMMONWEALTH OF PENNSYLVANIA, *Philadelphia County, ss:*

On this thirtieth day of October, A. D. 1899, before me the Recorder of Deeds in and for said County, personally appeared

William G. Warden, President, and Charles E. Bushnell,
1735 Secretary of the Atlantic Refining Company, who being by me duly sworn say that they are respectively the President and Secretary of said Company, that they know the corporate seal of said company, that the seal affixed to the foregoing certificate is such corporate seal, that it was affixed by order of the Board of Directors of said Company, and that they respectively signed their names thereto as President and Secretary by like order.

W. G. WARDEN, *Pres't.* [SEAL.]
C. E. BUSHNELL, *Sec'y.* [SEAL.]

Witness my hand and seal this day and year aforesaid.

[SEAL.] GEO. G. PIERIE, *Recorder.*

EXECUTIVE CHAMBER,
HARRISBURG, *November* 14, 1889.

Hon. Charles W. Stone, Secretary of the Commonwealth:

Having examined the within application and found it to be in proper form, and that the improvements, amendments or alterations therein asked for will be lawful and beneficial, and not injurious to the community, and are in accord with purposes of the charter, I hereby approve the same, direct that Letters Patent issue in the usual form according to law.

JAMES A. BEAVER, *Governor.*

SECRETARY'S OFFICE.

PENNSYLVANIA, *ss:*

Enrolled in Charter Book No. 24, page 256.

Witness my hand and seal of office, at Harrisburg, this fourteenth day of November A. D. 1889.

[SEAL.] CHARLES W. STONE,
*Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I do hereby certify That the foregoing and annexed is a full true and correct copy of an amendment to the charter of the Atlantic Refining Company, as the same appears of record in this office.

1736 In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BEITLER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed the day and year above written.

[SEAL.]

ROBERT McAFEE,
*Secretary of the Commonwealth.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atl. Ref. Co. (15).

No. 16.

Atlantic Refining Company.

*President's Return on Increase of Cap. Stock.*

To the Honorable Wm. F. Harrity, Secretary of the Commonwealth of Pennsylvania:

This is to certify that by virtue of the consent of the
1737 stockholders of the Atlantic Refining Company, authorizing an increase in the capital stock thereof from four hundred thousand dollars to five million dollars, given at an election duly held for that purpose on the 18th day of May A. D. 1892, the capital stock of said company has been increased from $400,000 to $5,000,000, and the stock representing such increase has been issued.

Said additional stock was issued for the purchase of real and personal property heretofore belonging to the Standard Oil Company of Pittsburgh, The Eclipse Lubricating Oil Company, Limited, The Imperial Refining Company, Limited, The Acme Oil Company and The Electric Light Oil Company, said property being of the cash value of $4,600,000.

ATLANTIC REFINING CO.,
By JAS. McGEE, *President.*

STATE OF NEW YORK, *City and County of New York, ss:*

James McGee being duly sworn according to law deposes and says that he is President of the Atlantic Refining Company, and that the facts set forth in the foregoing certificate are true.

JAMES McGEE.

Sworn and subscribed before me, this 11th day of June A. D. 1892.

[SEAL.] S. MARSHALL BUSSELLE,
*Notary Public, N. Y. C.*

Filed in the office of the Secretary of the Commonwealth on the 13th day of June, A. D. 1892.

A. L. TILDEN,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, That the foregoing and annexed is a full, true and correct copy of the President's Retu*n*r on Increase of Capital Stock of the Atlantic Refining Company, as the same appears of record and remains on file in this office.

1738 In Testimony Whereof I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BEITLER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said office, who authenticates the same.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.] ROBERT McAFEE,
*Secretary of the Commonwealth.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atl. Ref. Co. (16).

No. 18.

*Election Return on Increase Cap. Stock.*

Atlantic Refining Company.

OFFICE OF THE ATLANTIC REFINING COMPANY,
PHILADELPHIA, PA., *May 18th*, 1892.

I, C. E. Bushnell, Secretary of the Atlantic Refining Company do hereby certify that the following is a correct copy of a
1739 resolution adopted by the Board of Directors of said Company at a special meeting held for the purpose of considering the same at the office of the company in the City of Philadelphia, State of Pennsylvania, on the 17th day of March, A. D. 1892.

Resolved That a special meeting of the shareholders of the Atlantic Refining Company be called to meet at the office of the Company in Philadelphia, at twelve o'clock noon May 18th, 1892, to vote upon a proposition to increase the capital stock of the company to five million dollars, and that notice of said meeting be published in accordance with law.

Attest: C. E. BUSHNELL, *Secretary.*

*Notice to Stockholders.*

A special meeting of the stockholders of the Atlantic Refining Company will be held at the office of the Company S. E. Cor. Fourth and Chestnut Streets, Philadelphia, on Wednesday, May 18th, 1892, at twelve o'clock noon for the purpose of voting upon a proposition to increase the capital stock of the company to five million dollars.

C. E. BUSHNELL, *Secretary.*

*Proof of Publication of Notice.*

STATE OF PENNSYLVANIA, *City and County of Philadelphia, ss:*

C. W. McLearn, being duly sworn doth depose and say that he is a clerk; that a notice of which the one hereto attached is a copy was published in the Public Ledger a newspapers of general circulation printed and published in the City of Philadelphia, State of Pennsylvania, on the 18th and 25th days of March, 1st, 8th, 15th, 22nd and 29th days of April, and on the 6th and 13th days of May A. D. 1892.

C. W. McLEARN.

1740 Sworn and subscribed before me this 18th day of May, A. D. 1892.

[SEAL.]

OTIS EGAN,
*Notary Public.*

STATE OF PENNSYLVANIA, *City and County of Philadelphia, ss:*

Personally appeared before me, a Notary Public in and for the City and County aforesaid E. P. Cooper, George H. Perkins, and Wm. D. Cotton, judges duly appointed by the Board of Directors of the Atlantic Refining Company to conduct an election of said company to be held at the office of the company in the City of Philadelphia, State of Pennsylvania, at twelve o'clock noon May 18th, A. D. 1892, to determine whether the stockholders of said company will assent to the increase of the capital stock thereof from four hundred thousand dollars to five million dollars, who being duly affirmed do depose and say that they will well and truly, according to law, conduct said election and true return make of the same.

E. P. COOPER.
GEORGE H. PERKINS.
WM. D. COTTON.

Affirmed and subscribed before me, this 18th day of May, A. D. 1892.

[SEAL.] HENRY S. PARMALEE,
*Notary Public.*

*Return of the Judges.*

We, the undersigned Judges appointed by the Directors of the Atlantic Refining Company to conduct an election by the stockholders of said company for or against the increase of the capital stock thereof from four hundred thousand dollars to five million dollars do hereby certify that after being duly sworn to well and truly and according to law conduct such election to the best of our ability, we held said election at the office of the company in the City of Philadelphia, at twelve o'clock noon on the 18th day of May,
1741 A. D. 1892, the time and place fixed for holding the same by the resolution of the Board of Directors of which written sixty days' previous notice by publication was duly given, and in due form and manner we received the votes of the stockholders of the said company in favor of or against said increase.

And at said election there was voted in favor of said increase four thousand shares and against said increase no shares thereby evincing the consent to the said increase of capital stock of the persons or bodies corporate holding the larger amount in value of the capital stock of the said Atlantic Refining Company.

In witness whereof, We hereunto set our hands this day of May 18th, A. D. 1892.

E. P. COOPER.
GEORGE H. PERKINS.
WM. D. COTTON.

Filed in the office of the Secretary of the Commonwealth, on the 25th day of May, A. D. 1892.

A. L. TILDEN,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, That the foregoing and annexed is a full, true and correct copy of an Election Return on Increase of Capital stock of the Atlantic Refining Company, as the same appears of record and remains on file in this office.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.]

LEWIS E. BEITLER,
*Deputy Secretary of the Commonwealth.*

1742 OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his office acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed the day and year above written.

[SEAL.]

ROBERT McAFEE,
*Secretary of the Commonwealth.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atlantic Ref. Co. (18).

No. 19.

PENNSYLVANIA, *ss:*

Rob't E. Pattison.

[SEAL.] In the name and by the authority of the Commonwealth of Pennsylvania, Rob't E. Pattison, Governor of the said Commonwealth to all to whom these presents shall come, sends Greeting:

Whereas, In and by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the thirteenth day of June, Anno Domini one thousan- eight hundred and eighty-three, entitled,

"A Supplement to an act entitled 'An Act to provide for the
1743 incorporation and regulation of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, providing for the improvement, amendment and alteration of the charters of corporations of the second class," &c., the Governor of this Commonwealth is authorized and required to issue letters patent to all companies now incorporated, or which may hereafter be incorporated, under the provisions of the said act of twenty-ninth of April, 1874, or its supplements, for any of the purposes named in the second class of section two of said act, or embraced in that class by any of the supplements thereto, or to any corporation of the second class which has heretofore or may hereafter accept the provisions of said act, and the several supplements thereto, and the Constitution of this Commonwealth, in the manner provided by law, who shall desire to improve, amend or alter the article and conditions of the charter or instrument upon which said corporation is formed and established, in the manner and at the time therein specified.

And whereas, The Atlantic Refining Company, a corporation of the second class duly incorporated under the laws of this Commonwealth, being desirous of availing itself of the privileges of said act, has made application to me by certificate, under its corporate seal, acknowledged by the President and Secretary thereof, setting forth the character and objects of the proposed improvement, amendment or alteration of its charter or instrument upon which said corporation is formed or established, in the following words, viz:

The Directors may authorize the lease or sale and conveyance by deed under the seal of the corporation of any real estate of said company or interest therein which in their opinion is at the time of such lease or sale not necessary for the carrying on of the business of the company, and has in all respects fully complied with the requirements of the first above recited act of Assembly in
relation thereto, and which certificate has been duly recorded
1744 in the office of the Secretary of the Commonwealth.

Now know ye, That in pursuance of the power and authority given to me by law, I, Robert E. Pattison, Governor of the said Commonwealth, do by these presents, which I have caused to be made Patent, and sealed with the Great Seal of the State, extend the rights and powers of the said corporation in accordance with the terms and provisions of said amendment, alteration or improvement, with full power and authority to use and enjoy all the rights and privileges of the said corporation under its original charter, as amended, altered or improved as aforesaid, by the name, style and title of The Atlantic Refining Company and by the said name, the said corporation shall have successession for the period designated in said original charter, subject to all the provisions and restrictions of the above recited acts of the General Assembly, and all other laws of this Commonwealth relating thereto.

Given under my hand and the Great Seal of the State, at Harrisburg, this twenty-fourth day of June in the year of our Lord

one thousand eight hundred and ninety-three and of the Commonwealth the one hundred and seventeenth.

[GREAT SEAL.]

By the Governor:

WM. F. HARRITY,
*Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I do hereby certify, that the foregoing and annexed is a full, true and correct copy of Letters Patent issued to The Atlantic Refining Company, as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.]

LEWIS E. BEITLER,
*Deputy Secretary of the Commonwealth.*

1745 OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, That the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.]

ROBERT McAFEE,
*Secretary of the Commonwealth.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atlantic Ref. Co. (19).

No. 23.

Atlantic Refining Company.

*Acceptance.*

Know all men by these presents, That the Atlantic Refining Company a corporation organized under the act of Assembly of the Commonwealth of Pennsylvania, entitled "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July 18th, 1863, desiring to be entitled to all of the privileges, immunities, franchises and powers conferred by an act of Assembly of the State of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain cor-
1746 porations," approved the 29th day of April A. D. 1874, and its various supplements, does hereby in accordance with the provisions of section 26 of said act, as amended by section 6 of the act of April 17, 1876, accept the provisions of the Constitution of Pennsylvania, adopted A. D. 1873, and also the provisions of said act of 29th April, 1874, and its supplements.

Be it further known, That at a meeting of stockholders of said Atlantic Refining Company called for the purpose, among others of approving or disapproving the above acceptance of the provisions of the Constitution and the act aforesaid, held at Philadelphia on the twenty-fifth day of October, A. D. 1889, the foregoing acceptance was by the unanimous vote of said stockholders approved and authorized.

In witness whereof the said Atlantic Refining Company does hereunto affix its seal attested by the signature of its proper officers this twenty-eighth day of October, A. D. 1889.

[SEAL.] W. G. WARDEN, *Pres't.*

C. E. BUSHNELL, *Sec't'y.*

Filed in the office of the Secretary of the Commonwealth, on the 30th day of October, A. D. 1889.

J. H. LONGENECKER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I do hereby certify, That the foregoing and annexed is a full, true and correct copy of the acceptance of the Constitution of Pennsylvania, adopted A. D. 1873, and also of the provisions of the Act of April 29, 1874, and its supplements, by the Atlantic Refining Company, as the same appears of record and remains on file in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and
1747 year above written.

[SEAL.] LEWIS E. BEITLER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.] ROBERT McAFEE,
*Secretary of the Commonwealth.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atl. Ref. Co. (23).

No. 26.

PENNSYLVANIA, *ss:*

[SEAL.] James A. Beaver.

In the name and by the Authority of the Commonwealth, James A. Beaver, Governor of the said Commonwealth, to all to whom these presents shall come, sends Greeting:

Whereas, In and by an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for
1748 the incorporation and regulation of certain corporation-," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, it is provided that corporations for any of the purposes named, and covered by the provisions of the said act, heretofore created by any special act or in existence under the provisions of any general law of this Commonwealth, upon accepting the provisions of the Constitution and of the said Act, by writing, under the seal of said corporation, duly affixed, in the office of the Secretary of the Commonwealth, shall be entitled to all the privileges, immunities, franchises and powers conferred by the

said act upon corporations to be created under the same, and upon such acceptance and approval thereof by the Governor, he shall issue Letters Patent to said corporation, reciting the same.

And whereas, On the thirtieth day of October, Anno Domini one thousand eight hundred and eighty-nine, the Atlantic Refining Company, a corporation created under the provisions of an act, entitled "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July 18th, 1863, has duly filed in the office of the Secretary of the Commonwealth, a writing under the seal of said corporation, accepting the provisions of the Constitution of this Commonwealth, and the provisions of the act above mentioned, which acceptance was on the thirtieth day of October, Anno Domini one thousand eight hundred and eighty-nine duly approved by me.

Now know ye, That in pursuance of the power and authority to be given by law, I, James A. Beaver, Governor of the said Commonwealth, do by these presents, which I have caused to be made Patent and Sealed with the Great Seal of the State, declare the said corporation to be a body politic and corporate in deed and in law, by the name, style and title of the Atlantic Refining Company, and entitled to all the privileges, immunities, franchises and powers conferrd by the act approved the twenty-ninth day of April,
1749 Anno Domini one thousand eight hundred and seventy-four, entitled "An Act to provide for the incorporation and regulation of certain corporations," upon corporations to be created under the same.

Given under my hand and the Great Seal of the State, at Harrisburg, this thirtieth day of October in the year of our Lord one thousand eight hundred and eighty-nine and of the Commonwealth the one hundred and fourteenth.

By the Governor.

J. H. LONGENECKER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, that the foregoing and annexed is a full, true and correct copy of Letters Patent issued to the Atlantic Refining Company, as the same appears of record in this office.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.]

LEWIS E. BEITLER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper office-, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly;

that the records and proofs hereinbefore certified and exem-
1750 plified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.] ROBERT McAFEE,
*Secretary of the Commonwealth.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Atlantic Ref. Co. (26.)

No. 29.

PENNSYLVANIA, *ss:*

Jno. W. Geary.

[SEAL.] In the name and by the authority of the Commonwealth of Pennsylvania, John W. Geary, Governor of said Commonwealth, to all to whom these presents shall come, sends Greeting:

Whereas In and by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and sixty-four, entitled "A Supplement to an act relating to Corporations for mechanical, manufacturing, mining and quarrying purposes, approved the eighteenth day of July, one thousand eight hundred and sixty-three," the Governor of this Commonwealth is authorized and required to issue letters patent to all companies formed under the provisions of an act, entitled "An Act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved the eighteenth day of July, Anno Domini one thousand eight hundred and sixty-three, in the manner and at the time therein specified.

And whereas, it appears by writing duly certified to me by the Auditor General of this Commonwealth, that the proper certificate

provided for in the thirty-first section of the above recited
1751 act of the General Assembly, approved July eighteenth, one thousand eight hundred and sixty-three, has been filed with said Auditor General by the "Atlantic Refining Company."

And whereas, The Recorder of Deeds of the County of Philadelphia has certified that the requisite certificate of the formation of said company has been filed in his office.

Know ye, That in pursuance of the power and authority to me given by law, I, John W. Geary, Governor of the said Commonwealth, Do By These Presents, which I have caused to be made Patent, and sealed with the Great Seal of the State, create and erect the said Company into one body politic and corporate, in deed and in law, by the name, style and title of the "Atlantic Refining Company."

And by the said name, the said company shall have perpetual succession, and all the privileges and franchises incident to a corporation. And the said company so incorporated, their successors and assigns, are generally to be invested with all the rights, powers and privileges, with full force and effect, and be subject to all the duties, requisitions and restrictions specified and enjoined in and by the said act of the General Assembly, and all other laws of this Commonwealth.

Given under my hand and the Great Seal of the State, at Harrisburg this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy, and of the Commonwealth, the ninety-fourth.

By the Governor:

J. JORDAN,
*Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, That the foregoing and annexed is a full, true and correct copy of Letters Patent issued to the Atlantic Refining Company, as the same appears of record in this office.

1752 In Testimony Where-, I have hereunto set my hand and caused the seal of the Secretary's office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BIETLER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, Do Hereby Certify, that the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records

and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.]

ROBERT McAFEE,
*Secretary of the Commonwealth.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. Charter. Atlantic Ref. Co. (29.)

1753 No. 30.

PENNSYLVANIA, *ss:*

James A. Beaver.

[SEAL.]

In the Name and by the Authority of the Commonwealth of Pennsylvania, James A. Weaver, Governor of the Said Commonwealth, to all to whom these presents shall come, sends Greeting:

Whereas, In and by an act of the General Assembly of the Commonwealth of Pennsylvania, approved the thirteenth day of June, Anno Domini one thousand eight hundred and eighty-three, entitled "A Supplement to an act entitled 'An Act to provide for the incorporation and regulation of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, providing for the improvement, amendment and alteration of the charters of corporations of the second class, &c., the Governor of this Commonwealth is authorized and required to issue Letters Patent to all companies now incorporated, or which may hereafter be incorporated, under the provisions of the said act of twenty-ninth of April, 1874, or its supplements, for any of the purposes named in the second class of section two of said act, or embraced in that class by any of the supplements thereto, or to any corporation of the second class which has heretofore or may hereafter accept the provisions of said act, and the several supplements thereto, and the Constitution of this Commonwealth, in the manner provided by law, who shall desire to improve, amend or alter the articles and conditions of the charter or instrument upon which said corporation is formed and established, in the manner and at the time therein specified.

And whereas, the Atlantic Refining Company a corporation of the second class duly incorporated under the laws of this Commonwealth, being desirous of availing itself of the privileges of said act,

has made application to me by certificate, under its corporate
1754 seal, acknowledged by the President and Secretary thereof,

setting forth the character and objects of the proposed improvement, amendment or alteration of its charter or instrument upon which said corporation is formed or established, in the following words, viz:

That the charter of said corporation shall be and hereby is amended by striking out from the present Articles of Association or charter all of the second paragraph thereof in which is stated the purposes for which said corporation is established and inserting in lieu thereof the following: The purposes for which this corporation is established is the manufacture of illuminating and lubricating oils and all other products of petroleum, the manufacture of packages for holding the same and all the business necessarily incident thereto, and has in all respects fully complied with the requirements of the first above recited act of Assembly in relation thereto, and which certificate has been duly recorded in the office of the Secretary of the Commonwealth.

Now Know Ye, That in pursuance of the power and authority given to me by law, I, James A. Beaver, Governor of the said Commonwealth, Do By These Presents, which I have caused to be made Patent, and sealed with the Great Seal of the State, extend the rights and powers of the said corporation in accordance with the terms and provisions of said amendment, alteration or improvement, with full power and authority to use and enjoy all the rights and privileges of the said corporation under its original charter, as amended, altered or improved as aforesaid, by the name, style and title of Atlantic Refining Company, and by the said name, the said corporation shall have succession for the period designated in said original charter, subject to all the provisions and restrictions of the above recited acts of the General Assembly, and all other laws of this Commonwealth relating thereto.

1755 Given under my hand and the Great Seal of the State, at Harrisburg, this fourteenth day of November, in the year of our Lord, one thousand eight hundred and eighty-nine and of the Commonwealth the one hundred and fourteenth.

[GREAT SEAL.]

By the Governor.

CHARLES W. STONE,
*Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

I Do Hereby Certify, That the foregoing and annexed is a full, true and correct copy of Letters Patent issued to the Atlantic Refining Company, as the same appears of record in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

[SEAL.]

LEWIS E. BEITLER,
*Deputy Secretary of the Commonwealth.*

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
*Pennsylvania, ss:*

HARRISBURG, *May* 6, 1907.

1756 I, Robert McAfee, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do hereby certify, That the attest-ion or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was at the time of subscribing the same, Deputy Secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth, by said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed, the day and year above written.

[SEAL.]

ROBERT McAFEE,
*Secretary of the Commonwealth.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.
(30) Atlantic Ref. Co.

1757 No. 38.

In District Court, Travis County, Texas, June 15th, 1897.

12589.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Now on this the 15th day of June, A. D. 1897, came on to be heard this cause and both parties having appeared and announced ready for trial, there was then and there presented to the court the general and special exceptions of defendant to plaintiff's first amended original petition and the Court after hearing argument of counsel, considers that said exceptions are not well taken, and,

It is therefore ordered that said general exceptions and all of said special exceptions be and the same are hereby overruled to which the defendant excepts; and then came on the cause to be further heard and came a jury of good and lawful men, to-wit: W. T. McGregor and eleven others, who being duly empanelled and sworn, and who after hearing the pleadings read and after hearing the evidence and argument of counsel and receiving the charge of the Court retired to consider of their verdict and returned into Court the following verdict:

"AUSTIN, TEXAS, *June 15th*, 1897.

"We the jury find for the plaintiff the State of Texas, against the defendant Waters Pierce Oil Company and in favor of the individual defendants Hathaway, Austin, Grice, Keenan and Fries.

W. T. McGREGOR, *Foreman.*"

It is therefore ordered, adjudged, and decreed by the Court, that the defendant, the Waters Pierce Oil Company, be and is hereby denied the right and prohibited from doing any business within this State and that its permit to do business within this State heretofore issued on July 6th, 1889, by the Secretary of State of this State be and the same is hereby cancelled and held for naught and that said defendant, the Waters Pierce Oil Company, its managers, superintendents, agents, servants and attorneys be and are hereby perpetually enjoined and restrained from doing business within this State.

1758 Nothing herein shall be construed to in any way effect or apply to or prohibit said defendant's right to engage in interstate commerce within this State;

It is further ordered that the plaintiff, the State of Texas, recover of the defendant, the Waters Pierce Oil Company all costs in this behalf incurred for which let execution issue.

It is further ordered that the Clerk of this Court shall issue all necessary papers to enforce this judgment.

It is also ordered that the defendants, E. T. Hathaway, William Grice, F. A. Austin, J. W. Keenan and Lewis Fries go hence without day and that plaintiff take nothing as to said defendants and that they recover of plaintiff their costs in this behalf expended.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of the Judgment in cause No. 12,589, The State of Texas *vs.* Waters Pierce Oil Company, as same appears of record in Minute Book 5, page 144, *et seq.*, of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the 20th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
*Clerk District Court, Travis County, Texas,*
By J. A. BELGER, *Deputy.*

Endorsed: 38. Judgment *vs.* Old Co.

1759 No. 25.

*Affidavit of Dissolution.*

Andrew M. Finley, President of the Waters Pierce Oil Company, which was incorporated on the 7th day of May, 1878, being duly sworn, upon his oath states that said corporation was on the 28th

day of May, 1900, by a unanimous vote of its stockholders, duly dissolved and is no longer in existence.

ANDREW M. FINLEY.

Subscribed and sworn to before me, a Notary Public within and for the City of St. Louis Mo., this 28th day of May, 1900.

Witness my hand and notarial seal the day and date last above written. My term expires the 5th day of August, 1902.

[SEAL.] C. W. BLOCK,
*Notary Public.*

Filed May 29, 1900.
A. A. LESUEUR,
*Secretary of State.*

Endorsed: Filed in the office of the Secretary of State, this 31 day of May, 1900. D. H. Hardy, Secretary of State.

STATE OF MISSOURI, *ss:*

I, Alexander A. Lesueur, Secretary of State of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of the Affidavit of Dissolution of Waters Pierce Oil Company, filed May 29th 1900, as the same appears on file in this office.

In testimony whereof, I hereunto set my hand and affix the Great Seal, of the State of Missouri. Done at office in the City of Jefferson, this 29th day of May, 1900.

[SEAL.] A. A. LESUEUR,
*Secretary of State,*
By T. W. PARK,
*Chief Clerk.*

1760 THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, L. T. Dashiell, Secretary of State of the State of Texas, do hereby certify that the attached and foregoing is a true and correct copy of the certified copy of the Affidavit of dissolution of the Waters Pierce Oil Company, made by Andrew M. Finley, President of said Company, in the City of St. Louis, Missouri, on the 28th day of May, 1900, and duly certified by Hon. A. A. Lesueur, Secretary of State of the State of Missouri, a copy of whose certificate is hereto attached and certified to by me, all of which said papers are now on file in this Department.

In testimony whereof, I have hereto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas, this the 21st of May A. D., 1907.

[SEAL.] L. T. DASHIELL,
*Secretary of State.*

Endorsed: No. 24551. The state of Texas *vs.* Waters Pierce Oil Company. Filed May 22, 1907 D. J. Pickle, Clerk. By J. A. Belger Deputy. 25. Aff. of Dissolution.

No. 22.

Know all men by these presents, that we, Henry C. Pierce, Andrew M. Finlay, John P. Gruet, Charles M. Adams and John D. Johnson, all of the City of St. Louis and State of Missouri, do hereby associate ourselves together, for the purpose of forming a corporation under the provisions of the law of the State of Missouri and more particularly under the provisions of Article IX Chapter 12, Revised Statutes of the State of Missouri of the year 1899;
1761 and for that purpose declare and set out the following:

First. The name of this corporation shall be the Waters Pierce Oil Company.

Second. This corporation shall be located at the City of St. Louis in the state of Missouri.

Third. The capital stock of this corporation is Four Hundred Thousand Dollars ($400,000) divided into Four Thousand shares of the par value of One Hundred Dollars ($100) each; and we hereby certify that the same has been *bona fide* subscribed and fully paid up in lawful money of the United States and is in the custody of the persons hereinafter named as the first Board of Directors.

Fourth. The names and places of residence of the several shareholders and the number of shares subscribed by each are as follows:

| Name. | Place of Residence. | No. of Shares. |
|---|---|---|
| Henry C. Pierce | St. Louis, Mo. | 3996 |
| Andrew M. Finlay | St. Louis, Mo. | 1 |
| John P. Gruet | St. Louis, Mo. | 1 |
| Charles M. Adams | St. Louis, Mo. | 1 |
| Jno. D. Johnson | St. Louis, Mo. | 1 |

Fifth. The business of this corporation shall be managed by a Board of Directors composed of five directors, and the following named shareholders shall constitute said board of directors for the first year, to-wit: Henry C. Pierce, Andrew M. Finlay, John P. Gruet, Charles M. Adams and Jno. D. Johnson.

Sixth. This corporation shall continue for the term of fifty years from and after the date of its incorporation.

Seventh. The purpose for which said company is formed are, dealing in naval stores, and dealing in and compounding petroleum and other oils and all the products thereof, and buying and selling the same in the state of Missouri and elsewhere.

1762 In Witness of all which, we have hereunto set our hands and affixed our seals, at the said city of St. Louis, State of Missouri, this the 28th day of May, 1900.

HENRY C. PIERCE. [SEAL.]
ANDREW M. FINLAY. [SEAL.]
JNO. P. GRUET. [SEAL.]
CHARLES M. ADAMS. [SEAL.]
J. D. JOHNSON. [SEAL.]

STATE OF MISSOURI, *City of St. Louis, ss:*

On this 28th day of May, 1900, before me personally appeared Henry C. Pierce, Andrew M. Finlay, John P. Gruet, Charles M. Adams and Jno. D. Johnson, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal at office in the said city of St. Louis the day and year above written. And I certify that my term of office expires on the 5th day of August, 1902.

[Copy of Seal: C. W. Block, Notary Public, City of St. Louis, Mo.]

C. W. BLOCK,
*Notary Public, City of St. Louis, Mo.*

Filed and recorded May 28th, 1900 at 3:54 P. M.
WM. H. HAHN, *Recorder.*

STATE OF MISSOURI, *City of St. Louis, ss:*

I, the undersigned Recorder of Deeds for said City and State, do hereby certify the foregoing to be a true copy of the articles of incorporation of the Waters Pierce Oil Company, together with the acknowledgment and date of filing and recording thereof as the same remains of record in my office in Book of Corporations, No. 20, page 104.

1763 In Witness whereof I have hereto set my hand and official seal this 28th day of May A. D. 1900.

[SEAL.] WM. H. HAHN, *Recorder.*

Filed and Certificate of Incorporation issued May 29, 1900.
A. A. LESUEUR,
*Secretary of State.*

THE STATE OF MISSOURI:

No. 11709.

*Certificate of Incorporation.*

Whereas, an association organized under the name of Waters Pierce Oil Company has filed in the office of the Secretary of State articles of association, or agreement in writing, as provided by law, and has in all respects complied with the requirements of law governing the formation of private corporations for manufacturing and Business purposes,

Now, therefore, I, Alexander A. Lesueur, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said association has, on the date hereof, become a body corporate duly organized, under the name of Waters Pierce Oil Company and is entitled to all the rights and privileges granted to

manufacturing and business corporations under the laws of this state for a term of fifty years; and that the amount of the capital stock of said corporation is Four Hundred Thousand Dollars.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri, done at the city of Jefferson, this 29th day of May, A. D. 1900.

[SEAL.]

A. A. LESUEUR,
*Secretary of State,*
By T. W. PARK,
*Chief Clerk.*

1764 STATE OF MISSOURI, *ss:*

I, Alexander A. LeSueur, Secretary of State of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of the articles of association of the Waters Pierce Oil Company, filed May 29th, 1900, and of the certificate of incorporation issued to same company on the date aforesaid, as the same appears on file in this office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at office in the City of Jefferson, this 29th day of May, 1900.

[SEAL.]

A. A. LESUEUR,
*Secretary of State,*
By T. W. PARK,
*Chief Clerk.*

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, L. T. Dashiell, Secretary of State of the State of Texas, do hereby certify that the attached and foregoing is a true and correct copy of the certified copy of the articles of incorporation of the Waters Pierce Oil Company, a foreign corporation duly organized under the laws of the State of Missouri, filed in this Department, in accordance with the requirements of the laws of the State of Texas, on the 31st day of May, 1900, which said copy of the articles of incorporation of said company is duly certified by the Secretary of State of the State of Missouri, a certified copy of whose certificate is also hereto attached, all of which said papers are now on file in this Department.

In testimony whereof, I have hereto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas, this the 21st day of May, A. D. 1907.

[SEAL.]

L. T. DASHIELL,
*Secretary of State.*

1765 Endorsed: No. 24551. The State of Texas *vs.* Waters Pierce Oil Company. Filed May 22, 1907. D. J. Pickle, Clerk. By J. A. Belger Deputy. Charter W. P. O. Co. 22.

No. 1246. No. 24.

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

This is to Certify, that Waters Pierce Oil Company incorporated under the laws of the State of Missouri with an authorized Capital Stock of $400,000.00 has this day filed in this Department a certified copy of its Articles of Incorporation, in accordance with the requirements of the laws of the State of Texas; and I further certify that said corporation having this day paid the full amount of fees and taxes prescribed by the laws of this State, and having complied fully with the law in all respects, is entitled to and is hereby granted permission to do business in the State of Texas to the extent and for the purposes as follows, to-wit: "For the manufacture of petroleum and other oils, naval stores and their products, and the purchase and sale of such goods, wares and merchandise used for such business" for a term of ten years from the date hereof.

Witness my official signature, and the seal of the State of Texas affixed, at the City of Austin, this the Thirty first day of May A. D. 1900.

[SEAL.] (Signed) D. H. HARDY,
*Secretary of State.*

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, L. T. Dashiell, Secretary of State of the State of Texas
1766 do hereby certify that the attached and foregoing is a true and correct copy of a permit to do business in the State of Texas, issued to Waters Pierce Oil Company on the Thirty-First day of May, A. D., 1900.

In testimony whereof I have hereto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas, this the 21st day of May, A. D., 1907.

[SEAL.] L. T. DASHIELL,
*Secretary of State.*

Endorsed: No. 24551. The State of Texas *vs.* Waters Pierce Oil Company. Filed May 22, 1907. D. J. Pickle, Clerk. By J. A. Belger Deputy. 24. Permit.

No. 7.

UNITED STATES OF AMERICA, *ss:*

[Seal U. S. Sup. Court.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, Greeting:

Whereas, lately in the said Court of Civil Appeals, before you, or some of you, in a cause between The Waters Pierce Oil Company,

Appellant and the State of Texas, Appellee No. 1974, wherein the judgment of Said Court of Civil Appeals, entered in said cause on the 9th day of March, A. D. 1898, is in the following words, viz: "This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of the Court that there was no error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the appellee, The State of Texas; E. T. Hathaway, William Grice, F. A. Austin, J. W. Keenan and Lewis Fries do have and recover of and from the appellant, The Waters Pierce Oil Company, principal and its sureties, J. G. Palm, Geo.
1767 Clark and Wm. B. Abaide, all costs in this behalf expended, and this decision be certified below for observance," as by inspection of the transcript of the record of the said Court of Civil Appeals which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and ninety nine, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel; on consideration whereof, It is now here ordered and adjudged by this court that the judgment of the said Court of Civil Appeals in this cause be, and the same is hereby affirmed with costs; and that the said appellee, The State of Texas, recover against the said appellant for its costs herein expended and have execution therefor.

March 19, 1900.

And the same is hereby remanded to you the said Judges of the said Court of Civil Appeals for the Third Judicial District of the State of Texas, in order that such execution and proceedings may be had in the said cause, in conformity with the judgment and decree of this court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of April, in the year of our Lord one thousand, nine hundred.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

*Costs of Appellee.*

| | |
|---|---|
| Clerk | $.... |
| Printing record | $.... |
| Attorney | $.... |
| | $.... |

Paid by App't.

1768 (Endorsed on back:) Supreme Court of the United States, No. 97, October term, 1899. Waters Pierce Oil Co., *vs.* The State of Texas. Mandate. Filed in Court of civil appeals, 3rd Supreme Judicial District, Austin, Texas, Apr. 25 1900. R. H. Connerly, Clerk.

I, R. H. Connerly, Clerk of the Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas do hereby certify that the two foregoing pages contain a true and correct copy of the mandate of the Supreme Court of the United States of America, filed in said Court of Civil Appeals on the 25th day of April A. D. 1900, in the cause in said Court of Civil Appeals entitled—Waters Pierce Oil Company, Appellant *vs.* The State of Texas, appellee, no. 1974. Witness my hand and the seal of said court this the 25th day of January, A. D. 1907.

[SEAL.] R. H. CONNERLY,
*Clerk of the Court of Civil Appeals, Third Supreme Judicial District of the State of Texas.*

Endorsed: No. 24551. State of Texas *vs.* Waters Pierce Oil Company. Filed May 22, 1907. D. J. Pickle, Clerk, By J. A. Belger, Deputy. Mandate. (7)

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

General Price List.

NEW YORK, N. Y., *June* 15, 1904.

Mr. S. Johnson, St. Louis, Mo.

DEAR SIR: I beg to advise that on all orders received after this date the prices to you will be as per the enclosed schedule, f. o. b. the points named. Where reductions are made it is not with
1769 the idea that you will give them away unnecessarily, to the trade, but in order that you may make a little larger margin of profits than has been the case; and also to avoid the necessity of having so many special prices.

Respectfully, R. H. McNALL.

(Received Jun- 18, 1904. Answered ——. E. S. H.) Package No. 11. Lubricating Oil Prices. Plaintiff's Exhibit "Z". Cross examination of A. M. Finlay. F. H. S.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

*General Price List.*

JUNE 14, 1904.

| Decline. | Grades. | Prices in cents per gallon in bulk. | F. O. B. |
|---|---|---|---|
| | Amber Silk Oil | 32 | Cleveland. |
| | **Black Oils:** | | |
| .0025 | Summer | 4 | Whiting. |
| .0025 | 25/30 C. T. | 4½ | " |
| .005 | 15 C. T. | 4½ | " |
| .005 | Zero C. T. | 5½ | " |
| | Boston Coach Oil | 18½ | Cleveland. |
| | **Cylinder Oils:** | | |
| | A. Cold Test | 17 | Cleveland. |
| | B. Cold Test | 15½ | " |
| | Capitol Cylinder | 21 | Whiting. |
| | Light Capitol Cylinder | 22 | Cleveland. |
| | Mineral Capitol Cylinder | 20 | " |
| | Ruby Capitol Cylinder | 25 | " |
| | Ebony Cylinder | 14 | " |
| .055 | FFF Cylinder | 25 | " |
| | Model Cylinder | 18½ | " |
| | Shield Cylinder | 17 | " |
| | 20th Century Cylinder | 30 | " |
| | **Cylinder Stock:** | | |
| | AA Filtered | 17 | Cleveland. |
| | A. Filtered | 13½ | " |
| .015 | Alaska | 15 | " |
| | B. Filtered | 13 | " |
| | C. T. Stock | 18 | " |
| | E. Filtered | 16 | " |
| | H. Filtered | 12½ | " |
| | Dark H. Filtered | 12 | " |
| | Steam Refined (Ohio) | 8 | Whiting. |

Plaintiff's Exhibit "Z," p. 2. F. H. S.

1770 *General Price List*—Page Cont'd.

| | | | |
|---|---|---|---|
| | Steam Refined (Penna.) | 7½ | Franklin. |
| | S. Filtered | 10 | Cleveland. |
| | T. Filtered | 12 | Cleveland. |
| | Emerald Boiler Oil | 12 | Whiting. |
| | **Eldorado Oils:** | | |
| | Engine | 8½ | Whiting. |
| | Castor | 9 | " |

Plaintiff's Exhibit "Z," p. 3. F. H. S.

| | | | |
|---|---|---|---|
| | **Engine Oils:** | | |
| .0125 | Renown | 12½ | Whiting. |
| | Standard Gas | 13½ | " |
| | Westinghouse | 10½ | " |
| | Favorite Sewing Machine Oil | 15 | Whiting. |
| | Glycerinum Petræ | 75 | Cleveland. |
| Decline. | **Harness Oils:** | | |
| .03 | Eureka | 17 | Whiting. |
| | Standard Leather & Harness | 15 | Cleveland. |
| | Harness Oil Stock | 12½ | " |
| .005 | Mineral Seal | 6¾ | Whiting. |
| | Mineral Seal | 6 | Franklin. |
| | **Miners' Oils:** | | |
| | No. 2 300 | 4½ | Franklin. |
| | XXX | 6½ | " |
| | Miners Oil Stock | 6½ | Whiting. |
| | Miners Sunshine | 3 | Cleveland. |
| | **Neutral Oils:** | | |
| | "D" Neutral | 4¾ | Franklin. |
| | "D" Neutral | 4½ | Cleveland. |
| | Dark Neutral | 6 | " |
| | Domestic Neutral | 5 | " |
| | Pittsburg Neutral | 5 | " |
| | Venango | 8 | " |
| .01 | White | 10 | Whiting. |
| .035 | Yellow | 6½ | " |
| | 150 Red | 4¾ | Franklin. |
| | 180 Red | 5¼ | " |
| | 150 Pale | 5 | " |
| | 180 Pale | 5¾ | " |
| | Patrolatum Oil | 19½ | Cleveland. |
| | **Paraffine Oils:** | | |
| | Diamond | 6 | Whiting. |
| .01 | Zone | 7¼ | " |
| .055 | Polar Ice Machine | 9 | " |
| | Putty Oil | 19 | " |
| | **Red Oils:** | | |
| .005 | Atlantic Red | 18¼ | Whiting. |
| | No. 2 Red | 7¼ | " |
| .005 | Solar Red | 9¼ | " |

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*General Price List*—Cont'd.

| | | | |
|---|---|---|---|
| Decline. | **Residuum:** | | |
| | Not over 23 | 5 | Lima. |
| | 19/21 | 5¼ | " |
| | 19/21 Parkersburg | 3¾ | Parkersburg. |
| | Ruddy Harvester Oil | 10 | Whiting. |
| | Smiths Ferry Oil | 6¾ | Pittsburg. |

Spindle Oils:

| | | | |
|---|---|---|---|
| | "B" | 9 | Cleveland. |
| advanced 1c | Gravity | 10½ | " |
| | Heavy | 10 | " |
| | Standard Floor Dressing | 17 | " |
| | Straw Oil | 5½ | Whiting. |
| | Torch Oil | 5 | " |
| | Union Thread Cutting Oil | 22½ | " |
| .02 | Vegetable Castor Oil | 36 | " |
| | White Rose Oil | 14½ | Cleveland. |
| | Extra White Rose Oil | 18½ | " |
| .035 | No. 2 White Rose Oil | 8½ | " |

Wool Oils:

| | | |
|---|---|---|
| Excelsior | 10½ | Cleveland. |
| Llama | 14 | " |
| Merino | 12 | " |
| Standard | 20 | " |
| White Rose | 18 | " |
| Wool Stock | 10½ | " |
| Heavy Wool Stock | 12½ | " |

Plaintiff's Exhibit "Z," p. 4. F. H. S.

X Oils:

| | | |
|---|---|---|
| X | 8 | Whiting. |
| XX | 8¼ | " |
| XXX | 8½ | " |
| XXXX | 8¾ | " |
| H. V. Oil | 13 | Buffalo. |
| Magneto Oil | 15 | Cleveland. |
| Atlas Press Oil | 15 | Whiting. |

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mineral Seal.

NEW YORK, N. Y., *Jan'y* 2, 1905.

Mr. S. Johnson, St. Louis, Mo.

1772 DEAR SIR: On all orders received after December 29th the price on Mineral Seal Oil will be 6¾ cents per gallon in bulk Whiting, or 6 cents in bulk Franklin. Regular additions to be made for barrels.

Respectfully, R. H. McNALL.

(Received Jan. 5 1905. Answered ——. E. S. H.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Cost & Selling Price Sheets.

NEW YORK, N. Y., *Sept.* 16, 1904.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you kindly arrange to send me a full set of cost and selling price sheets as of Sept. 30th as soon after the first of the month as possible, and oblige.

Yours truly, R. H. McNALL.

(Received Sep. 19, 1904. Answered ——. R. B. B.)
Transmitted Sep. 19, 1904. To T. F. Lydon.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mineral Seal Oil.

NEW YORK, N. Y., *September* 19, 1904.

Mr. S. Johnson, St. Louis, Mo.

1773 DEAR SIR: I beg to advise that on all orders received after this date the price to you on Mineral Seal Oil will be as follows:

7¼ cts. per gal. in bulk f. o. b. Whiting, Ind.
6½ " " " " " " Franklin, Pa.

Respectfully, R. H. McNALL.

(Your telegram. Mr. Lyden.)
Stamped: Waters Pierce Oil Co. Lub. Dept., 1904, Sept. 23rd.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Shipments of Refined Oil from San Francisco to Mexican Ports.

NEW YORK, N. Y., *April 6th*, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 20th ulto., in regard to price of Refined Oil for shipment from San Francisco, Cal., to Mexican Ports, beg to say, that I have obtained the following information from San Francisco: The rate of freight from San Francisco via Pacific Mail Steamship Co., to Acapulco, Manzanilla (for Colima), San Blas is $7. per ton of 40 cubic feet, with a lighterage charge which the P. M. S. S. Co., were unable to get, which they assume will be from $1. to $1.50 per ton. They could not get the rate from Manzanilla to Colima. The P. C. S. S. Co. quote rates to Culiacan, Guaymas and Lapaz at $7.75 per ton, with a lighterage charge of about $1.75 per ton. The lighterage is for 2,200 pounds; the rate per ton is for 40 cubic feet. The price of Refined Oil
1774 in cases f. o. b. San Francisco would be from 20 to 20½ cents per gallon in reasonably large quantities, the drawback to accrue to seller. The custom charges on each shipment would be from $4 to $6 which would be charged to the W. P. O. Co. Trusting that this will give the information you require, I remain,

Yours truly,
R. H. McNALL.

Received Apr. 8, 1903. Answered ——. J. P. Gruet, Jr.

Endorsed: No. 24,551. Filed May 31, 1907. F. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Names of Banks where Accounts are Kept.

NEW YORK, N. Y., *Feb.* 18, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you please have made up and send me a statement giving the names of the different banks where you have an account. Let this statement give not only the name of the bank but the town or city where each is located. This applies to all substations points as well as main stations.

Yours truly,
R. H. McNALL.

(Received Feb. 20, 1902. Answered 20. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mineral Seal Oil.

NEW YORK, N. Y., *January* 6, 1905.

Mr. S. Johnson, St. Louis, Mo.

DEAR SIR: On all orders received after this date the price to you on Mineral Seal Oil will be as follows:

6¼ cents per gallon in bulk f. o. b. Whiting, Ind.
5½ " " " " " Franklin, Pa.

Respectfully,
R. H. McNALL.

(Received Jan. 9 1900. Ans. ——. E. S. H.) (Schaub.)

Endorsed: No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Advance in Billing Prices of 72 and 73/76 Gravity Gasoline.

NEW YORK, N. Y., *Sept.* 1, 1904.

A. M. Finlay, Esq., Pt. W. P. O. Co., St. Louis, Mo.

1775 DEAR SIR: I mention for your information that taking effect on Tuesday morning, Sept. 6th, an advance will be made in the billing prices of the following grades of Gasoline:

½¢ Deod. Gasoline above Stove up to 72 gravity, inclusive, 1¢ above Stove Steam Treated or Redistilled Gasoline above Stove up to gravity, inclusive, ¾¢ above Deod. Stove Gaso. 1¢ Steam Treated or Redistilled 73/76 gravity, 1¾¢ above Deod. Stove Gaso. 1¢ Deod. 73/76 gravity Gasoline, 2¢ above Deod. Stove Gaso.

No change in any other gravities.

Yours truly,
R. H. McNALL.

(Received Sep. 3, 1904. Answered ——. A. M. Finlay.)
Note. Rundle. Sept. 5, 1904. Noted 9/6/04. T. T. L.
(Read at Executive Committee Meeting. Sep. 3, 1904. J. P. G. Secretary.)

WALTER: How much of an advance is this on the different grades.
A. M. F.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Cyclopædia Information.

NEW YORK, N. Y., *May* 7, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 4th inst., enclosing Cyclopædia Reports of various points. It was the intention to get this information for all points where competitors have plants. If there are any other points beside those given where outside plants are located would be glad to have such information in Cyclopædia form as you can get.

On report of the S. W. Oil Company, at Ft. Worth, Texas, I note that they commenced business in November, 1901, but in giving receipts of petroleum products you specify that it is for nine months making a total of 1677 barrels. Will you kindly advise
1776 whether these parties commenced business in November, 1901. If so, should not the receipts be given for the year 1902?

Yours truly, R. H. McNALL.

(Received May 9, 1903. Answered 9. J. P. Gruet, Jr.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Cost of Milk Cans.

NEW YORK, N. Y., *Jan.* 7, 1902.

J. P. Gruet, V. P. Waters Pierce O. Co., St. Louis, Mo.

DEAR SIR: I beg to advise that the cost of Milk Cans used for Milk Can delivery should be charged to B. & M. Expense, the same as you treat the cost for tank wagon buckets.

Yours truly, R. H. McNALL.

(Received Jan. 11, 1902. Answered ——. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Sales of Engine Naphtha.

NEW YORK, N. Y., *May 11th*, 1903.

J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: In your telegram of May 8th giving total sales of Refined Oil and Naphtha for the month of April, I notice that you have included in the Naphtha sale 20 bbls. of Engine Naphtha. Is this material purchased from the Guffy or other Texas Refiners? If so, will you kindly report such purchases each month on
1777 blanks which I believe you have for that purpose so that I will be fully informed as to the quantity purchased, from whom, price paid, etc.

Yours truly, R. H. McNALL.

Received May 13, 1903. Answered 13. J. P. Gruet, Jr.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

NEW YORK, N. Y., *Sept.* 16, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I have not received from you, for some time, reports showing tank car shipments by other parties than yourselves of fuel oil from Beaumont, and other points. Will you kindly have these reports rendered at as early date as possible, and oblige,

Yours truly, R. H. McNALL.

Received Sept. 18, 1902. Answered ——. J. P. Gruet.
July 26, ——. Sent 9/17.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Report of Outside Shipments of Fuel Oil from Beaumont.

NEW YORK, N. Y., *Sept.* 6, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I have not received from you, for some time, current reports of fuel oil shipped from Beaumont and vicinity.
1778 Neither have I received reports showing shipments of the W. P. O. Co. of the same nature. I shall be glad to have these reports as soon as possible.

Yours truly, R. H. McNALL.

6/17—30. Aug. 2. 7/1/26. Sent 9/17.
Received Sept. 8, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Report of Beaumont Shipments.

NEW YORK, N. Y., *Nov.* 12, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I find that I have not received any report from you since September 1, of shipments of Beaumont oil, other than the W. P. O. Co.'s shipments. Will you not kindly send me reports, as soon as possible, of September and October shipments, and oblige—

Yours truly, R. H. McNALL.

Sep. 12, 22. Sent 11/12. Received Nov. 14, 1902. Answered 15. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Oil Clearances Sabine Pass and Port Arthur, Texas.

NEW YORK, N. Y., *Mar.* 31, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: For some time past I have not received from you clearances of Texas Fuel Oil from Sabine Pass and Port
1779 Arthur. Your reports in the past have covered Sabine Pass but not Port Arthur. Can you include in your reports, hereafter, clearances from both of these points, and oblige—

Yours truly, R. H. McNALL.

3/14 last. Received April 2, 1903. Answered ——. J. P. Gruet, Jr.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Water- Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Returning Debit Memorandum for Oils Delivered to S/s "Raithmoor."

NEW YORK, N. Y., *January 30th*, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I return herewith your memorandum charge against the Standard Oil Company, Marine Department, for one barrel of black oil, and 1½ cases of Water White 150 oil. You note on your bill the price of the Case Oil, but have omitted to put any price on the Black oil. When this difficulty occurs with deliveries to vessels, *and* it occasions considerable delay in rendering invoices to the Steamship owners. Will you not kindly fill in the price of Black oil on this bill; and also arrange that the proper party see that this information will be given on future charges of this kind.

Yours truly, R. H. McNALL.

Received Feb. 2, 1903. Answered ——. J. P. Gruet, Jr.
A. J. H.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Water- Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

NEW YORK, N. Y., *Dec. 24th*, 1902.

1780 J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to hand you, herewith, blank for reporting prices paid for supplies during the month of December.

Yours truly, R. H. McNALL.

Enc. Received Dec. 26, 1902. Answered 26. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Returning of Cargo S. S. "Pinna."

NEW YORK, N. Y., *Aug.* 27, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 23rd inst., enclosing reports showing petroleum clearances from Port Arthur and Sabine Pass for July and first half of August.

I note, with interest, what you say in regard to the S. S. "Pinna" bringing back from Plymouth, England, part of a Cargo with which she was recently loaded, by the J. M. Guffey Company. I shall be glad to have any further information on the subject which you may receive; and, also, would like to know what is meant by "Deodorized Oil," "Solar Oil," and "Refined Oil," with which this steamer is reported to have loaded.

Yours truly, R. H. McNALL.

(Asked T. for additional information. Sent additional information to McN. 9/17/02. See T. letter to A. P. C., 9/11.)
Received Sept. 3, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1781 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Marine Oil Report for the First Six Months of 1902.

NEW YORK, N. Y., *Sept.* 18, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., S. Louis, Mo.

DEAR SIR: I should be glad to have, as soon as possible, W. P. O. Co.'s statement showing net results of Marine Oil Business during the first six months of 1902.

Yours truly, R. H. McNALL.

Sent 10/6/02.
Received Oct. 4, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900

R. H. McNall,
Commercial Agent.

Cost of Barreling and Marketing.

NEW YORK, N. Y., *Dec.* 7, 1903.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I beg to give below memo. of the average cost of barreling and of marketing oil at Stations in your various divisions during the first six months of 1903, to be used in preparing cost and selling price statements during the first six months of 1904.

On account of recent advances in paying prices for empty packages, there has been added by me to the average cost of empty packages, first six months of 1903, an amount sufficient to cover recent advances of price of empty barrels.

| | Prep'n. Iron bbls. | | Total cost barrelling. | | Marketing. Tank wagon. | | Bulk. | | Barrels. | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Head. | Subs. | Head. | Subs. | Head. | Subs. | Head. | Subs. | Head. | Subs. | |
| St. Louis | .11 | .32 | 2.68 | 2.29 | 1.28 | 2.07 | .37 | 2.01 | .76 | 1.99 | 22 |
| Arkansas | .34 | .27 | 1.86 | 1.86 | 1.81 | 2.22 | 1.72 | 2.30 | 1.56 | 1.93 | 58 |
| E. Texas & La | .17 | .44 | 1.62 | 1.73 | 2.71 | 2.87 | 2.43 | 2.63 | 2.82 | 2.30 | 1.98 |
| North Texas | .27 | .34 | 1.97 | 1.94 | 1.98 | 2.34 | 1.52 | 2.31 | 1.89 | 1.95 | 1.25 |
| Central Texas | .38 | .43 | 1.64 | 1.65 | 2.46 | 2.78 | 1.99 | 2.76 | 2.60 | 2.47 | 1.21 |
| Southern Texas | .25 | .45 | 1.59 | 1.54 | 3.75 | 3.03 | 3.68 | 3.07 | 3.40 | 2.82 | 1.96 |
| Mexico | ... | .58 | ..... | ..... | 1.98 | 1.89 | 1.25 | 1.21 | 1.96 | 1.87 | 1.87 |

Costs for Southern Texas division includes costs for Western Texas division.

If you desire to make any changes in the bases of costs to be used during the coming six months, please advise.

Yours truly,

R. H. McNALL.

J. A. S. pls. note. J. P. G. (O. K. J. A. S. 12/19/03.)
Received Dec. 9, 1903.
Answered 21, A. J. H.

Endorsed: Filed May 31, 1907. No. 24551. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Cost of Barrelling and Marketing.

NEW YORK, N. Y., *Dec.* 18, 1902.

J. P. Gruet, Sec'y, St. Louis, Mo.

DEAR SIR: I beg to give below memo. of the average costs of barrelling and marketing oil at stations in the various divisions during the first six months of 1902, to be used in preparing cost and selling price statements during the first six months of 1903.

| | Prep'n. Iron bbls. | | Total cost barrelling. | | Marketing. Tank wagon. | | Bulk. | | Barrels. | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Head. | Subs. | Head. | Subs. | Head. | Subs. | Head. | Subs. | Head. | Subs. |
| St. Louis..... | .09 | .09 | 2.26 | 2.25 | 1.20 | 2.23 | .38 | 1.98 | .48 | 2.17 |
| Arkansas..... | .28 | .14 | 1.76 | 1.71 | 1.84 | 2.32 | 1.78 | 2.13 | 1.57 | 2.08 |
| E. Texas & La.. | .06 | .28 | 1.56 | 1.66 | 1.78 | 2.72 | 2.13 | 2.42 | 2 86 | 2.41 |
| No. Texas..... | .12 | .25 | 1.98 | 1.94 | 1.24 | 2.32 | 1 23 | 1.95 | 1.60 | 1.90 |
| Cen. Texas..... | .18 | .28 | 1.49 | 1.52 | 1.67 | 2.55 | 1.76 | 2.11 | 2.14 | 2.55 |
| So Texas..... | .09 | .15 | 1.46 | 1.44 | 3.06 | 3.55 | 3.31 | 3.15 | 3.78 | 3.39 |
| West Texas. .... | .16 | .19 | 1.49 | 1.54 | 2.31 | 2.95 | 1 90 | 2.80 | 1.80 | 2.47 |
| No. Mexico..... | .06 | ... | .... | .... | 2.10 | .... | 1.14 | .... | 1.89 | |
| Central Mexico . | .19 | .13 | .... | .... | 1.71 | 2.00 | .96 | 1.16 | 1.74 | 1.84 |

If you desire to make any change in bases of costs to be used during the coming six months, please advise.

Yours truly,

R. H. McNALL.

J. A. S. 12/20/02. Transmitted Dec. 20, 1902 to J. A. S. Received Dec. 20, 1902. Answered 20, J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1783 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Refinery Statements.

NEW YORK, N. Y., *Sept.* 17*th*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 10th inst., beg to say that I am sending to you, by accompanying mail, Refinery Blanks, for your information and guidance.

It is possible that similar blanks could be used at your Mexican Refineries to advantage, in fact Mr. Edwards, soon after his arrival in Mexico last year, wrote direct to one of the refinery superintendents, with whom he was acquainted, asking for copies of these Blanks as he preferred Blanks which he had been using to those he found in Mexico. The letter was referred to me, and I got a set of the Blanks in question and sent them to Mr. Finlay, with a letter, under date of January 24th, 1902, and I presume Mr. Finlay sent these Blanks to Mr. Edwards in Mexico. Mr. Edwards, however is still using the old Blanks, which are not conveniently arranged for making his reports, and which must necessitate a good deal of extra work.

Will you kindly look over the Blanks which I am sending you and, if possible, have your Mexican Refinery Reports conform to them in a general way, and oblige,

Yours truly, R. H. McNALL.

Wrote W. R. R. Oct. 8, 1902.
(Received Sep., 1902. Answered Oct. 6. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mexican Refinery Reports.

NEW YORK, N. Y., *November* 28, 1902.

1784 J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 24th inst., and am today in receipt of Express package containing reports showing Yield, Cost of Tin Cans and Cases for three months ending September 30th, 1902.

Yours truly, R. H. McNALL.

(Received Dec. 1, 1902. Answered ——. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Reports 41-D and 41-N, Mexico Refineries.

NEW YORK, N. Y., *June 28th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I hand you with this letter some blank Forms 41-D and 41-N. Kindly have these reports prepared and sent to me each month, and have the June report rendered regularly.

You will understand that I have a report showing Deliveries of Lubricating Oil, but have never received any report from Mexico of the Deliveries of refined oil and Naphtha.

You will please note that these blanks call for the number of gallons, amount of money, and the average price received by the Refinery on deliveries to the trade. This price should show the average price received after deducting all charges, such as freight, terminal charges, etc., etc., arriving at a bulk price received F. O. B. Refinery.

Yours truly,

R. H. McNALL.

Encl.
Sent blanks to Roalfe July 3, 1902. Quoted Roalfe 7/9/1902. Ans. July 2, 1902.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle.

1785

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Special Report.

NEW YORK, N. Y., *February 18th*, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you kindly send me a report covering your annual sales at each station, separately, which you now report under the head of "Other Stations." You report the sales at the salaried tank wagon points only, and it is necessary for me to have the following information in order to follow up the amount of oil which could be shipped from Corsicana instead of Whiting.

As follows:

| Station. | Refined Oil Stove & 70/76 Sales 1902. | 86/90 Gaso. Sales 1902. | 62/65 Decol. Sales 1902. | Tanks or Barrels. |
|---|---|---|---|---|

Yours truly,

R. H. McNALL.

This information required for the following divisions only: Arkansas. E. Texas & Louisiana. North Texas. Southern Texas. (Received Feb. 20, 1903. Answered ——. J. P. Gruet, Jr.)

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Changing from Walter Jennings, Agent, to R. P. Tinsley, Agent.

NEW YORK, N. Y., *July 9th*, 1902.

J. P. Gruit, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: For your information beg to say that account formerly handled by Walter Jennings, Agent, will hereafter be handled by R. P. Tinsley, Agent of the same address.

1786 If Mr. C. M. Adams is interested in this, will you kindly show him this letter, and oblige,

Yours truly,

R. H. McNALL.

Notified E. S. Horn. A. P. Robinson. Geo. D. Scherden. P. J. H. Received Jul- 11, 1902. Answered 11. J. P. Gruet.

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Report of Prices Paid for Supplies.

NEW YORK, N. Y., *Jan. 28th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to hand you herewith blank report to be filled in for Prices paid for Supplies, which kindly return to me at your convenience, and oblige,

Yours truly,

R. H. McNALL.

Encl.

(Received Jan. 30, 1902. Answered ——. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Cost of Milk Cans.

NEW YORK, N. Y., *Jan.* 15, 1902.

J. P. Gruet, Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 11th on the above subject I think your manner of having these milk cans numbered,
1787 and keeping a careful record of them, is certainly a most excellent and wise scheme. It is my feeling, however, that the cost of these milk cans should be charged in the first place, as a B. & M. Expense, it not being considered desireable to carry them as a plant item. This would, in no way, interfere, with your way of carrying this account, except that you charge the cost of cans to B. & M. expense.

Yours truly, R. H. McNALL.

Received Jan. 17, 1902. Answered ——. J. P. Gruet.
Received Jan. 17, 1902. Answered 20. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Excess Tank Wagon Equipment at City of Mexico.

NEW YORK, N. Y., *December 5th,* 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Referring again to my letter on the above subject beg to say that, according to the last encyclopedia report dated Jan'y 1st, 1902, you showed the tank wagons mentioned below at your City of Mexico plant, and in a recent letter from you, on this subject, you stated that you had only 12 tank wagons at this point, and out of that 12 only 6 of the number shown as being in operation during the month of October correspond with the numbers of the wagons shown on your encyclopedia report. I also have a record that, on February 15th, 1902, an appropriation was passed for running gear, wheels, etc. for wagon 289 and on June 18 you report appropriation No. 298 for a tank wagon transferred to the City of Mexico from St. Louis,

the number of which is not stated. Will you kindly advise me if your encyclopedia report of January 1st, 1902, showing wagons as per list below at the City of Mexico is correct, if so, will you kindly send me a memorandum of transfers and additions so that I can make corrections on my records here, and oblige.

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| Number on tank wagons. | Capacity. Gallons. | Number of compartments. | Number of faucets. | Number of horses. |
|---|---|---|---|---|
| 160 | 214 | 1 | 1 | 2 |
| 161 | 398 | 2 | 2 | 2 |
| 163 | 199 | 1 | 1 | 2 |
| 164 | 200 | 1 | 1 | 2 |
| 165 | 215 | 1 | 1 | 2 |
| 166 | 310 | 1 | 1 | 2 |
| 167 | 160 | 1 | 1 | 2 |
| 310 | 297 | 1 | 1 | 2 |
| 311 | 297 | 1 | 1 | 2 |
| 312 | 298 | 1 | 1 | 2 |
| 168 | 209 | 1 | 1 | 2 |
| 169 | 261 | 1 | 1 | 2 |
| 174 | 281 | 1 | 1 | 2 |
| 369 | 301 | 1 | 1 | 2 |
| 370 | 301 | 1 | 1 | 2 |
| 371 | 305 | 1 | 1 | 2 |
| 423 | 342 | 1 | 1 | 2 |

Yours truly,

R. H. McNALL.

Received Dec. 8, 1902. Answered 8. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1900. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Marine Insurance.

NEW YORK, N. Y., *March* 13, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: You may remember that in November, 1900, I took up with you the question of Marine Insurance on petroleum merchandise, also, material for Mexico Refineries. In your letter received this morning, in refernce to the goods lost on lighter alongside S. S. "Havana" last October, you stated that all goods at Vera Cruz, Mexico, are lightered for your account, therefore, I am of the opinion

that the insurance companies are not liable for loss of goods from the lighter alongside the S. S. "Havana".

On looking over the policy with the Federal Insurance Company (R. C. Rathbone & Son) on which your refinery supplies are covered, I only find provision for loss during natural voyage of the
1789 steamer on which the goods are shipped. It does not cover lighterage from steamer to final destination, neither does the policy with the Atlantic Mutual Insurance Company on which your petroleum merchandise is insured, cover lighterage at Mexican Ports.

I believe it would be a good time to go over this insurance question and arrange policy so as to cover all the risks to which goods are subjected. The rate charged us by R. C. Rathbone & Son is 35 cents per $100., from which there is no rebate. And open policy can be taken out with the Atlantic Mutual Insurance Co., for about 40 cents per $100 say, possibly a little higher if goods are insured on lighters, and, at the end of the year, a rebate of 40 per cent. is given, payable in script bearing 6%, running for four or five years. This script can always be sold at par, perhaps a little better. This would be a better rate than now obtained through R. C. Rathbone & Son, and there is considerable advantage in having all the goods insured in one company, so that losses would not have to be divided, as in the present case in the S. S. "Havana".

If you think well of making some change and taking out an open policy in the Atlantic Mutual Insurance Co., I will do so on the best terms possible. In doing so, we will take out a policy for, say $1000 on six months insurance, for which the insurance Company would ask us to sign a note for the total premium on same. This can either be allowed to mature, or can be discounted, the latter is the usual course pursued. I should then want to know just what risk you will want covered for goods shipped from New York to any port in Mexico, including all ports, and would like you to state at what ports you would wish the goods insured for delivery by lighter.

I will advise you within a short time as to whether the Insurance Companies consider themselves liable for the loss of the goods on the S. S. "Havana".

Yours truly,

R. H. McNALL.

Transmitted Mar. 19, 1903. To T. J. Ryder.
1790 (Received Mar. 19, 1903. Answered 19. J. P. Gruet.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Fuel Oil Shipments for January.

NEW YORK, N. Y., *February 24th*, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of Report from "23 D," Receipts and Purchases for month of January. I am inclined to think that the names of some of the parties given, from whom Oil was purchased during the month, do not agree with the notices sent me by Mr. Finlay when he reports current purchases. For instance, there are two items on the report which I cannot check with my records, namely, Galveston—Beaumont Oil Co., 2,000 bbls., at 51 cts., and W. E. Brice, 2951 bbls., at 50 cts. However, I have entered these two items as current purchases during the month.

I should like to have each month, as I have written you before, a report showing the Fuel Oil purchased during the month from the Corsicana Refinery, giving the number of barrels, and the prices paid for same. Will you kindly arrange so that this report will come to me regularly, and oblige,

Yours truly, R. H. McNALL.

January. Jan'y Cor. Fuel Oil. 6015 5/7 at 50c.
Received Feb. 26, 1903. Answered 26. J. P. Gruet, Jr.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Proposed New Accounting for Marine Oil Business.

NEW YORK, N. Y., *Feb.* 6, 1902.

1791 J. P. Gruet, Esq., Sect. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Will you please let me know if you have recently received a letter from C. E. Bedford on the subject "Proposed new Accounting." If you have, will you please send me a copy of it, and oblige,

Yours truly, R. H. McNALL.

A. P. C. Have you received this. J. P. G.
Received Feb. 8, 1902. Answered 8. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Statement of Bad Debts for the First Six Months of 1902.

NEW YORK, N. Y., *July 18th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 15th inst. enclosing semi-annual statement No. 1, showing value of sales and bad accounts charged to Profit and Loss for the first six (6) months of 1902.

I note that the bad debts charged to Profit and Loss in East Texas and Louisiana Division and North Texas Division are very much greater than at other points, amounting to nearly 1% of the credit sales.

Will you kindly advise me how you account for this large increase in bad debts in East Texas and Louisiana and North Texas Divisions, and oblige,

Yours truly, R. H. McNALL.

Received Jul- 21, 1902. Answered 21, Aug. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1792 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

NEW YORK, N. Y., *November 25th*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to hand you, herewith, blank report, on which I shall be glad to have you specify prices paid for supplies for the month of October, if not already rendered, and oblige,

Yours truly, R. H. McNALL.

Enc.
A. J. H. 11/28/1902.
Received Nov. 28, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

NEW YORK, N. Y., *December 2nd*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I would like to have you make me up a statement showing the number of employés of the W. P. O. Co. and the annual amount of wages paid same for one year, this to include men on commission, station agents on commission, and laborers. It is not necessary to have this absolutely correct, but as nearly correct as possible. No classification is required; but, as before stated, the information to cover all employés, laborers and commission men, and the wages to be given in one amount. I should like to have you separate the total of the U. S. Divisions from the Mexican Divisions, giving them separately, and including in the Mexican statement the Refinery employés and laborers, as well as those in your Marketing Department.

Yours truly, R. H. McNALL.

Transmitted Dec. 4, 1902. A. M. F. Pt.
1793 Received Dec. 4, 1902. Answered 5. J. P. Gruet.

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Bad Debts and Indemnity Insurance.

NEW YORK, N. Y., *August 22nd*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 20th instant in regard to bad debts charged off during the month of June, and the amount of indemnity insurance which you will probably be able to collect on such losses. If I remember correctly you paid a considerable premium for this insurance, and it does not seem to me good policy to continue this Credit Insurance. I am glad that you have been more fortunate than you anticipated, in collecting your accounts in Texas and Missouri. It would appear, from reports we have here, that the South and Southwest are in a prosperous condition, that is, from the crop standpoint.

Yours truly, R. H. McNALL.

Received Aug. 25th. Answered ——. J. P. Gruet.

No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Form 30-D.

NEW YORK, N. Y., *July* 23, 1902.

J. P. Gruet, Esq., St. Louis, Mo.:

Referring to report form 30-D.—Deliveries of Refined Oil and Naphtha by tank wagons for June. Lafayette, sub-station of Marshall shows 6 bbls. of Eupion Oil. Previous deliveries at this
1794 point have been W. W. Oil. Please advise.

Yours truly,
R. H. McNALL.

Wrote Littlefield 7/25/02. Ans. 7/29/02. Wrote McNall. 7/29/02. L. B. S.
Received July 24, 1902. Answered ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Bad Debts in East Texas & Louisiana and Northern Texas Divisions; Credit Insurance.

NEW YORK, N. Y., *Aug. 7th*, 1902.

J. P. Gruit, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Referring to your letter of the 1st inst., explaining increase in Bad Debts in East Texas & Louisiana and Northern Texas Divisions, beg to say that I am reminded that you have a form of Credit Insurance.

Will you kindly advise me whether under this policy any of the losses made during the first six (6) months of the year will be paid by the Insurance Company. I should be very glad as soon as you have tried this credit insurance for one year to have you advise me the premium paid, losses, if any, collected, and any further particulars which you think would be of interest, and oblige,

Yours truly,
R. H. McNALL.

Received Aug. 9, 1902. Answered 20. J. P. Gruet.

Endorsed: No. 24551. Filed May 31st, 1907. D. J. Pickle, Clerk.

1795 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Mexico Bad Debts for the Year 1901.

NEW YORK, N. Y., *Jan. 27th*, 1902.

J. P. Gruet, Esq., Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: I beg to acknowledge receipt of your favor of the 25th inst., enclosing Semi-Annual Statement showing Bad Debts charged to Profit and Loss, Mexico Division, and also total of United States and Mexico Divisions for year ending December 31st, 1901.

Mexico, I think, heads the list and is keeping up its reputation in this respect as usual.

It is a fine showing.

Yours truly, R. H. McNALL.

Received Jan. 29, 1902. Answer ——. J. P. Gruet.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900

R. H. McNall,
Commercial Agent.

Returning Stable Inventories.

NEW YORK, N. Y., *December 22nd*, 1902.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: I beg to return herewith Stable Inventories of your various divisions, and would ask that you kindly put in the numbers of wagons where they are omitted; and also kindly give numbers and capacities of tank wagons in St. Louis, and oblige,

Yours truly, R. H. McNALL.

The compliments of the Season.

1796 Received Dec. 24, 1902. Answer 24. J. W.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29th, 1900.

R. H. McNall,
Commercial Agent.

Depreciation on Iron Barrels.

NEW YORK, N. Y., *March* 18, 1902.

J. P. Gruet, Sec'y Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: For some unknown reason, on Dec. 28, 1895, instructions were given to charge iron barrel depreciation of 4¢ per barrel direct to P. & L. Account.

Do you know of any reason why this depreciation should not be charged to B. & M. Expense, the same as depreciation of "Stable Equipment."

Your views in regard to this matter will be much appreciated by,

Yours truly, R. H. McNALL.

Received Mar. 20, 1902. Answered 20. J. P. Gruet.

Endorsed: 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Cyclopedia Reports.

NEW YORK, N. Y., *May* 6, 1903.

J. P. Gruet, Esq., Sec'y W. P. O. Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of the 4th instant, beg to hand you, herewith, copies of Cyclopedia Reports relative to E. M. Wilhoit Joplin and Springfield, Missouri, and Gubser and Rutter, Belleville, Illinois.

Yours truly, R. H. McNALL.

Enc.

Received May 8, 1903. Answered 8. J. P. Gruet, Jr.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

1797 Waters Pierce Oil Company.

Incorporated under the Laws of the State of Missouri, May 29, 1900.

R. H. McNall,
Commercial Agent.

Reporting Sales Deodorized 73-76.

NEW YORK, N. Y., *Feb.* 11, 1903.

J. P. Gruet, V. P. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: On your monthly naphtha sales report, you only show delivery of 63 naphtha, stove gasoline, and 87-90 gasoline. I believe you are receiving from Whiting some Deodorized 73-76 naphtha. Are you including sales of this grade with Stove gasoline? While, probably, the business does not amount to very much, it seems to me that you could report sales of this grade, separately, and would ask that you kindly do so, beginning with your January report.

Yours truly, R. H. McNALL.

Received Feb. 13, 1903. Answered ——. J. P. Gruet, Jr.

Endorsed: No. 24551. State of Texas *vs.* Waters Pierce Oil Company. Filed May 31, 1907. D. J. Pickle, Clerk, By J. A. Belger, Deputy.

No. 36.

A. M. Finlay,
Vice President.

Subject: Eagle Refining Company, Dallas.

ST. LOUIS, MO., *April* 28, 1891.

H. A. Dennett, Cashier, Dallas, Texas.

DEAR SIR: Yours of the 25th inst., received. If you have not done so, please send regular slip, showing advance in your case Eupion price at Dallas.

Of course in Mngr. Grice's absence, you appreciate the necessity of close attention to the Eagle Refining Company's efforts at Dallas and surrounding territory; and as we have understood from Mngr. Grice, Mr. Taylor is to give his time to this particular trade.

We are very glad to know that you are on such good terms with the railroad people, that Mr. Clem gains nothing by mark-
1798 ing his shipments by numbers, instead of names.

We want to make prices at Dallas, and in the neighborhood on Brilliant and Water White oil, that will prevent Clem doing any business.

Hope you will make it a point to be present at the next meeting

of the City Council tomorrow night and do everything possible to prevent granting of permit to build within city limits, unless building similar to ours is constructed; for it would not be fair to us, to allow some one else to put up construction for the storage of oil, when they had compelled us to put up such an expensive building, as we have done. Of course we appreciate, however, that you will cover these points, without our calling your attention to them.

Would be glad to have you advise us, when Clem's first two tank cars have been emptied and returned; also the second two, to which you refer as having been in the yard, nine and sixteen days, that we may know how long they have been held in Dallas. The movement of tank cars, enters into the cost of the oil; so it is necessary to have this information, that we may know what we are competing with.

Yours truly, A. M. FINLAY,
*Vice President.*

(Texas Division, Cashier, Rec'd Apr. 30, 1891. Ans. 30-91.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk. (Letter 1891 in regards to Clem.)

No. 4.

Waters Pierce Oil Company.

Incorporated May 29, 1900.

OFFICE OF PRESIDENT,
ST. LOUIS, MO., *May* 29, 1900.

Mr. —— ——.

DEAR SIR: The Waters Pierce Oil Company, incorporated May 29th, 1900, has purchased all of the property wherever situated of the Waters Pierce Oil Company, which was incorporated May 7, 1878, and dissolved by unanimous resolution of its stockholders, May 28th, 1900.

1799 Referring to the notice signed by Andrew M. Finlay, President of that Company, you are advised that you are hereby employed by this Company in the same capacity as you were employed by the old Waters Pierce Oil Company and at the same salary, and your services on behalf of this Company will commence upon the morning of June 1st, 1900.

As soon as possible you will be advised concerning the details of the conduct of this Company's business in your charge.

Yours truly, H. C. PIERCE, *President.*

Endorsed: No. 24551. Filed May 30, 1907. D. J. Pickle, Clerk.

No. 5.

Waters Pierce Oil Company.

ST. LOUIS, MO., *May 29th*, 1900.

To Managers, Agents and Representatives of the Waters Pierce Oil Company:

The Waters Pierce Oil Company, incorporated May 7th, 1878, was, on the 28th day of May, 1900, by unanimous vote of its stockholders, dissolved, and you are hereby respectfully notified that your services will not be required and will cease and terminate upon the evening of May 31st, next.

This Company has this day sold and arranged to transfer on May 31st, 1900, all of its property to the Waters Pierce Oil Company, incorporated at St. Louis, Mo., May 29th, 1900, and after May 31st, 1900, you will hold all of this Company's property in your charge subject to the order of H. C. Pierce, President of the new Waters Pierce Oil Company; and in the meantime you will continue making sales and remittances as heretofore up to the evening of May 31st, 1900.

On behalf of the Stockholders and Officers of this Company, I desire to thank you for your faithful attention to its interests.

Very truly yours, A. M. FINLAY, *President.*

1800 Endorsed: No. 24551. Filed May 30, 1907. D. J. Pickle, Clerk. Letters of dischg. & emp. (4) (5).

No. 39.

*Copy of Charge.*

In the District Court, Travis County, Texas, for 26th Judicial District, May Term, 1897.

No. 12589.

THE STATE OF TEXAS
*vs.*
THE WATERS PIERCE OIL COMPANY ET AL.

GENTLEMEN OF THE JURY:

This is a suit by the State of Texas, as plaintiff, against the Waters Pierce Oil Company, a private corporation, and E. T. Hathaway, William Grice, F. A. Austin, J. W. Keenan, and Lewis Fries, as defendants, to cancel the permit of said Waters Pierce Oil Company to do business in this state, and to enjoin all of said defendants from further transacting the business of said company in this state, on account of an alleged violation of the laws of this state against trusts by said company, its agents and employés.

The plaintiff alleges that the defendant Waters Pierce Oil Company is a private corporation, incorporated under the laws of the state of Missouri, for the purpose of dealing in petroleum and its products and in selling the same in the state of Missouri and other states, and that on July 6, 1889, said company filed its articles of incorporation in the secretary of state's office in this state, and secured a permit to transact its said business in the state of Texas for a term of ten years, as provided by the laws of this state, and that since said date defendant company has been transacting its said business in this state, and has divided this state into five general divisions for the purpose of transacting its said business, and that the defendants E. T. Hathaway, F. A. Austin, William Grice,
1801 J. W. Keenan, and Lewis Fries are the respective managers of defendant company in said general divisions of this state, and have appointed various local agents throughout this state for the transaction of its business.

Plaintiff further alleges that the defendant company has violated the law of this state against trusts, by making and entering into a contract with, and becoming a member of, the Standard Oil Trust; which contract and agreement is set out in full in plaintiff's petition, and for doing certain other acts in connection with said Standard Oil Trust agreement.

Plaintiff also alleges that the defendant company has violated the law of this state against trusts by entering into a contract with the Eagle Refining Company, with C. W. Robinson, with J. L. Lewis and Stilwell Bros., as set out in plaintiff's petition and introduced in evidence before you.

Plaintiff further alleges that since July 6, 1889, said defendant company has been, and still is, engaged in dealing in and selling the products of petroleum in this state, and that during that time said company has made, and is still making, through its agents in this state, contracts and agreements, by and between said company and other parties dealing in, buying, and selling similar oils, in this state, by the terms of which agreements said parties, for a valuable consideration paid them by defendant company, agreed and contracted that they would not buy any oils from any other person or corporation, but would deal with and buy and sell oils obtained from said defendant company exclusively; that said company has further contracted with certain of said persons, as aforesaid, for a valuable consideration, paid by defendant company to said parties, by the terms of which said parties contracted and agreed to buy from and sell the oils of defendant company exclusively, and not to sell the oils so bought, as aforesaid, to any one buying from, or dealing with, any other person or corporation dealing in such oils in com-
petition with said defendant company, and, further, that said
1802 company, since July 6, 1889, has made and entered into other contracts and agreements, by and between it and various others dealing in, buying, and selling oils, by the terms of which said parties agree with said company to purchase its said oils, and to sell the same to others desiring to purchase the same, at prices fixed and established by it or its agents and officers. The names

and dates and contracts above referred to are set out in plaintiff's petition.

Plaintiff further alleges that prior to July 6, 1889, and also since that date, the defendant company entered into certain contracts in writing, with certain parties in Brownsville, Tex., by the terms of which said parties bound themselves to buy all their oil from defendant company, for a fixed period, in consideration of certain rebates allowed them by defendant company, and also agreed to sell such oil at a price fixed by defendant company, and that such contracts as were entered into prior to 1889 have been carried out and executed, and business done thereunder by said parties since that date to the present time. The parties with whom said contracts were made, and the terms thereof, are set out in plaintiff's petition.

Plaintiff alleges that all of said contracts above mentioned were made by the agents of said defendant company, and were authorized by it, and were fully ratified and carried out by it after same had been so made, and that the same were a violation of the laws against trusts of this state; that the products of petroleum are articles of prime necessity to the people of this state, and that, by reason of said acts and contracts, said defendant company has forfeited its right to transact business in this state; and prays for an injunction prohibiting the defendant company, its agents and employés, from further violating said statute, and for a decree canceling the permit of said company to do business in this state.

The defendants answer by a general denial of all the allegations of plaintiff's petition, and especially answer that the Waters Pierce Oil Company is the real defendant in this action, and that
1803 the other parties named as defendants are simply its agents in the state of Texas. It further says that the state of Texas is estopped from canceling defendant's permit to do business in this state, because that on July 6, 1889, through its proper officers, and in pursuance of the provisions of the law of this state, it did, for a sufficient and lawful consideration, issue to said company a permit to do business in this state for a term of ten years from that date, and that said permit was a valid and binding contract between it and the state of Texas.

Defendant further pleads that it is a foreign corporation of the state of Missouri, having its principal offices in said state of Missouri, and that the business transacted by it in the state of Texas was interstate commerce, and not subject to the laws of the state of Texas. Defendants denies that it ever became a member of, or a party to, the Standard Oil Trust agreement, or that it acted with said trust, or was controlled by said trust in any way; that said trust was dissolved March 21, 1892. Defendant denies that it ever entered into any of the contracts or agreements with the parties named in plaintiff's petition, for the sale of its oils, and that if any such contracts or agreements were entered into, as set forth in plaintiff's petition, with any one representing the defendant company, either as agent, attorney, employé, servant, or otherwise, the same was never known to the defendant company, nor did it ever

san-tion or ratify such contract, either directly or indirectly; wherefore they pray that plaintiff take nothing by this suit.

Upon the law of the case, you are instructed as follows:

Under the laws of this state, a 'trust' is defined as follows: A trust is a combination of capital, skill, or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any, or all of the following purposes: First, To create or carry out restructions in trade or commerce, or aids to commerce or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of the state. Second. To increase or reduce the price of merchan-
1804 dise, produce, or commodities. Third. To prevent competition in manufacture, making, transportation sale, or purchase of merchandise, produce, or commodities, or to prevent competition in aids to commerce. Fourth. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity or merchandise, produce, or commerce intended for sale, use, or consumption in this State. Fifth. To make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation, between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such articles or commodity, that its price might in any manner be affected.

Now, if you find from the evidence that the defendant company, acting through its duly appointed and authorized agents entered into and performed a contract, in the state of Texas, with any of the parties dealing in, buying, and selling oils, as named and sent out in plaintiff's petition, since July 6, 1889, by the terms of which contract it was agreed that said parties were to buy oil from the defendant company exclusively, for any specified time, and from no other source, in consideration of rebates allowed them by the defendant company, or for any other valuable consideration; or if you find that said company, so acting through its duly appointed and authorized agents, since said date, made, entered into,
1805 and carried out a contract in this state with any of the persons named and as stated in plaintiff's petition, by the terms of which said parties bound and obligated themselves, for a valuable consideration, to buy all their oils from defendant company, and not to buy oils from any other source for any specified time, and not to sell said oils so bought from defendant company to any person handling or dealing in oils in competition with defendant

company; or if said defendant company, so acting since said date, made and entered into and carried out, in this state, a contract with any of the parties, as stated and named in plaintiff's petition, by the terms of which said parties, for a valuable consideration, bound and obligated themselves to said company, either verbally or in writing, to buy all their oils exclusively from defendant company, and from no other source, and to sell said oils so bought to other parties desiring to purchase the same at a price fixed by said company's officers or agents; and you further find that said sales of oils were not interstate commerce, as that is hereinafter explained to you, and that said officers or agents, so acting for said company in making said contracts, if any were so made, were acting in the scope of their employment and duty, and were authorized to make such contracts by the governing officers of said company, or that said governing officers with a knowledge that said contracts had been made, consented to and ratified or carried out the same after they were made,—then you are instructed that the defendant would be guilty of violating the law against trusts, of this state; and, if you so find the facts to be as above stated, you will return a verdict for the plaintiff against the defendant Waters Pierce Oil Company.

You are further instructed that a corporation can only act through its agents and servants, but a corporation is not liable for all the acts of its agents or servants. It is liable, however, for the acts of its agents, done in the scope of their employment and agency,
1806 and is also liable for the acts of its agents which it has authorized such agents to perform, and it is also liable for the unauthorized acts of its agents which have been acquiesced in, or ratified by, the governing body of said corporation.

Now, if you find from the evidence that any or all of the contracts mentioned in Section No. 10 of this charge were made and carried out by the defendant company, acting through its agents, with the parties therein named, but you do not find that said agents were authorized by the governing body of said corporation to make said contracts, nor that said contracts were made in the scope of the duty and employment of such agents, and do not find that said contracts, if any were made, were known to, or acquiesced in or consented to by, the governing body of said corporation, after being made by said agents, then you will return a verdict for the defendant company.

But if you find said contracts mentioned in section No. 10 of this charge were entered into by the defendant company, acting through its agents, and that said agents were acting in the scope of their employment and agency in making said contracts, or, if said contracts were not authorized by the governing body of said corporation, that it acquiesced in or consented to or ratified said acts, after knowing the same had been entered into, then said defendant company would be liable for such acts.

You are further instructed that this court has no jurisdiction over, and the laws of this state do not apply to, interstate commerce; that is, to commerce between the different states of the United States. Shipments of oils or other products, made by the Waters Pierce Oil

Company from points without this state to its agents within this state, is interstate commerce, until such oils are sold by said company in the original packages in which it was shipped into this state and as such is not subject to the laws of this state regulating the sale thereof; and if the evidence introduced before you
1807 shows any of the contracts set out in plaintiff's petition were made in reference to any state commerce, then you will not consider such contracts further, as the laws of this state do not cover such transactions; but, on the other hand, if the Waters Pierce Oil Company shipped oils from points beyond this state to its agents to points within this state, and, after their receipt in this state, the same were sold by said agents in this state, to parties in this state, in broken packages, or by retail, and not in the original packages in which said oils were shipped into this state, then such business is not interstate commerce and is subject to the laws of this state. You are further instructed that, even though the contracts may have reference to interstate shipments of oils, yet if the parties go further, and contract that such oils, after being sold by said Waters Pierce Oil Company to parties in this state, shall be sold, by said parties at a price, fixed by the duly-authorized agents of defendant company then you are informed that such dealing with said oils, after its sale to parties in this state, is not protected by the interstate commerce laws, but such contracts, if made, are subject to the laws of this state.

You are instructed that the law against trusts in this state became a law on March 30, 1889, and was amended in 1895, and the defendant company obtained its permit to do business in this state on July 6, 1889, and all transactions in evidence before you of date prior to July 6, 1889, are immaterial in this case, except where such contracts were continued and carried out subsequent to July 6, 1889, and for the purpose of showing the course of dealing of said company in this state, and such transactions prior to July 6, 1889, are no ground for forfeiture of defendant's permit to do business.

There has been certain evidence introduced before you tending to show efforts and inducements offered by the agents of the
1808 defendant company to parties to handle oils of defendant company exclusively, and tending to show refusal of the agents of said company to sell parties handling other oils than those of defendant company, and of discrimination in prices against parties handling other oils than those of defendant company, and of cutting of prices by defendant company to break down competition. None of these things are unlawful, and was only admitted as bearing upon the question of the course of dealing of defendant company in this state, and as bearing upon the question whether or not the defendant company made or entered into the contracts, or any of them, as set out and mentioned in section No. 10 herein, and as to whether or not such contracts or course of dealings, if any such there was, was known to the governing officers of t-e defendant company or was authorized by them.

There has been introduced in evidence before you a certain con-

tract, known as the 'Standard Oil Trust Agreement,' and certain evidence tending to show that the defendant Waters Pierce Oil Company became a member of and entered into said agreement. You are instructed that the evidence is not sufficient to show that defendant became a member of said organization, if at all, in a manner that violates the trust laws of this state, and you will therefore disregard all testimony upon this branch of the case.

There has also been introduced in evidence before you certain evidence in regard to a contract made by the defendant company with the Eagle Refining Company, and also with C. W. Robinson, with J. L. Lewis, and Stillwell Bros., in the state of Texas, by which they purchased the business of such concerns. You are instructed that such transactions as these are not believed to be in violation of the laws of this state, and the evidence in regard to these transactions will only be considered by you as bearing upon the course of dealing of defendant company in this state.

1809 The questions for you to determine in this case are: First. Were any of the contracts mentioned in section 10 of this charge made and entered into and carried out by the defendant company in this state since July 6, 1889, acting through its agents? Second. Whether such agents were acting in the scope of their authority and employment in making such contracts, or, if not, whether same were ratified or acquiesced in by defendant company after they were so made. Third. Whether said contracts, if any, related to interstate commerce or to business within this state.

In determining whether or not the agents of defendant company were authorized to make the contracts alleged, if any were so made, or whether same were known to or acquiesced in by defendant company's governing officers, the same does not necessarily have to be shown by positive or direct testimony, but may be shown by circumstances; and you will take into consideration all the facts and circumstances in evidence before you in determining this question.

You will return a verdict for the defendants Hathaway, Austin, Grice, Kennan, and Fries, as they are only the agents of defendant company, and not liable in this suit. If you find a verdict for the plaintiff, you will say: 'We, the jury, find for all the defendants, and that Plaintiff take nothing by this suit.'

The burden of proof is on the plaintiff to show, by a preponderance of the evidence, the facts necessary to entitle it to recover.

The jury are the exclusive judges of the credibility of the witnesses, the facts proven, and the weight to be given the testimony, but are bound to receive the law from the court and be governed thereby.

(Signed) R. E. BROOKS,
*Judge 26th Judicial District.*

Endorsed: Chg. of Ct. in old Co. case.

1810 Copy.

Package No. 10.

Walker Smith Gro. Co., Brownwood.

CWC 1. FEB. 10*th*, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: Your letter of the 8th received and noted.

We have not as yet, been able to arrive at a satisfactory understanding with the Walker Smith Gro. Co. at Brownwood, Texas. I went into matters very thouroughly with them when in Brownwood last week but they did not seem at that time disposed to accept a 10% proposition. Their Buyer suggested that we could have their business if we would allow them a discount of 15%, but I do not feel that conditions at the present time warrant our offering them such a liberal arrangement.

Our making an arrangement with these people would probably shut the R. G. O. Co. out in this particular territory and would likely enable us to advance our schedules from ½ to 1¢ per gal. at several points, and, after carefully considering the matter, I have reached the conclusion that it would pay us to allow them a discount of 12½%, as a last resort, and I am rather inclined to think they would accept this arrangement.

If you agree with me in the matter kindly authorize us to arrange with them on this basis.

Yours truly, —— ——, *Manager.*

210-647.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Stove Gasoline.

CWC-1. MARCH 7*th*, 1906.

1811 Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: I have your letter of the 5th inst. on the above subject.

The Southwestern Oil Co. and R. G. O. Co. Corsicana, appear to be getting all the Gasoline they want from the Texas Co. and the Climax Ink & Oil Co., Clem Oil Co. and Oriental Oil Co. are being kept well supplied by the G. R. Co.—Can't you arrange in some way to get gasoline which the G. R. Co. and Texas Co. are selling in a wholesale way to the concern referred to above?

With these small concerns out of the road we could obtain a much more satisfactory price for our gasoline than is possible under present conditions.

Yours truly, —— ——, *Manager.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Discount Rotan Grocery Co., Waco.

CWC-1. MARCH 7, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: I have recently had some correspondence with the Rotan Gro. Co. of Waco, Texas relative to supplying them with what refined oil they have occasion to market, and for your information I hand you herewith, copy of a letter received from them under date of the 6th, inst.

As you will no doubt remember, the Rotan Gro. Co. have been working with the R. G. O. Co. during the past two years, and while they have not done very much of late they were at one time placing quite a number of cars.

We have the territory in which the Rotan Gro. Co. are doing business well covered by our tank wagons and I do not believe they will be able to do much business, however, our having an
1812 arrangement with them on refined oil will assist us in holding their trade on axle grease, lubricating oils and other lines which they handle and they will also assist us in preventing the sale of a car of refined oil here and there which the R. G. O. Co. might put in with the assistance of the Rotan Gro. Co. Salesman.

I would suggest that you authorize us to allow them a discount of 10% on their purchases at Waco, Temple, Hico, Hillsboro, Cameron and Rockdale, (The latter agency is in South Texas Division)—I also think it a good idea to concede them a 2% discount for cash to protect them to cover the taxes which they will pay the State of Texas on their refined oil sales.

Kindly let me hear from you hereon promptly

Yours truly, —— ——, *Manager.*

214.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle.

Copy.

Discount Snyder Brokerage Co., San Angelo.

MARCH 27, 1906.

Mr. C. P. Ackert, General Manager, St. Louis, Mo.

DEAR SIR: Since our last advance of 1¢ per gal. on Eupion Oil at San Angelo, Texas, the Snyder Brokerage Co. have become dissatisfied, and it will be necessary for us to increase their allowance on iron barrel and case Eupion; also case Brilliant 1¢ per gal. to 10% in order to satisfy them and prevent their buying from others in car lots.

The Snyder Brokerage & Storage Co. do a wholesale Grocery and Grain Business, and as they are traveling several men in the San Angelo territory, they are in a position to render us considerable assistance in holding the trade, and I would strongly recommend increasing their discount to the extent asked.

1813 The purchases of this concern during the past six months have averaged $124.66 per month.

Yours truly, —— ——, *Manager.*

215.

Endorsed: No. 24551. Filed May 31, 1907. *Filed* D. J. Pickle, Clerk.

Copy.

Discount B. L. Morris, Ft. Worth.

CWC-1. MARCH 2*nd*, 1906.

Mr. C. P. Ackert, General Manager, St. Louis, Mo.

DEAR SIR: I will thank you to authorize us to allow B. L. Morris Ft. Worth, Texas a discount of 1¢ per gal. on Eupion Oil.

Mr. Morris' purchases will average about 600 gals. per month. He has been buying exclusively from the Gulf Ref. Co. for the past three months and claims they have been making him some special concessions. However, he has always been disposed to favor competitors at equal prices. The concession asked for will give us his trade in future.

Yours truly, —— ——, *Manager.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Conditions at Dallas.

DEC. 9*th*, 1905.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: As stated in my letter of the 29th, ult. the
1814 Southwestern Oil Co., Clem Oil Co. and Oriental Oil Co. have been offering the better trade at Dallas, discounts varying from ½¢ to 1¢ per gal. on refined oil and gasoline, ever since the last two advances went into effect, and matters have now reached a point where it is going to be necessary for us to either put in effect a reduction of ½¢ on both oil and gasoline or allow a number of discounts, and while as a general proposition I do not favor discounts, I would advise using them in this particular case, at least until rebate offers being made by competitors affect a larger percentage of the total gallonage than at present.

I attach hereto, a list of 19 Dallas Merchants with name of concern from whom they are at present buying, estimate monthly purchases of both refined oil and gasoline, and discounts which it will probably be necessary to allow in order to hold those we are now selling and regain all or a part of the trade of those who are buying from others.

Prior to our putting in effect the first advance of ½¢ on Refined and 1¢ on gasoline Sept. 29th, 1905, we were selling every merchant whose name appears on list with the exception of Sonnenthiel-Holbrook Co. but competitors now have eight out of the 19 and we will gradually lose the others unless we meet offers made by competition which as stated above, vary from ½¢ to 1¢ off schedule on Oil and gasoline and I will be obliged if you will authorize us to allow the discounts noted opposite each merchant's name on enclosed list in case we find it absolutely necessary to do so in order to protect our interests.—We will, of course put in Brilliant against competitors best grade at regular schedule when possible and allow discounts on gasoline only, and all special arrangements will be made subject to change at any time so that in case a reduction in schedule becomes necessary, the discounts can be cut off.

Our total sales, bulk and Bbls. from Dallas in Nov. 1905 were about 56,800 gal. refined and gasoline, while total gallonage affected by proposed discounts, if all are allowed, would be but 12,450 or 22% of the total.

1815 Our total sales from Dallas in Nov. 1905 show a decrease of 98 Bls. as compared with the same month 1904 and practically all of this decrease occurred on City tank Wagon sales, a greater portion of it being due to increase in sales by others, consequently, you will appreciate the importance of at once taking steps to improve conditions.

Yours truly,

—— ——, *M.*

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Gasoline Prices.

CWC-1. MARCH 7*th*, 1907.

Mr. C. P. Ackert, General Manager, St. Louis, Mo.

DEAR SIR: I have your wire this date authorizing an advance of 1¢ per gal. on gasoline at Sherman and Ft. Worth if conditions warrant.

We will probably be able to make these advances in the course of the next day or two.

In reference to advancing our gasoline prices at other points. There are a few agencies where it will possibly be safe to make advance, after the advance at Sherman and Ft. Worth are put in effect; I would not, however, advise a general advance until we can find out to what extent the advances being made by the South Texas Refineries will affect such concerns as the Climax Ink & Oil Co., the Southwestern Oil Co., Clem Oil Co., Oriental Oil Co. and the R. G. O. Co.

At the present time the Climax Ink & Oil Co. are naming a flat price of 12¢ per gal. on stove gasoline fob all points to which they are making shipments in car lots, and as they — ma-ntaining agencies

at Waco, Greenville Dublin and one or two other convenient
1816 distributing points trade to a more or less extent now, and
our advancing at this time would turn a larger per centage of the trade to them then we can afford to let them have. If I find latter that the Climax Ink & Oil Co. are disposed to advance their gasoline prices I will probably take advantage of it at points where we now have ten cent schedules.

I infer from your wire that it will be satisfactory to go ahead and advance our gasoline prices wherever conditions warrant. If I am not correct, please advise.

Yours truly, —— ——, *Manager.*

(213-6-649.)

(Endorsed:) No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

CWC-1. JAN'Y 10, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: Referring to our two telegrams of the 9th relative to refined oil shipments from Corsicana.

I was in Corsicana yesterday and on investigation found that the Refinery did not have any finished W. W. 120 on hand that date, and only had two cars of finished P. W. 150, both of which were shipped out yesterday morning on orders from South Texas Division.

Agent Angus will probably get today four or five cars of W. W. 120 but no P. W. 150 and we are promised four cars each of W. W. 120 and P. W. 150 on Saturday the 13th, but if the bad weather we are now having continues throughout the week, it is possible we may not get these last eight cars until next week.—You will understand from the above that we have exhausted the surplus stock of P. W.
150 which the Refinery had on hand, and from now on we
1817 will have to depend on their daily output for our supply of this grade of oil as well as W. W. 120.

As near as I can figure, we can probably depend on getting about 6000 42 gal. barrels of W. W. 120 and 1500 barrels of P. W. 120 or a total of 7500 42 gallon barrels during the remainder of January, and this estimate includes the oil which we will get today.

We will require at Dallas, Ft. Worth, Waco, Corsicana and other points in Central Texas Division, taking less than a 25¢ rate, about 3000 barrels of W. W. 120 between now and February 1, and the remaining 3000 of W. W. and 1500 barrels of P. W. 150 which we can depend upon getting would hardly be enough to supply other Central Texas Agencies during the balance of this month, even though you are agreeable to our getting it off, consequently, you will appreciate the importance of at once arranging to obtain a supply of a satisfactory grade of refined oil from some other source.

I noticed when in Corsicana that South Texas Division is drawing very heavily on Corsicana and in view of the rate to the larger

agencies in Central Texas Division being less than 25¢ per cwt. I would suggest that you shift Houston, San Antonio, Austin and other points in South Texas Division where the large gallonage is marketed, to some other supply point.

Please see my letter of Jan'y 8th, to Vice President Finlay and call his attention to this letter.

Yours truly, —— ——, *Manager.*

(210-629.)

Endorsed: No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Corsicana Oil.

CWC-1. JAN'Y 13, 1906.

1818 Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: As you of course understand, the Corsicana Ref. had on hand January 6th, about 5200 barrels finished, and 4000 barrels unfinished, or a total of 9200, 42 gal. barrels of S. W. 112, which is equivalent to 386,400 gals.—Add to this 6000 barrels or 252,000 gals. of W. W. 120, and 4000 barrels of 168000 gals. P. W. 150 which is the estimate output of the Refinery for January, would make a total of 806,400 gallons.

We should mark it in C. T. Division in Jan. very close to 600,000 gals. of Refined oil and as the South Texas Division continues to draw on Corsicana as heavily during the next three or four weeks as they have recently been doing, it is probable the entire stock of all grades of refined oil at Corsicana will be exhausted early in February.

This for your information.

Yours truly, —— ——, *Manager.*

(210-629.)

Endorsed: No. 24,551. Filed May 31, 1907. D. J. Pickle, Clerk.

Copy.

Orders No. 294 and No. 304.

CWC-1. FEB. 15TH, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: Replying to your letter of the 13th inst. in reference to the above mentioned orders which called for gasoline for shipment to Big Sps. and San Angelo.

1819 As we are forced to sell more or less of this gasoline on basis of engine naphtha prices, I think it would be advisable

to have the shipments made from Chaison, account of the gasoline which we are obtaining there costing less than the Corsicana gasoline.

As you no doubt appreciate, the demand for gasoline will increase from now on, and if the Security people are now behind to the extent of 16 cars with their orders, and we are not likely to get cleaned up within the next 30 days, we will certainly be in a very bad shape as the summer advances if we are forced to depend upon them for supplies and their out put is not materially increased. Can't you arrange to obtain a price from the Texas Co. or Gulf Ref. Co. on stove gasoline that would justify your drawing on them for that part of our supplies which cannot be obtained from the Security people.

The Corsicana Refinery have on hand to-day 6 tank cars of gasoline, and Agent Angus has on file the following orders for Corsicana gasoline to be shipped to points in this Division:

| | |
|---|---|
| For Dallas Station | 4 cars |
| For Corsicana Station | 3 cars |
| For Ft. Worth Station | 1 car |
| For Waco Station | 1 car |
| | 9 cars |

We will send in at an early date orders for one car each of gasoline to be shipped to the following points:

Cleburne Ennis
Hillsboro Sherman
Weatherford

When sending in orders for the first 4 mentioned agencies, we will specify Corsicana gasoline and they can be sent there for shipment. These orders together with the gasoline which we will require at Dallas, Ft. Worth Waco and Corsicana will probably consume the present stock and out put of the refinery for some time to come.

Yours truly, ——— ———, *Manager.*

(216-630.)

1820 Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Estimate Output of Refinery.

CWC-1. FEB. 17TH, 1906.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

DEAR SIR: Referring to your wire of the 16th.

Supt. Plumley of the Corsicana Ref. Co. advises that it will be impossible for him to give us an estimate of their probable future out put until about the middle of next week. I will advise you promptly as soon as I obtain this information.

The Refinery had on hand at the close of business to-day: the following stock:

W. W. 120..... 300 Bbls.
P. W. 150..... 1200 Bbls.
S. W. 112..... 2500 Bls.
Gasoline..... 1200 Bbls

The 300 Bbls. of W. W. would have been shipped out to-day had we been able to get the cars placed for unloading. This oil will be loaded Monday and shipped on our orders for Mexia and Albany.

The refinery will not be able to give us any more W. W. oil until Thursday or Friday of next week, at which time, we will likely get seven or possibly eight cars all of which should be applied on orders which we now have on file at Corsicana.

Yours truly,

—— ——, *Manager.*

216-636.

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk

Production at Corsicana.

October 30th, 1906.

Mr. C. W. Cahoon, Manager, Dallas, Texas.

1821 Dear Sir: Report of Agent Angus dated October 27th shows a decided increase in the estimate production of Eupion Oil for the week ending November 3rd. I assume that you are in touch with conditions at Corsicana, and will place sufficient orders to take care of the entire production.

Yours truly,

(Signed) A. M. FINLAY, *Vice Pres.*

p-e.
(216-630.)

Endorsed: No. 24551. Filed May 31, 1907. D. J. Pickle, Clerk.

Reduction at Commerce.

CWC-1. Dec. 1st, 1905.

Mr. C. P. Ackert, Gen. Mgr., St. Louis, Mo.

Dear Sir: Your letter of the 29th inst. received.

Present selling prices of W. P. O. Co. and Competitors, and proposed schedule as given in our letter of Nov. 27th should have read as follows:

| W. P. O. Co. Present Schedule | Schedule maintained by |
|---|---|
| P. W. Bulk & Bbls.—12½¢ | G. R. Co. and Wyse Oil Co. |
| Eupion Bulk & Bbls. 15¢ | Low grade Oil Blk. & Bbls.—10¢ |
| | High grade Oil Bulk & Bbls. 12¢ |

Proposed schedule W. P. O. Co.
P. W. Bulk & Bbls.—11½¢
Eupion Bulk & Bbls. 12¢

The 1¢ reduction on refined oils asked for will still leave us 1½¢ on low grade and 2¢ on high grade oil, above competitors, and I

would strongly advise making this decline at once and later,
1822 we may be forced to make a further reduction.

The Gulf Ref. Co. agent at Commerce, also the Wyse Oil Co. at Greenville are naming a price on 12¢ per gal. on gasoline delivered at Commerce. While our schedule is 15¢ The Commerce gasoline trade does not amount to very much, and so far, these cuts have not materially affected the situation, tho if they continue to maintain a 12¢ price, it is probable we will have to reduce our schedule.

I will be obliged if you will authorize me by return mail to put in effect a reduction of 1¢ per gal. on both grades of refined oil, as asked for in our letter of the 29th.

Yours truly, —— ——, *Manager.*

Endorsed: # 24551. State of Texas *vs.* Waters Pierce Oil Company. Filed May 31, 1907. D. J. Pickle, Clerk. By J. A. Belger, Deputy. (10)

1823 Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

CHICAGO, *June 21st,* 1906.

Received Jun- 22, 1906.
Ans. ——.
A. M. Finlay.

Mr. A. M. Finlay, Vice Pres. Waters Pierce Oil Company, St. Louis, Mo.

DEAR SIR: Taking effect to-day, June 21st, our price on shipments of common oil from Neodosha and Sugar Creek will advance one-half cent per gallon.

As previously advised you, we have none of this oil at present, but notify you of this change in price *in case we make shipments later on.*

Yours truly, EDG. BOGARDUS.

Noted C C P. Noted GC. Noted R B B 6/22. Noted E H Avery Jun- 22 1906.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Refined Oil from Neodosha and Sugar Creek.

JUNE 22ND, 1906.

Mr. H. Clay Pierce, Chairman, New York, N. Y.

DEAR SIR: For your information, please note attached copy of Mr. Edgar Bogardus' letter, Chicago, June 21st.

We are now getting our supplies of common oil for St. Louis and the Missouri Division from Whiting, our present cost being,

F. O. B. Whiting..... 4.87¢
Freight to St. Louis..... 67¢

Delivered cost St. Louis..... 5.54¢

The cost at Neodosha, if we could get the oil there for St. Louis, would be,

1824 F. O. B. Neodosha..... 3.87 ¢
Freight to St. Louis..... 1.148¢

Delivered St. Louis..... 5.048¢

Yours truly,

——— ———,
*Vice President.*

P. S.—This advance of June 21st on P. W. 150 oil from Neodosha and Sugar Creek, makes the difference between the Whiting and the Neodosha F. O. B. billing price, 1¢ per gallon, the same as it was previous to June 11th, when we were notified of a reduction of ½¢ per gallon on refined oils at Corsicana and Whiting, and 1¢ per gallon at Neodosha and Sugar Creek.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

CHICAGO, *August 15th*, 1906.

Received
Aug. 16, 1906.
Ans. ———.
A. M. Finlay.

Mr. A. M. Finlay, Vice Pres. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Confirming telegram to you today. Effective August 15th, our prices on refined oil f. o. b. Whiting and Corsicana will be as follows:

| | | |
|---|---|---|
| Common oil | 4.25 | (Corsicana only) |
| Common oil | 4.375 | (Whiting only) |
| Water White 110 to 120 | 4.875 | |
| Eupion 120 | 6.125 | |
| Water White 121 to 150 | 4.875 | |
| Eupion 121 to 150 | 6.125 | |
| Headlight 175 | 6 | |

Yours truly,

W. P. COWAN.
B.

Noted 8/17/06. C. M. Adams. Noted (Y)

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

1825 The Western Union Telegraph Company.

* * * * * * *

Received
Aug. 16, 1906.
Ans. ——.
A. M. Finlay.

Received at 412 and 414 Pine Street, St. Louis Mo.
27 BX Q My 86 Paid.

BX CHICAGO, ILL., *Aug.* 15, 1906.

A. M. Finlay, V. P. Waters P. Co., St. Louis, Mo.:

Taking effect today our price on water white one ten to one twenty and eupion one twenty declines one quarter sent per gallon and one half cent per gallon on waterwhite one twenty one to one fifty Eupion one twenty one to one fifty and headlight one seventy five this declin- from present basis F O B whiting corsicana sugarcreek and neodosha Effective today our price on common oil F O B Corsicana will be four and one quarter cent and three six twenty five F O B Sugarcreek and Neidesha.

W. P. COWAN [WATERS P. OIL CO.].*

335 pm.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Aug. 9, 1906.
Answered ——.

Received
Aug. 8, 1906.
Ans. ——.
A. M. Finlay.

CHICAGO, *Aug.* 7, 1906.

Received
Aug. 8, 1906.
Answered ——.
C. P. A.

Mr. A. M. Finlay, Vice Pres. W. P. O. Co., St. Louis, Mo.

DEAR SIR: For your information, our prices on Refined Oil and Napthas, in bulk, F. O. B. Sugar Creek or Neodosha, are as shown below. These prices effective July 9th:

---

[*Words enclosed in brackets erased in copy.]

| | | |
|---|---|---|
| Common Oil | | 3.875 |
| | W. W. 110/120 | 4.125 |
| 1826 | W. W. 121/150 | 4.375 |
| | VM & P Naptha | 9.375 |
| 62/65 Deod | | 9.375 |
| Deod. Stove Gaso | | 10.375. |

Yours truly,

W. P. COWAN.
B.

Noted 8/8/06. C. M. Adams. Noted 8/8/06. A. R. B. Backus.
L.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Aug. 9, 1906.
Answered ——.

Received
Aug. 8, 1906.
Answered ——.
C. P. A.

Received
Aug. 8, 1906.
Ans. ——.
A. M. Finlay.

CHICAGO, *Aug.* 7, 1906.

Mr. A. M. Finlay, Vice-Pres. W. P. O. Co., St. Louis, Mo.

DEAR SIR: Taking effect Aug. 3rd, our prices on Refined Oil, Naptha, and Gasoline, in bulk, F. O. B. Whiting and Corsicana, are as follows:

| | | |
|---|---|---|
| Common Oil | 4.375 | |
| W. W. 110/120 | 5.125 | |
| Eupion 120 | 6.375 | cut out* |
| W. W. 120/150 | 5.375 | |
| Eupion 121/150 | 6.625 | cut out* |
| Headlight 175 | 6.50 | |
| V. M. & P. Naptha | 8.875 | |
| 62/65 Deod | 8.875 | |
| Deod. Stove Gaso | 10.125 | |
| 86 Gasoline | 15.125 | |
| 87 Gasoline | 16.125 | |

Yours truly,

W. P. COWAN.
B.

[* In pencil in copy.]

1827 Noted 8/8/06. C. M. Adams. Avery. Noted 8/8/06. R. B. Backus L.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Sept. 16, 1905.
Ans. 9/20.
A. M. Finlay.

CHICAGO, *Sept.* 15, 1905.

Mr. A. M. Finlay, President Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: For your information our price on refined oil, shipped from Whiting and Corsicana, effective Monday, Sept. 18th, will advance .50 cents per gallon, and on stove gasoline and other grades, up to and including 76 Naptha, from *Whiting, Corsicana, Neodesha,* and *Sugar Creek,* one cent per gallon.

No change on 62/65 and 86 and higher grades.

Yours truly, W. P. COWAN.

Noted G. P. Ackert. Noted J. P. G. M., Jr. S. Nattis. Please return A. M. F. Rundle Sep. 18, 1905.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Jul- 19, 1906.
Ans. ——.
A. M. Finlay.

CHICAGO, *July* 18, 1906.

Mr. Andrew M. Finlay, V.-P. Waters Pierce Oil Co., St. Louis, Mo.

1828 DEAR SIR: Replying to your letter of July 16th, regarding prices on 87 Gasoline in wood and iron barrels:

We quote you this grade in wood barrels at 18,875 cents per gallon; in iron barrels, 16.375 cents per gallon net f. o. b. Whiting, Ind.

Yours truly, W. P. COWAN.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

The Western Union Telegraph Company.

* * * * * * *

Received
Aug. 25, 1906.
Ans. ——.
A. M. Finlay.

Received
Aug. 25, 1906.
Ans. ——.
C. P. A.

15 Bx WP Mn 12 paid.

Received at 412 and 414 Pine Street, St. Louis, Mo.

Bx

CHICAGO, 8/25.

A. M. Finlay, V. P. Waters Pierce Oil Co., St. Louis, Mo.:

We cannot make any reduction in price V M and P Naptha.

W. P. COWAN.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice President, 5 Wabash Avenue.

Received
Mar. 29, 1906.
Ans. ——.
A. M. Finlay.

CHICAGO, *March 28th*, 1906.

Mr. A. M. Finlay, Vice Pres. Waters Pierce Oil Co., St. Louis, Mo.

1829 DEAR SIR: Taking effect tomorrow, March 29th, our price on Naptha, gravity under 62, 62 to 65 and D. S. Gasoline advances one cent per gallon; Naptha gravity above stove, up to 72 inclusive, 1½ cent per gallon; 73 to 76, two cents and 68 to 90 one cent per gallon.

These advances to apply on shipments from Whiting, Corsicana, Neodesha and Sugar Creek.

Yours truly,

W. P. COWAN.
B.

C. M. A.—Noted C. M. A. R. B. B. Noted R. B. B. 3/29. C. P. A. Noted C. P. Ackert. W. Please note and return Noted G C.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

Received
Apr. 6, 1906.
Ans. ——.
A. M. Finlay.

W. P. Cowan, Vice-Pres. Waters Pierce Oil Co., St. Louis, Mo.

DEAR SIR: Effective April 16th, our price on all grades of refined oil from Whiting and Corsicana will advance one-quarter of a cent per gallon; no change when from Sugar Creek or Neodesha.

Yours truly,
W. P. COWAN.
B.

[C. M. A.]* Noted Avery. C. P. A. Noted C. P. A. W. [R. B. B.]* Noted R. B. B. L. Recorded Apr. 16, 1906, G. D. M.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

Standard Oil Company.

W. P. Cowan, Vice-President, 5 Wabash Avenue.

CHICAGO, *May 10th*, 1906.

Received
May 11, 1906.
Answered — S. K. W.

Received
May 11, 1906.
Ans. ——.
A. M. Finlay.

Mr. A. M. Finlay, Vice Pres. Waters Pierce Oil Co., St. Louis, Mo.

1830 DEAR SIR: Taking effect today, May 10th, our price on all grades of Naptha and Gasoline above *Stove* will advance one cent per gallon from Whiting, Corsicana, Sugar Creek and Neodesha.

Yours truly,
W. P. COWAN.

C. M. A. *C. M. A.* C. P. A. C. P. A. W. R. B. B. R. B. B. 5/11/6.

(Endorsed:) No. 24,551. Filed May 25, 1907. D. J. Pickle, Clerk.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court, within and for the county and State aforesaid, do hereby certify that the within and foregoing on 12 pages contains true and correct copies of certain Letters and Telegrams, filed in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as the same appear on file in this office among the papers of said case.

[*Words enclosed in brackets erased in copy.]

Given under my hand and seal of office, at Austin, Texas, this the 7th day of August, A. D. 1907.

[SEAL.]

D. J. PICKLE,
*Clerk District Court, Travis County, Texas.*

Endorsed: With 4212. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas. Sep. 10, 1907. R. H. Connerly, Clerk.

1831 *Opinion of Court of Civil Appeals. Filed December* 11, 1907.

No. 4212.

THE WATERS-PIERCE OIL COMPANY, Appellant,
*vs.*
THE STATE OF TEXAS, Appellee.

Appeal from the District Court of Travis County.

This case involves alleged violations of the anti-trust laws of this State, and as the charge of the able judge who tried the case sufficiently states the nature of the suit as it was submitted to the jury, and correctly defines the provisions of the anti-trust statutes applicable to the case, and states the issues that were decided by the jury, it is deemed proper to set out the charge in full, which is as follows:

"GENTLEMEN OF THE JURY: In this case the State of Texas, as plaintiff, has sued the Waters-Pierce Oil Company, a private corporation chartered under the laws of the State of Missouri and doing business in Texas by virtue of a permit issued to it by the State of Texas on May 31, 1900, as defendant, to cancel said permit and to recover penalties for violations of the anti-trust laws of Texas which the State alleges the defendant has committed on each and every day from May 31, 1900, to April 29, 1907.

"The State alleges that on or about January 1st, 1870, John D. Rockefeller, John P. Archbold, H. H. Rogers, Henry M. Flagler, and a number of other persons conceived the scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas, and that said persons to that end and for that purpose entered into a conspiracy among themselves and with other individuals and corporations, including the defendant corporation, which conspiracy the State alleges continued in force
1832 and effect from the date of its formation until the date of the filing of the State's second amended petition in this case, and the State further alleges that in pursuance of said alleged conspiracy the defendant has done various acts and entered into various agreements which constitute violations of the anti-trust laws of Texas.

"The State further alleges that the defendant's predecessor, the Waters-Pierce Oil Company incorporated in 1878, on or about the 5th day of October, 1894, entered into a contract with the Eagle Refining Company, A. W. Clem and certain other individuals named in

its petition, by the terms of which defendant acquired the property of said Eagle Refining Company, situated in the city of Dallas, Texas, and the right to operate its business under the name of the said Eagle Refining Company. It further alleges that the defendant did, subsequent to May 31, 1900, operate said Eagle Refining Company and maintain the plant thereof at Dallas, as an apparently competing concern for various purposes prohibited by the anti-trust laws.

"The State further alleges that in the year 1896, the defendant's said predecessor bought out the business of the Texas Oil & Gasoline Company and of one Roy Campbell, who were at that time doing business in the city of San Antonio, Texas, and elsewhere, and entered into contracts and agreements with the said Texas Oil & Gasoline Company and Roy Campbell, whereby said Texas Oil & Gasoline Company was thereafter to be operated under said name by defendant as an apparently competing concern with defendant at San Antonio, in the sale of the products of petroleum. It further alleges that said Texas Oil & Gasoline Company was operated by defendant as a concern apparently competing with it at San Antonio subsequent to May 31st, 1900, for various purposes in violation of the anti-trust laws of the State. For full particulars of the
1833 State's allegations you are referred to its second amended original petition.

"The defendant denies all and singular the allegations of the State, and in addition to various of her special defenses, pleads specially that, if it has entered into any of the agreements or committed any of the acts alleged by the State, none of same constitute violations of the anti-trust laws of Texas, because said agreements were made and said acts done (if at all) solely with reference to subjects of interstate commerce. For full particulars of defendant's allegations, you are referred to its third amended original answer.

"As the law of the case you are instructed as follows, viz:

"I. The burden of proof rests upon the State to establish the affirmative of the issues which will hereafter be submitted in this charge for your consideration by a preponderance of the evidence, and you will find in favor of the defendant on each issue so submitted for your consideration, except such issue or issues, if any, as you find that the State has established by a preponderance of the evidence, and you will return a general verdict for the defendant, unless you find that the State has established by a preponderance of the evidence some combination or combinations of facts which will entitle it to recover under the law as it is given you in charge by the court.

"II. The statute known as the anti-trust law of 1899 was in force on May 31, 1900, and thereafter remained continuously in force until March 31st, 1903.

"For the purposes of this charge you are instructed that this act made it unlawful for any corporation transacting or conducting any kind of business in this State to enter into, or become a party to, any agreement or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

1834 "You are further instructed that said statute also made it unlawful for any corporation transacting or conducting any kind of business in this State to bring about or permit any union or combination of its capital, property, trade or acts with the capital, property, trade or acts of any other person or corporation, whereby the price in Texas of any article of manufacture or merchandise would be fixed or sought to be fixed, regulated or sought to be regulated; or whereby the price in Texas of any article of manufacture or merchandise would be reasonably calculated to be fixed or regulated, or whereby the trade in such article of manufacture or merchandise in Texas would be sought to be controlled or limited, or would be reasonably calculated to be controlled or limited.

"The statute known as the anti-trust law of 1903, became effective on March 31st., 1903, and has since continued in force. For the purposes of this charge you are instructed that this statute defines a trust to be a combination of capital, skill or acts, by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes, viz:

"1. To create or which may tend to create or carry out restrictions in trade or commerce in Texas, or to create or carry out restrictions in the free pursuit in Texas of any business authorized or permitted by the laws of this State.

"2. To fix, maintain or increase the price of merchandise in Texas.

"3. To prevent or lessen competition in Texas in the sale of merchandise.

"4. To abstain from engaging in business or in the sale of merchandise in Texas, or any portion thereof.

"Said statute of 1903 further defines a monopoly to be a combination or consolidation of two or more corporations when effected in any of the following methods, viz:

"1. When the direction of the affairs of two or more cor-
1835 porations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create, a trust as above defined.

"2. When any corporation acquires the shares or certificates of stock, franchise or other rights, or the physical properties or any part thereof of any other corporation for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

"III. Oil, all other products of petroleum, and goods, wares or merchandise of any character which the defendant or its agents may have purchased or acquired in any manner outside of the State of Texas and caused to be transported to its agents or others within the state, are the subjects of interstate commerce when they enter this State, and so remain until such commodities are removed from the original tanks, vessels or other packages in which they are imported into the State and become mixed with the common mass of property of similar character in this State. The anti-trust laws of Texas have no reference to agreements or pools or arrangements of any character

concerning subjects of interstate commerce, and no agreement, pool or other arrangement, if any, which the defendant may have entered into with reference to the sale of any subject of interstate commerce can be considered by you as violating any anti-trust law of Texas. But neither oil purchased by the defendant from the Corsicana Refinery or elsewhere in Texas, nor other merchandise purchased by defendant at points in Texas, nor such oil or other merchandise purchased by defendant at points outside the State and transported into the State and removed from the original packages or vessels in which it was brought into the State and mingled with other property of similar character in the State, is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any
1836 agreement or pool or arrangement entered into by defendant with reference to such property or the sale thereof, if any such sale there were, would be unlawful, if in violation of the anti-trust laws of this State.

"IV. A corporation such as defendant can only act through its agents and servants, but such a corporation is not liable for all of the acts of its agents or servants. It is liable, however, for the acts done in the scope of their employment and agency, and is also liable for the acts of its agents which it has authorized such agents to perform, and it is also liable for the unauthorized acts of its agents, if any, which have been knowingly acquiesced in or ratified by the governing body of said corporation.

"V. Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor's agents prior to June 1st., 1900, and to the doings and agreements of defendant's agents, and the agents of other corporations, outside the State of Texas, and to the doings and agreements of individuals both prior and subsequent to June 1st., 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant, except within the limitations and for the purposes hereinafter stated, viz:

"If you find from a preponderance of the other evidence in the case, independent of all declarations or statements made by any person or persons, except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June 1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with defendant relating to the manag-ment of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the State's petition to be co-conspirators
1837 with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it worth, such acts or declarations of all the parties to said agreement, if any, and such acts and declarations of their authorized agents, if any, as were done or made, as the case may be, during the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the character of said agreement,

and whether or not it contemplated a violation by defendant of the anti-trust laws of Texas.

"You may further consider for what, if anything, you think it worth as tending to show or explain the course of defendant's dealing in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside the State.

"None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency.

"VI. No agreement made by the defendant outside the State of Texas, to violate the anti-trust laws of Texas, if any such there were, can be made the basis for forfeiting its permit to do business in Texas, or for imposing penalties upon it, unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of defendant; but inasmuch as the undisputed evidence in the case shows that the defendant has continuously maintained its agents in this State and prosecuted its business therein since May 31, 1900, you will be authorized to convict it of violating the anti-trust laws of Texas, if you find from a preponderance of the evidence in favor of the State on the issues submitted for your consideration in paragraphs VII, VIII, IX, X or XI of this charge.

1838 "VII. If you find from a preponderance of the evidence that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey, on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, and if you further find from a preponderance of the evidence that the oil with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce, you will return a verdict for the state and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph seven of the court's charge. You are instructed in this connection that if you find in favor of the State on the issue above submitted for your consideration in this paragraph of the charge, each day embraced between May 31, 1900 and March 31, 1903, during which the defendant remained a party to the agreement or understanding herein mentioned, if there were any such agreement or understanding, and if it remained a party to same on any of said days, would constitute a separate and distinct violation of the anti-trust laws of Texas.

"If you do no- find from a preponderance of the evidence that the defendant was on June 1st, 1900, or on some date subsequent thereto and prior to March 31, 1903, through the action of its duly ap-

pointed and authorized agents, a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined from petroleum, and
1839 if you do not further find from a preponderance of the evidence that the oil with reference to which defendant entered into said agreement or understanding, if any such there were, was the subject of loca-, as distinguished from interstate commerce, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph seven of the court's charge.

"VIII. If you find from a preponderance of the evidence that on June 1st.,1900, or on any date subsequent thereto and prior to March 31st., 1903, the defendant acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital of the Standard Oil Company of New Jersey, whereby the price in Texas oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eight of the court's charge. In this connection you are instructed that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas. If you do not find from a preponderance of the evidence that on June 1, 1900, or that on some date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents had brought about or permitted a combination or union of its capital with the capital of the Standard Oil Company of New Jersey, and if you do not further find from a
1840 preponderance of the evidence that by said combination or union, if such there were, the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or that thereby the price in Texas of such oil was reasonably calculated to be fixed or regulated, or that thereby the trade in such oil in Texas was sought to be controlled or limited, you will say by your verdict, we the jury, find for the defendant on the issues submitted for our consideration in paragraph eight of the court's charge.

"IX. If you find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum, other than oil which was the subject of interstate as destinguished from local commerce, or to fix, maintain

or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were on March 31st., 1903, or any date subsequent thereto and prior to April 29th., 1907, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph nine of the court's charge. In this connection you are instructed that if the defendant became a party to a trust of the character mentioned in this paragraph of the charge, each day between March 30, 1903 and April 29th., 1907, that it remained a party to and acted under such trust, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized
1841 agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey, for the purpose of creating in Texas, or which tended to create or carry out in Texas restrictions in the free pursuit in this state of the business of selling said character and kind of oil, or to fix, maintain, or increase the price of such oil in Texas, or to prevent or lessen competition in Texas, in the sale of such oil, and that the defendant remained or was a party to, and acted under, such combination, if such there were subsequent to March 30, 1903, and prior to April 30, 1907, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph nine of the court's charge.

"X. If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29th., 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances, that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the state and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph ten of the court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29th., 1907, that it remained a party to such monopoly, if there were any such
days, constituted a separate violation of the anti-trust laws
1842 of Texas.

"If you do not find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the

same management or control on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, and that they were brought under such a common management or control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of such oil, or fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph ten of the court's charge

"XI. If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29th., 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eleven of the court's charge.

In this connection you are instructed that if the defendant
1843 entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29th., 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation, and if you do not further find from a preponderance of the evidence that said stock was acquired and combination effected, if it were at all, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of said character and kind of oil, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will say by your verdict, we the jury find in defendant's favor on the issues submitted for our consideration in paragraph eleven of the court's charge.

"XII. The evidence introduced before you does not show with sufficient definiteness that the defendant has, since May 31st., 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil & Gasoline Company, in

such a manner as to violate the anti-trust laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts.

"XIII. Evidence has been introduced before you tending to show that the defendant has given rebates and discounts in the course of its dealings; evidence has also been introduced before you tending to show that defendant has made contracts and entered into
1844 understandings other than those which have been submitted for your consideration in paragraphs seven to eleven, inclusive, of this charge. Evidence has also been introduced before you tending to show the general course of dealings of defendant in Texas and elsewhere, including some of its business methods in meeting competition. You are instructed that none of this evidence shows or tends to show any violation of the anti-trust laws of Texas, unless it tends in some degree to establish some one or more of the issues submitted for your consideration in the last above mentioned paragraph of this charge; and you are therefore instructed to acquit the defendant and return a general verdict for it,—notwithstanding any and all of said evidence, unless you find in favor of the State on the issues submitted for your consideration in some one or more of said paragraphs of the charge.

"XIV. If you convict the defendant under the foregoing instruction of any violation or violations of the anti-trust law of 1899, you will specify in your verdict the date or days for which it is convicted of having violated said law, and will further specify in your verdict that for said violation or violations, if any your find, that its permit to do business in Texas shall be forfeited, and the amount of money which shall be adjudged against it as penalties for said violations, if any. In fixing the penalties, if any, which you assess against the defendant for any violations of which you may convict it, of the anti-trust law of 1899, you will fix same at not less than two hundred dollars, or more than five hundred dollars per day for each day you find it has so violated the law. If you convict the defendant of any violations of the anti-trust law of 1903, you will specify in your verdict the date or days for which it is so convicted and further specify therein that as a result of said conviction, its permit to do business in Texas shall be forfeited, and the sum of money that shall be adjudged against it as a penalty for such violation, fixing said sum at fifty dollars per day for each and every day that you convict it of having violated said law.

1845 "XV. In order to aid you in preparing your verdict in proper form, when you have reached same, the following forms of verdicts are submitted for your consideration:

"1. If you find in favor of the State on all of the issues submitted to you and for the entire time for which penalties are claimed by the State against the defendant in its petition, you will say: 'We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for the penalties at —— Dollars; and we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903,

and April 29, 1907, being fourteen hundred and eighty eight days, and fix the penalties at Seventy Four Thousand Four Hundred Dollars. We further find that the permit of the defendant to do business in the State of Texas should be cancelled. We find for the defendant upon all the issues made by the pleadings and not submitted in the charge of the court.'

"2. If you find in favor of the State on some of the issues submitted for your consideration, relating to the alleged violation of the anti-trust law of 1899, and in favor of the State with reference to some of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

"We the jury find in favor of the State on the issues submitted for our consideration in the following paragraphs of the court's charge—

"We further find that the defendant violated the anti-trust laws of Texas on the following days embraced between May 31, 1900 and March 31, 1903—

"We further find that on account of said violations, the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of —— Dollars. We further find that the defendant violated the anti-trust laws of 1903, on the following days embraced between the 30th day of March, 1903, and the 29th day of April, 1907—

1846

"We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of —— Dollars. On all other issues raised by the pleadings, we find in favor of the defendant.

"3. If you find in favor of the State with reference to some or all of the alleged violations of the anti-trust law of 1899, submitted for your consideration, and if you find in favor of the defendant on other of said alleged violations, and if you find in favor of the defendant on the issue of all of the alleged violations of the anti-trust law of 1903, you may use the following form of verdict:

"We the jury find in favor of the State on the issues submitted for our consideration in the following paragraph of the court's charge ——. We further find that the defendant has violated the anti-trust laws of Texas on each of the following days embraced between May 31, 1900 and March 31, 1903 ——; we further find that because of said violations the permit of the defendant to do business in Texas should be forfeited and penalties should be imposed upon it in the amount of —— Dollars. We further find in defendant's favor on all alleged violations of the anti-trust laws of 1903, and on all other issues made by the pleading.

"4. If you find in defendant's favor on all issues submitted for your consideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the State on all or some of the issues relating to defendant's alleged violation of the anti-trust law of 1903, you may use the following form of verdict: We, the jury,

find in defendant's favor on all issues submitted for our con-
1847 sideration relating to its alleged violation of the anti-trust laws of 1899, but find in favor of the State under the following paragraphs of the court's charge: ——, for alleged violations of the anti-trust laws of 1903. We further find that the defendant has violated said anti-trust laws on each of the following days embraced between March 30, 1903, and April 29, 1907, ——. We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the sum of —— Dollars.

"5. If you desire to return a general verdict for defendant you may use the following form of verdict: We the jury find for the defendant.

"XVI. You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to take the law as it is given you in charge by the court, and to be governed thereby in arriving at your verdict."

All requested instructions were refused. The verdict of the jury reads as follows:

"We, the jury, find for the palintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties, 1,549,500.00 dollars.

"And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty eight days, and fix the penalties at seventy four thousand four hundred dollars.

"We further find that the permit of the defendant to do business in the State of Texas should be cancelled.

"We find for the defendant upon all issues made by the
1848 pleadings and not submitted in the charge of the court."

The court rendered judgment for the State in accordance with the verdict for $1,623,900, and a cancellation of the defendant's permit to do business in this State. The defendant has appealed and presents the case in this Court on one hundred and twenty-nine assignments of error.

There is evidence in the record which supports the findings of the jury, and we find the facts to be as found by the verdict.

*Opinion.*

1. Assisted by elaborate briefs and arguments submitted by able counsel on both sides, this Court has given to this important case earnest and careful consideration. The volume of business on our docket and the great number of questions presented preclude extended consideration in this opinion of many of the questions raised in appellant's brief. We therefore announce, in general terms, our conclusion to the effect, that it is not shown that error was committed in overruling appellant's application for a change of venue, in various

rulings upon exceptions to pleadings, and as to admissibility of testimony.

A majority of the Court also hold that no positive error has been assigned upon the charge of the court. The writer of this opinion is of a different view concerning the 11th section of the charge, and concurs with counsel for appellant in their contention that it was calculated to mislead the jury into the belief that they could find against the defendant upon the issues therein submitted, regardless of whether it had any knowledge of, participated with, or aided or abetted the Standard Oil Company in the wrongful conduct therein referred to. The provision of the anti-trust statute of March 31, 1903, upon which the charge in question was evidently founded, seems to be addressed, in the main, against the corporation
1849 which acquires stock or other property of another corporation with the intention of using it for the purpose specified in the statute and it cannot properly be construed to include the corporation whose stock or property has been acquired, and subject it to the penalties prescribed by the statute, unless that corporation is, in some manner, responsible for the unlawful acts of the acquiring corporation.

These are my individual views, and the other members of the Court do not concur in the construction placed by me upon the charge. However, we are all agreed that if the charge in question be erroneous, it affords no ground for reversal, because the jury found that appellant had violated other provisions of the antitrust act of 1903, and awarded only one penalty for each day's violation. Having found for the State on these other issues, if the verdict had been in appellant's favor on the issue submitted by the charge under consideration, the judgment should have been the same; and therefore, if that section of the charge was erroneous, such error is now harmless and immaterial.

In reference to the assignments of error complaining of the order of the court appointing a receiver, it is sufficient to say that appellant has exercised its right to prosecute a separate appeal from that order, and this Court, in considering that appeal, has decided against appellant. It is not entitled to have the order appointing a receiver reviewed by this Court twice or in two distinct proceedings.

2. The constitutionality and validity of the anti-trust acts of May 25th, 1899, and March 31st, 1903, have been vigorously assailed in numerous respects. We overrule these objections and hold that these statutes authorize and sustain this suit. (State *vs.* Laredo Ice Company, 96 Tex., 467; Waters-Pierce Oil Co. *vs.* the State, 44 S. W., 936.)

The contention that these statutes are too indefinite and uncertain in the particulars involved in this case is not regarded as tenable.
The Sherman Anti-trust Law enacted by Congress is not more
1850 definite and specific than these statutes, and that Law has stood the test against similar objections in the Supreme Court of the United States. (United States *vs.* Knight Company, 156 U. S. 1; United States *vs.* Trans-Missouri Freight Ass'n. 166 U. S., 291; United States *vs.* Joint Traffic Ass'n, 171 U. S., 505; Hopkins *vs.*

United States, 171 U. S., 578; Anderson *vs.* United States, 171 U. S., 604; Addyston Pipe & Steele Co., *vs.* United States, 175 U. S. 211; Montague & Co. *vs.* Lowry, 193 U. S., 38; Northern Securities Company *vs.* United States, 193 U. S., 196.

3. This suit was instituted on September 22, 1906, and the defendant interposed a special exception to the petition in so far as it sought to recover penalties for alleged violation of the anti-trust laws of this State prior to the 22nd day of September, 1904, for the reason that it appeared from the face of the plaintiff's petition that the right to recover such penalties accrued more than two years before the suit was filed; and was therefore barred by the statute of limitation of two years, as prescribed in Art. 219, of the Code of Criminal Procedure of this State. That exception was overruled, and the court refused to give the jury a special instruction, requested by appellant, announcing and applying the same proposition of law. These rulings of the trial court are assigned as error, and present one of the most important questions in the case. Chapter 1 of Title 4 of the Code of Criminal Procedure is headed thus: "The time within which criminal actions may be commenced:" Art. 219 reads as follows: "For all misdemeanors an indictment or information may be presented within two years from the commission of the offense and not afterward."

By the Penal Code offenses which are punishable by pecuniary fine only are designated misdemeanors; and appellant's contention seems to be that the things condemned by the Act of May 25th, 1899, upon which this suit in part is based, constitute misdemeanors; and that, although civil in form, the suit is criminal in nature and
1851 barred by Art. 219 of the Code of Criminal Procedure. It is also contended that the pecuniary penalties imposed by the act of March 31, 1903, constitute part of the punishment prescribed by that act, and that the suit for the penalties accruing thereunder constitutes a criminal case, and is barred by Art. 218 of the Code of Criminal Procedure, which bars prosecutions for felonies.

The second, third, fourth and sixth sections of the act of May 25, 1899, declare that all persons, firms, corporations or associations of persons who violate those sections "shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act." The 11th section states that all who do the things therein condemned shall be "adjudged a monoply and be subject to all the pains and penalties provided in this act." The seventh section provides for the forfeiture of the charter of any domestic corporation and permit to do business granted to any foreign corporation for violations of the statute. The 5th section reads as follows: "Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State at the relation of the

Attorney General or the district or County Attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided."

The pertinent part of the 9th section is expressed in these words: "It shall be the duty of the Attorney General and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The Attorney General and the prosecut-
1852 ing attorney shall institute and conduct all suits begun in the district courts, and upon appeal the attorney General shall prosecute said suits in the Courts of Civil Appeals and Supreme Court."

The first section of the anti-trust act of March 31st, 1903, defines a trust. The second section defines a monop-ly, and the third section prescribes what act shall constitute a conspiracy in restrain- of trade. The fourth section declares all trusts, monop-lies and conspiracies in restraint of trade to be illegal. The 5th, 6th and 7th sections make provision for the forfeiture of charters of domestic corporations violating that act, and the 8th section makes a similar provision in reference to the permit of foreign corporations to do business in this State. The 7th and 10th sections use the word "convicted", but the 7th relates to the subject of the forfeiture of charter rights, and the tenth to the subject of forfeiture of a foreign corporation's right to do business in the State, which shows that the Legislature did not have in mind a proceeding by indictment or criminal information. The 11th section reads as follows:

"Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis County, and it shall be the duty of the Attorney General, or the district or county attorney, under the direction of the Attorney General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this act shall be over and above the fees allowed him under the general fee bill."

The 13th section of that act reads as follows: "And in addition to the penalties and forfeitures herein provided for, every per-
1853 son violating this act may further be punished by imprisonment in the penitentiary not less than one nor more than ten years."

We agree with counsel for appellant that these statutes are penal. They were enacted for the purpose of suppressing and preventing certain things regarded by the Legislature as detrimental to the public interest. The penalties prescribed were intended as punishment, but it does not follow that this is a criminal case within the purview of Art. 219 of the Code of Criminal Procedure. After a careful consideration of all their terms, we have reached the conclusion that it was the intention of the Legislature in enacting the two statutes under consideration to create a cause of action in behalf of the State

for the pecuniary penalties therein prescribed, to be recovered in a civil suit. We reach this conclusion mainly from the language of the 5th section of the act of 1899, and the 11th section of the act of 1903. These sections declare that those who violate any of the provisions of those acts shall forfeit and pay, in the one instance not less than $200 nor more than $5000, and in the other instance $50, to be recovered in an action in the name of the State. It is true that in some places in these laws the procedure is designated "prosecutions", but in others they are spoken of as "actions" and "suits". In the 9th section of the act of 1899, it is declared to be the duty of the Attorney General and district and county attorneys "to institute and conduct all *suits* begun in the district courts, and upon appeal the Attorney General shall prosecute said *suits* in the Courts of Civil Appeals and Supreme Court."

Section 5 of that act, construed in connection with section 9, indicates with absolute certainty a legislative purpose to authorize civil suits for the recovery of the pecuniary penalties prescribed. The two sections together indicate that it was not intended that such penalties should be enforced by a criminal proceeding, because if
1854 that act creates a criminal offense such offense would be a misdemeanor, of which the district court would have no jurisdiction. The Constitution confers upon that court exclusive jurisdiction of suits by the State for forfeitures and penalties; and it must be presumed that in enacting that statute, the Legislature intended to provide for such suits as were authorized by that provision of the Constitution, and not to create criminal offenses of which the county court alone would have original jurisdiction, otherwise the Legislature would not have used the language, "shall institute and conduct all suits begun in the district courts."

It is true that both of these statutes contain some expressions common to criminal procedure, such as "offense", "guilty", and "convicted". The word "guilty" however, is frequently used in civil cases, as "guilty of fraud", "guilty of negligence". And the word "offense" as used in these statutes, has reference to violations of their provisions, and is not equivalent to the words "felony" or "misdemeanor". However, we do not hold that it is necessary to use either of the latter terms to create a criminal offense; nor, on the other hand, do we think that the words "offense", "guilty" and "convicted" necessarily determine that these are criminal statutes to be enforced exclusively by indictment or information. The word "suit" is very generally used to designate a civil case, and seldom if ever applied to criminal cases.

As these statutes do not, in terms, require a resort to criminal procedure for their enforcement, then, even if they do not direct any method of enforcement, we are of the opinion that the State had the right to proceed in a civil action for a recovery of the pecuniary penalties. In such cases it is a well established rule that an action of debt will lie for the recovery of statutory penalties. (5th Ency. Plead. & Prac. 907, and authorities there cited.) It has been so decided in this State in Davidson *vs.* Missouri Pacific Ry. Co.
1855 3 Tex. Crt. App., 173, where it was held that a suit to recover a statutory penalty was an action of debt, and barred by our

statute of limitation, which requires actions for debt, where the indebtedness is not evidenced by a contract in writing, to be commenced within two years. That the State may also bring an action for debt for the recovery of statutory penalties, seems to be equally well settled. It was so held by the Supreme Court of the United States in Stockwell *vs.* United States, 13 Wall., 531. That was an action by the government to recover double the value of certain shingles, alleged to have been illegally imported into the United States. The act of Congress upon which the suit was founded, reads as follows: "That if any person or persons shall receive, conceal or buy any goods, wares or merchandise, knowing them to have been illegally imported into the United States, and liable to seizure by virtue of any act in relation to the revenue, such person or persons shall, on conviction thereof, forfeit and pay a sum double the amount or value of the goods, wares or merchandise so received, concealed or purchased." In that case, among other things, the court said:

"A verdict and judgment having been recovered against the defendants in the court below, the record has been removed into this court and four errors have been assigned.

"The first is that a civil action of debt will not lie, at the suit of the United States, to recover the forfeitures or penalties incurred under this Act of Congress, and that the court below erred in holding that such an action might be maintained. It is not contended that an action of debt will not lie to recover duties, if the defendant be the owner or importer of the goods imported, for it is conceded that by the act of importing, an obligation to pay the duties is incurred. The obligation springs out of the statutes which impose duties. Nor is it doubted that when a statute gives a private person a right to recover a penalty for a violation of law he may maintain an action of debt, but it is insisted that when the Government proceeds for a penalty based on an offense against law, it must be by indictment or by information. No authority has been adduced in support of this position, and it is believed that none exists. It cannot be that whether an action of debt is maintainable or not depends upon the question who is the plaintiff. Debt lies whenever a sum certain is due to the plaintiff, or a sum which can readily be reduced to a certainty—a sum requiring no future valuation to settle its amount. It is not necessarily founded upon contract. It is immaterial in what manner the obligation was incurred, or by what it is evidenced, if the sum owing is capable of being definitely ascertained. The act of 1823 (3 Stat. at L. 781) fixes the amount of the liability at double the value of the goods received, concealed or purchased, and the only party injured by the illegal acts, which subject the perpetrators to the liability is the United States. It would seem, therefore, that whether the liability incurred is to be regarded as a penalty or as liquidated damages for an injury done to the United States, it is a debt, and as such it must be recoverable in a civil action.

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"But all doubts respecting the matter are set at rest by the fourth section of the act, which enacted that all penalties and forfeitures incurred by force thereof shall be sued for, recovered, distributed and

accounted for in the manner prescribed by the act of March 2nd, 1799 (1 Stat. at L. 627) entitled 'An Act to regulate the collection of duties on Imports and Tonnage'. By referring to the 89th section of that act, it will be seen that it directs all penalties accruing by any breach of the act, to be sued for and recovered, with costs of suit, in the name of the United States of America, in any court competent to try the same; and the collector within whose district a forfeiture shall have been incurred, is enjoined to cause suits for the same to be commenced without delay. This manifestly contemplates civil actions, as does the proviso to the same section, which declares
1857 that no action or prosecution shall be maintained in any case under the act, unless the same shall have been commenced within three years after the penalty or forfeiture was incurred. Accordingly, it has been frequently ruled that debt will lie at the suit of the United States, to recover the penalties and forfeitures imposed by statutes. U. S. *vs.* Colt. Pet. (C. C.) 145; Jacob *vs.* U. S., 1 Brock., 520; U. S. *vs.* Bougher, 6 McLean, 277; Walsh *vs.* U. S., 3 Wood. & M. 342; U. S. *vs.* Lyman, 1 Mas. 482; U. S. *vs.* Allen, 4 Day, 474. It is true that the statute of 1823 imposes the forfeiture and liability to pay double the value of the goods received, concealed or purchased with knowledge that they had been illegally imported, 'on conviction thereof'. It may be, therefore, that an indictment or information might be sustained. But the question now is whether a civil action can be brought and, in view of the provision that all penalties and forfeitures incurred by force of the act shall 'be sued for and recovered' as prescribed by the act of 1799, we are of the opinion that debt is maintainable. The expression 'sued for and recovered' is primarily applicable to civil actions, and not to those of a criminal nature."

As to the point made in reference to the penalties being indefinite under the act of 1899, in addition to the case just cited, we refer to Rockwell *vs.* the State, 11 Ohio, 130, where the law fixed the penalty at not less than $5 nor more than $50, and the objection referred to was overruled, and it was held that an action of debt would lie. Other courts have held that statutes somewhat similar to those under consideration confer upon the State a cause of action to be maintained in a civil suit (Burgh *vs.* the State, 118 Ind., 133; Davis Admr. *vs.* State, 119 Ind., 555; State *vs.* Grove, 77 Wis., 448; Territory of New Mexico *vs.* Baca, 2 New Mex. 183.) Interesting discussions of the terms "fines", "forfeitures" and "penalties" will also be found in People *vs.* Nedrow, 122 Ill., 363; Gosselink *vs.* Campbell, 4 Iowa, 300.

Our conclusion is that the statutes under consideration vest
1858 in the State a civil right of action for the pecuniary penalties prescribed for violations of the provisions of those statutes. This being true, and as our statute of limitations applicable to civil cases does not include and bar the State, we hold that limitation is not available as a defense in this case. We do not rest this ruling upon the ground that the statutes under consideration do not create criminal offenses. If it be conceded that they create such offenses, criminal prosecutions for which would be barred within two

years, it does not follow that the penalties which might have been recovered by such prosecutions cannot when authorized, be recovered in a civil action. Our Penal Code and Code of Criminal Procedure deal exclusively with criminal cases, and that portion of the latter which deals with the subject of limitation only purports to fix the time within which criminal actions may be commenced; and Art. 219, relied on by appellant, merely forbids prosecutions by indictment or information after two years from the commission of the offense.

It is argued on behalf of appellant that, even though a statute creating an offense may confer upon the State the right to maintain a civil action to recover a pecuniary penalty for violating the statute, still that right would be barred by Art. 219, which would bar the right to enforce the penalty by indictment or information. If Art. 219, or any other statute, declared that no right of action should exist or no sort of proceeding be instituted for the collection of a penalty after two years, appellant's contention would be correct; but that article is much narrower in its scope and merely prohibits prosecutions in the manner and by the means prescribed for the prosecution of criminal cases. It may be true that the same general result would be sought in the one case as in the other, viz: recovery of the penalty, and if that were the only thing to be considered, there would be force in the argument that in prohibiting criminal prose-
1859 cutions after a specified time the Legislature intended thereby to prevent any other character of procedure which had for its purpose the accomplishment of the same general result. If the two proceedings, civil and criminal, were not so essentially different the contention urged might be sustained; but the statutes under consideration apply to natural persons as well as corporations, and as to such persons, civil and criminal proceedings are widely different. In a civil action against an indivdual to recover a penalty he is notified of the suit by delivering to him a citation. When the case is tried, if he loses, the only result is a personal judgment against him for a specified sum of money to be collected by execution and not otherwise. But if he is proceeded against criminally for the enforcement of a penalty he is arrested and required to give bond or stay in jail until after the case is tried. Upon trial, if he is convicted, the judgment not only goes against him for the penalty, but unless he pays it, he is again incarcerated in jail. Thus it will be seen that in a criminal proceeding to enforce the penalty the defendant would necessarily be subjected to the ignominy of an arrest by a public officer; and, upon contingencies which often occur, would be incarcerated in jail. Now when the Legislature prescribed a time which would prevent a prosecution fraught with these serious consequences, does it necessarily follow that it intended to cut off any right the State might have to obtain a personal judgment for a pecuniary penalty, without resorting to a procedure that would bring about any such harsh results? We think not. In prescribing limitation for criminal proceedings we believe the Legislature had in mind cases criminal, both in substance and form, and had no intention of affecting any right the State might assert in a civil action.

Chief Justice Marshall, in Adams *vs.* Woods, 2 Cranch, 337, announced that if a law should merely declare that no indictment or information should be presented after a specified time, such
1860 law would be pleadable only in bar of indictments or informations, and would not bar a civil action for a recovery of the penalty prescribed for violating a statute.

An offense which is punishable by imprisonment in the penitentiary absolutely or in the alternative, is a felony; and as the anti-trust act of 1903 fixes confinement in the penitentiary as an alternative punishment, appellant pleaded Art. 218 of the Code of Criminal Procedure in bar of the State's right to recover part of the penalties sued for under that act. Art. 218 is framed like Art. 219, and would apply to a criminal prosecution based upon the act of 1903 and bar such prosecution after three years. As we hold that it was the intention of the Legislature to confer upon the State the right to maintain a civil action for the pecuniary penalties therein prescribed, we hold that such right of action is not barred by Art. 218. In other words, while the penalties referred to were intended, in a certain sense, as punishment, they were not imposed as punishment to be inflicted through the onerous instrumentalities of a criminal prosecution.

Appellant also pleaded the statute of limitation of two and four years embodied in the Revised Statutes and applicable to civil cases. It is contended that the two years' statute has application upon the theory that if the State's suit is an action of debt, and not instituted for the preservation of the public rights, revenues or property, then the State should not be exempt from limitation, but should be treated as any other litigant. It is the rule of the common law of England that unless so expressly enacted, limitation does not run against the sovereign, and that is the rule in the American states. We are not prepared to place upon that rule the restriction urged, but if we should do so it would not be proper to apply it to this case. In seeking to recover the penalties here involved, the state is endeavoring to enforce statutes enacted for the protection of the public interest. One of the main objects of the suit is to protect and preserve public rights and promote a well established public policy.
1861 In view of what we have already said it is hardly necessary to add that we regard the four years' statute of limitation as equally unavailing. In Brown *vs.* Sneed, 77 Tex., 471, which holds that limitation does not apply to the State unless so expressly provided, the authorities are collated and reviewed. We also hold that no error was committed in refusing a charge to the effect that the state must prove its case beyond reasonable doubt. Being a civil case that rule does not apply.

4. It is contended on behalf of appellant that the anti-trust act of May 25th, 1899 was rendered unconstitutional by the passage of another statute at the same session of the Legislature entitled "An Act to protect workingmen in the right of organization and the purposes thereof," approved May 27th, 1899, wherein it was provided that from and after its passage it should be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to

associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor and personal service in their respective pursuits and employments. By the third section it is declared that that act shall not apply to combinations or associations of capital or capital and persons natural or artificial formed for the purposes of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade, and that nothing therein contained shall be held to interfere with the terms and conditions of private contracts with regard to the time of service or other stipulations between employers and employés, and "that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies." In view of these limitations placed upon that act, we are of the opinion that it was not the intention of the Legislature to authorize anything to be done that was prohibited by the act of May 25th, 1899. Hence we
1862 hold that this statute engrafts no exemptions upon the anti-trust statute referred to.

5. The anti-trust statute of May 25th, 1899, having been superseded and repealed by the act of March 31st, 1903, which diminished the pecuniary penalties, appellant sought to have the latter statute applied to the time before as well as after it went into effect. This was refused, and we think properly so, on account of this proviso in the latter act: "provided nothing in this act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this act took effect." We are of opinion that this proviso preserved whatever rights the State had under the former law, including the right to enforce the penalties prescribed by that act. We are unable to concur in the proposition that it was merely intended to preserve the right to, but not the amount of, the penalties. Nor can we sanction the proposition that because of the location of a comma in the proviso quoted, it was the intention of the Legislature to protect and preserve the rights of the State to recover penalties from domestic corporations and not preserve such right as against foreign corporations. No reason existing for making such a marked discrimination, we are not willing to hold that it was the intention of the Legislature to do so, merely because a comma was so used as to render that construction plausible. In construing written laws courts are not bound by rules of grammar, and may disregard them in order to give effect to manifest legislative intention.

6. It is claimed that the trial court should have granted appellant's motion for a new trial based upon the ground that the judgment imposes excessive fines, and operates as a deprivation of property without due process of law. It is also contended that the
1863 act of 1899 should be declared void, because it authorizes excessive fines and forfeitures. That question has already been decided against appellant's contention in State *vs.* Laredo Ice Co., 96 Tex., 467. The verdict, while large, is much under the maximum

permitted by the law. Its magnitude is mainly attributable to appellant's repeated and long-continued violations of the law, covering a period of six years. Hence we have reached the conclusion that the verdict is not so large as to render it manifest that the jury were actuated by prejudice or other improper motives.

7. In appellant's motion for a new trial in the court below, and in its presentation of the case here, the verdict of the jury has been challenged, the contention being that the testimony fails to show that appellant has violated any of the anti-trust laws of this State. The evidence is very voluminous, and it is not necessary that it be set out or epitomized in this opinion. It is sufficient, we think, to show that from the date of its permit to do business in this State, May 31, 1900, appellant has been a party to an agreement or understanding with the Standard Oil Company of New Jersey, one object of which was to create a monopoly and control the price of petroleum oil and prevent competition in its sale in a large and specified territory, including the State of Texas; and that, to a large extent, such object has been accomplished. In so far as that agreement related to this State, appellant, acting by its agents, performed it within this State; and such performance within the limits of the State constitutes violations of Texas laws and renders appellant amenable to such laws, although the agreement between it and the Standard Oil Company may not have been made in this State. To a large extent the case rests upon circumstantial evidence; but we cannot say that the jury were not warranted in the conclusions drawn from it. Hence we hold that the verdict is supported by
1864 testimony, and no error was committed in overruling the motion for a new trial.

Upon the whole case our conclusion is that reversible error has not been shown, and therefore the judgment will be affirmed.

Affirmed.

W. M. KEY,
*Associate Justice.*

Filed Dec. 11, 1907.

Endorsed: With App. No. 5744. No. 4212. The Waters Pierce Oil Co., Appellant, *vs,* The State of Texas, Appellee. Appeal from Travis County. Opinion. Affirmed. W. M. Key, Associate Justice. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Dec. 11, 1907, R. H. Connerly, Clerk. Filed in Supreme Court Feb. 13, 1908. F. T. Connerly, Clerk.

*Judgment of Court of Civil Appeals. Rendered December 11th, 1907.*

No. 4212.

WATERS PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

Appeal from District Court of Travis County

Opinion by Associate Justice KEY:

This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the court that there was no error in the judgment; it is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the appellee, The State of Texas, do have and recover of and from the appellant, The Waters Pierce Oil Company, principal and its sureties, The American Surety Company of New York and Jno. H. Kirby, the amount adjudged by the court below and all costs in this behalf expended and this decision be certified below for observance.

1865 Appellant's Motion for a Rehearing, Filed Dec. 24th, 1907.

No. 4212.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

WATERS PIERCE OIL COMNANY, Appellant,
*vs.*
THE STATE OF TEXAS, Appellee.

*Appellant's Motion for Rehearing.*

Now comes the appellant, The Waters Pierce Oil Company, by its attorneys, and moves this court to set aside its judgment herein rendered on December 11th, 1907, affirming the judgment of the
1866 trial court, and to grant appellant a rehearing in this cause, for the following reasons:

1.

Because this Court erred in holding that it was not error for the trial court upon the hearing of appellant's motion for a change of venue, to refuse to permit appellant to prove by the witnesses C. J. Johnson and H. M. Metz that they were members of the grand jury of the District Court of Travis County for the Fifty-third Judicial District at the September Term, 1906, and that the indictment

against H. C. Pierce charging him with false swearing in making the affidavit set out in plaintiff's petition, and therein alleged to have been made by him on May 31st, 1900, was returned by said grand jury without having any evidence before it other than the said affidavit, and without having any evidence before it showing, or tending to show that the statements contained in said affidavit were false.

2.

Because, upon the hearing of appellant's motion for a change of venue in the trial court, it was shown by the preponderance of evidence and the manifest weight of the testimony that there existed in Travis County so great a prejudice against appellant that it could not obtain a fair and impartial trial of this cause in said county, and this court erred in not so holding.

3.

Because plaintiff's petition was, by reason of the matters complained of in appellant's assignments of error Nos. 5 to 19, inclusive, in violation of Article 1183 of the Revised Statutes and rule 2 of the rules for the district and county courts, in that it was, as shown by said assignments of error and appellant's statements and propositions thereunder, a statement of alleged facts so intermingled with irrelevant, impertinent, scandalous and inflammatory matter, arguments and legal conclusions as to produce confusion and uncertainty and unnecessary length in the petition, and was calculated to inflame the minds of the jury trying this case against appellant, and to prevent justice being done upon
1867 the trial of this case, and this court erred in not holding that it was error for the trial court to refuse to direct a repleader by plaintiff and the ommission from the petition of such irrelevant, impertinent, scandalous and inflammatory matter, arguments and legal conclusions, as contended by appellant in its 19th assignment of error, and propositions thereunder.

4.

Because this court erred in holding that the Anti-trust Act of May 25th, 1899, was not repealed by the Anti-trust Act of March 31st, 1903.

5.

Because this court erred in not holding that the proviso contained in Section 17 of the Act of March 31st, 1903, whereby it was sought to preserve to the State the right to recover penalties and forfeit charters and permits on account of acts committed before said Act took effect, was in violation of Section 35, Article 3 of the Constitution of this State, in that the subject of said proviso was not expressed in the title of said Act, but was excluded by the provisions of said title, as contended in appellant's second proposition under its 20th assignment of error.

6.

Because, since it was shown by plaintiff's petition that appellant is a foreign corporation, this court erred in holding that Section 17 of the said Act of March 31st, 1903, preserved to the State the right to recover of appellant penalties on account of violations of the Anti-trust Act of May 25th, 1899.

7.

Because the court erred in holding that plaintiff's cause of action to recover penalties against appellant for acts committed more than two years before the institution of this suit was not barred by the provisions of Article 219 of the Code of Criminal Procedure of this State.

8.

Because this court erred in not holding, as contended by appellant in its proposition under its 23rd assignment of error, that to
1868 hold that plaintiff's cause of action to recover penalties against appellant for acts committed more than two years before the institution of this suit, was not barred by the provisions of Article 219 of the Code of Criminal Procedure of this State, would result in taking appellant's property without due process of law and deny to appellant the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

9.

Because this court erred in holding that plaintiff's cause of action to recover penalties of appellant for acts committed more than two years before the institution of this suit was not barred by the statute of limitation of two years, as prescribed in Article 3354 of the Revised Civil Statutes of Texas.

10.

Because this court erred in holding that plaintiff's cause of action to recover penalties of appellant for acts committed more than four years before the institution of this suit was not barred by the statute of limitation of four years, as prescribed in Article 3358 of the Revised Civil Statutes of Texas.

11.

Because this court erred in holding that plaintiff's cause of action to recover penalties of appellant for acts committed more than three years before the institution of this suit, in violation of the Anti-trust Act of March 31st, 1903, was not barred by the statute of limitation of three years, as prescribed in Article 218 of the Code of Criminal Procedure of this State.

12.

Because this court erred in not holding, as contended by appellant in its proposition under its 29th assignment of error that to hold that plaintiff's cause of action to recover penalties of appellant for

violations of the Anti-trust Act of March 31st, 1903, committed more than three years before the institution of this suit, was not barred by the provisions of Article *of Article* 218 of the Code of Criminal Procedure of this State, would result in denying to
1869 appellant the equal protection of the laws, as guaranteed to it by Section I of the Fourteenth Amendment to the Constitution of the United States.

13.

Because this court erred in holding that that portion of Section 2 of the Anti-trust Act of May 25th, 1899, wherein a "monopoly" is defined as "Any union or combination or consolidation or affiliation of capital, credit, prpoerty, assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms, or corporations, or associations of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this Act is accomplished, or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced", sufficiently defines an offense against the laws within the requirements of Article 3 of the Penal Code of this State, then overruling appellant's first proposition under its 30th, 31st, 33rd, 34th, 35th and 36th assignments of error,

14.

Because this court erred in holding that that portion of Section 2 of said Act of May 25th, 1899, defining a monop-ly as above quoted, sufficiently designates an offense within the requirements of Article 6 of the Penal Code of this State, thus overruling appellant's second proposition under its 30th, 31st, 32nd, 33rd, 34th, 35th and 36th assignments of error.

15.

Because this court erred in holding that that portion of Section 2 of the Anti-trust Act of May 25th, 1899, defining a monop-ly as above quoted, sufficiently defines an offense against the laws within the requirements of Article 9 of the Penal Code of this State, thus overruling appellant's third proposition under its 30th, 31st, 32nd, 33rd, 34th, 35th and 36th assignments of error.

1870 16.

Because this court erred in holding that that portion of Section 6 of said Anti-trust Act of May 25th, 1899, which provides, "If any two or more persons or corporations who are engaged in buying or selling any article of commerce, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit trade in any such article or thing * * * it shall be a violation of this Act * * *" sufficiently defines an offense within the requirements of Article 3, 6 and 9 of the Penal Code of this State, thus overruling appellant's 4th 5th and sixth propositions under its 30th, 31st, 32nd, 33rd, 34th, 35th and 36th assignments of error.

17.

Because this court erred in holding that Section 1 of the Anti-trust Act of March 31st, 1903, purporting to define a trust sufficiently designates an offense against the laws within the rules prescribed by Articles 3, 6 and 9 of the Penal Code of this State.

18.

Because this court erred in holding that Section 2 of the Anti-trust Act of March 31st, 1903, wherein it purports to define a monop-ly, sufficiently designates an offense against the laws within the rules prescribed by Articles 3, 6 and 9 of the Penal Code of this State.

19.

Because this court erred in not holding that the provisions of Section 2 of the Anti-trust Act of May 25th, 1899, purporting to define a monop-ly, do not define an offense against the laws with such definiteness and certainty as is necessary to constitute due process of law under the Fourteenth Amendment to the Constitution of the United States, and in thus overruling appellant's 44th assignment of error and propositions thereunder.

20.

Because this court erred in not holding that the 6th Section of said Act of May 25th, 1899, whereby it is provided, "If any
1871 two or more persons or corporations who are engaged in buying or selling any article of commerce * * * shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing * * * it shall be a violation of this Act * * *", does not define an offense against the laws with such definiteness and certainty as is necessary to constitute due process of law under the provisions of the Fourteenth Amendment to the Constitution of the United States, as contended by appellant in its 44th assignment of error and propositions themselves.

21.

This court erred in not holding that the 1st Section of the Anti-trust Act of March 31st, 1903, does not define an offense against the law with such definiteness and certainty as it necessary to constitute due process of law under the provisions of the Fourteenth Amendment to the Constitution of the United States, as contended by appellant in its 45th assignment of error and propositions themselves.

22.

Because this court erred in not holding that the 2nd Section of the Anti-trust Act of March 31st, 1903, does not define an offense against the laws with such definiteness and certainty as is necessary to constitute due process of law under the provisions of the Fourteenth Amendment to the Constitution of the United States, as con-

tended by appellant in its 45th assignment of error and propositions thereunder.

23.

Because this court erred in not holding that the 3rd Section of the Anti-trust Act of March 31st, 1903, does not define an offense against the laws with such definiteness and certainty as is necesasry to constitute due process of law, under the provisions of the Fourteenth Amendment to the Constitution of the United States, as contended by appellant in its 45th assignment of error and propositions thereunder.

24.

Because this court erred in holding that the Anti-trust Act
1872 of May 25th, 1899, was not unconstitutional and not in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, by reason of the fact that it provided that it should be cumulative of all laws then in force in the State, and the fact that the Anti-trust Act of 1899, by the 13th Section thereof, and the Anti-trust Act of 1895, by the 12th Section thereof, expressly exempted producers of agricultural products and the raisers of live stock from the pains and penalties therein imposed upon all other persons and classes of persons, thus overruling appellant's first proposition under its 46th assignment of error.

25.

Because this court erred in holding that the Anti-trust Act of May 25th, 1899, was not rendered unconstitutional and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by the passage of another statute at the same session of the Legislature entitled, "An Act to protect working men in the right of organization and the purposes thereof", approved May 27th, 1899, wherein it was provided that from and after its passage it should be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor and personal service in their respective pursuits and employments, and in thus overruling appellant's propositions under its 47th assignment of error.

26.

Because this court erred in holding that the Anti-trust Act of March 31st, 1903, is not unconstitutional and not in violation of the Fourteenth Amendment to the Constitution of the United States, by reason of the fact that said Act of March 31st, 1903, did not repeal the Act of the Legislature of Texas of May 27th, 1899 entitled "An Act to protect working men in the right of organization and the purposes thereof", and in holding that the provisions of said statutes do not deny to appellant the equal protection of the law as guaranteed
to it be said Amendment to the Constitution *to* the United
1873 States, and in thus overruling appellant's proposition under its 48th assignment of error.

27.

Because this court erred in holding that the Anti-trust Act of March 31st, 1903, is not in violation of Section 14, Article 1 of the Constitution of Texas, providing that no person for the same offense shall twice be put in jeopardy of life or liberty, nor shall any person again be put upon trial for the same offense after a verdict of not guilty in a court of competent juri-*dcition*, by reason of the fact that Section 11 of said Act provides that every person or corporation who shall violate any of the provisions of said Act shall, for each and every day that such violation shall be committed or continued, forfeit and pay the sum of Fifty Dollars, and Section 13 provides that in addition to the penalties and forfeitures therein provided for, every person violating said Act may further be punished by imprisonment in the penitentiary for not less than one nor more than ten years, and in thus overruling appellant's proposition under its 49th assignment of error.

28.

Because this court erred in not holding that in as much as an acquittal or conviction of a person prosecuted by an action civil in form brought by the Attorney General, or by the district or county attorney under his direction, for penalties under Section 11 of the Anti-trust Act of March 31st, 1903, is a bar to an indictment for a felony, authorized by the 13th Section of said Act, said Act does not guarantee to all persons within this State the equal protection of the law, nor does it secure the infliction of the same character of punishment upon all persons within the jurisdiction of this State who are guilty of violating its provisions, by reason of the fact that the Attorney General, or district or county attorney under his direction, may prevent the infliction upon the person of a greater punishment for the violation of the provisions of said Act than a fine of Fifty Dollars per day by the institution of a civil action against such person to recover penalties, while said officers may elect to have another person violating its provisions indicted and convicted of a fel-
1874 ony and confined in the penitentiary for a term of from one to ten years, and that, therefore, the said Act is in violation of that part of the Fourteenth Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, as contended by appellant in its proposition under its 50th assignment of error.

29.

Because this court erred in overruling the contention of appellant in its proposition under its 51st and 52nd assignments of error, wherein appellant contended that it was not within the constitutional power of the Legislature of the State of Texas to subject defendant to the penalties and forfeitures declared by the Anti-trust Act of March 31st, 1903, because of the fact that at the time of the passage of said Act the Standard Oil Company of New Jersey held, and continued to hold, a majority of the stock of appellant, and that to inflict penalties upon appellant because of such stock ownership would make the said Act of March 31st, 1903, an *ex post fact-* law, in viola-

tion of Sub-division 1, Section 10, Article 1, of the Constitution of the United States, providing that no state shall pass any *ex post facto* law, or law impairing the obligation of contracts, and would result in depriving appellant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

30.

Because this court erred in not holding that the Anti-trust laws of the State of Texas are limited to agreements, combinations, etc. between persons and corporations actually engaged in business within the State, and in not holding that it could not be an offense against the laws of the State of Texas for the Standard Oil Company of New Jersey, as a foreign corporation which had no permit to do business in the State, to hold stock in appellant company and to agree that it would not do business in the State in competition with appellant, as contended by appellant in its 53rd and 54th assignments of error,
1875 and the action of this court in not sustaining said assignments of error results in denying to appellant the protection of Sub-division 3, Section 8, Article 1, of the Constitution of the United States, which gives to Congress the power to regulate the commerce between the States, and also denies to appellant the protection of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

31.

Because this court erred in not holding that since the Standard Oil Company of New Jersey was a manufacturing corporation, while appellant was a dealer and distributer of the manufactured articles, it could not be made an offense against the laws of the State of Texas for said Standard Oil Company to agree not to enter into competition with appellant as such dealer, as contended by appellant in its 55th and 56th assignments of error, and the action of this court in not sustaining said assignments of error denies to appellant the protection of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of liberty or property without due process of law.

32.

Because this court erred in not holding that since appellant was a corporation created by the laws of the State of Missouri, it was not within the power of the State of Texas to prescribe who shall be qualified to own its stock, or make it a penal offense against appellant because of the fact that the Standard Oil Company of New Jersey owns a part of its stock, as contended in appellant's 57th and 58th assignments of error violates Section 1, Article 4, of the Constitution of the United States, which declares that full faith and credit shall be given to the public acts of each state.

33.

Because this court erred in not holding that since the Standard Oil Company of New Jersey was the owner of a part of the stock of the old Waters Pierce Oil Company, and had acquired its
1876 stock prior to the passage of the Anti-trust Acts of 1899 and 1903, that the interest of said Standard Oil Company in the property of said old Waters Pierce Oil Company was a vested right, and upon its dissolution, that said Company, as a tenant in common with the other stockholders, had the legal right to acquire stock in the new Waters Pierce Oil Company, and that it could not be made an offense against the anti-trust laws of the State of Texas for said Standard Oil Company to acquire and hold stock in appellant company, as contended in appellant's 59th assignment of error, and the action of this court in not sustaining said assignment of error results in denying to appellant the protection of Sub-division 1, Section 10, Article 1, of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and also that part of the Fourteenth Amendment to said Constitution which provides that no state shall deprive any person of property without due process of law.

34.

This court erred in not holding that the offenses denounced under the Anti-trust Acts of 1899 and 1903 are made separate and distinct offenses for each day, and that each offense should have been made the subject of a separate count in the petition or bill of complaint against appellant, as contended by appellant in its proposition under its 60th assignment of error.

35.

Because this court erred in not holding, as contended by appellant in its proposition under its 60th assignment of error, that since the State in this case has seen fit to prosecute appellant in one count under allegations that appellant had violated the said Anti-trust Acts of 1899 and 1903 on each and every day from May 31st, 1900, down to the time of the trial, the State was entitled to recover but for one day, or, at most, but for one day under each act.

36.

Because this court erred in not holding that the failure of the State to institute this prosecution for a period of seven years, and the imposition upon appellant of the accumulated penalties, was in violation of Section 13, Article 1, of the Constitution of the
1877 State of Texas, which declares that excessive fines shall not be imposed, and in not holding that such delay and the imposition of the accumulated penalties deprives appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, as contended in appellant's 61st assignment of error.

37.

Because this court erred in holding that the penalty which the State was entitled to recover of appellant for violations of the Act

of May 25th, 1899, if any, was not reduced by the Act of March 31st, 1903, to the sum of Fifty Dollars per day, as contended by appellant in its proposition under its 62nd and 63rd assignments of error.

38.

Because this court erred in not holding that Sundays should be excluded in computing the amount which could be assessed against appellant as penalties, as contended in appellant's 64th and 65th assignments of error.

39.

Because this court erred in holding that evidence of the fact that appellant had sold oil at different prices in different parts of the State of Texas in competition with other dealers, not being of itself an offense against the laws of the State, could nevertheless be considered by the jury as evidence in support of the charge that appellant violated the anti-trust laws of the State by entering into combinations with the Standard Oil Company as contended in appellant's 66th, 67th and 68th assignments of error.

40.

Because this court erred in not holding, as contended by appellant in its first proposition under its 69th assignment of error, that there was no evidence showing, or tending to show, that the defendant entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey on June 1st, 1900, or at any time between said date and March 31st, 1903, to fix or
1878 regulate the price in Texas of oil refined from petroleum, and that, therefore, such issue should not have been submitted by the court to the jury, as was done in the seventh paragraph of the court's charge quoted in said assignment of error.

41.

Because this court erred in not holding that it was error for the trial court to instruct the jury, as it *idd* in the seventh paragraph of the charge, that they could, in any event, convict the defendant of violating the law for each day embraced between May 31st, 1903, during which it remained or continued to be a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refeined from petroleum, as contended by appellant in its second proposition under its 69th assignment of error.

42.

Because this court erred in not holding, as contended by appellant in its first proposition under its 70th assignment of error, that that portion of Section 2 of the Anti-trust Act of March 31st, 1903, wherein a monopoly is defined as, "Where any corporation acquires the shares or certificates of stock or bonds, franchises or other rights or physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening competition, whether such acquisition is accomplished directly or through the instrumentality of trustees, or otherwise", if it defines any offense,

makes the offense an offense by the corporation so acquiring such shares or certificates of stock, and not an offense by the corporation whose shares of stock are so acquired, and that, therefore, it was error for the trial court to instruct the jury, as it did in the 11th paragraph of the charge, to the effect that if they should find from preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31st, 1903, or on any date subsequent thereto and prior to May 29th, 1907, acquired a majority of the capital stock of the defendant corporation, and thereby effected a combination of said two corporations, and if they should further find that such stock was acquired and combination effected, if
1879 any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening competition in the sale of oil in Texas, they would convict the defendant.

43.

Because this court erred in holding, as it did in overruling appellant's 70th assignment of error, and its second proposition thereunder, that the acquisition by the Standard Oil Company of New Jersey of a majority of the capital stock of defendant, "with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening competition in the sale of oil in Texas," constituted an offense by defendant without defendant knowing at the time of such purpose and aiding and encouraging such acquisition and purpose.

44.

Because this court erred in not holding that, since it was alleged in the petition that the Standard Oil Company of New Jersey had owned a majority of the stock of defendant since its creation as a corporation on May 29th, 1900, that portion of the 11th paragraph of the trial court's charge to the jury wherein the jury were instructed that the defendant would be guilty of an offense under the Act of March 31st, 1903, if the Standard Oil Company of New Jersey had on March 31st, 1903—acquired a majority of the capital stock of defendant corporation and thereby effected a combination of said two corporations, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening competition in the sale of oil in Texas, gave said Act of March 31st, 1903, an *ex post facto* operation, in that it made the question of defendant's guilt or innocence depend upon the purpose and intention of the managing officers and directors of the Standard Oil Company of New Jersey in doing an act consummated long prior to the taking effect of said Act of March 31st, 1903, contrary to the provisions of Paragraph 1, Section 10, Article 1, of the Constitution of the United States, and contrary to Section 16, Article 1, of the Constitution of the State of
1880 Texas, and contended by appellant in its third proposition under its 70th assignment of error.

45.

Because this court erred in not holding that it was error for the trial court to refuse to instruct the jury, as requested in special charge No. 10, requested by defendant, to the effect that the defendant was presumed to be innocent until its guilt should be established by competent evidence beyond a reasonable doubt, and that unless they should believe from the evidence beyond a reasonable doubt that the defendant was guilty of some act in violation of the law, as submitted in the instructions of the court, they should return a verdict for the defendant, as contended by appellant in its 71st assignment of error, and proposition thereunder.

46.

Because this court erred in not holding that it was error for the trial court to refuse to give the jury special charge No. 18, requested by defendant and being as follows: "You are instructed that if you believe from the evidence that since the incorporation of defendant under the laws of Missouri on the 29th day of May, 1900, and its obtaining its permit to transact business in the State of Texas on the 31st day of May 1900, the defendant has, through its officers and agents, fixed and regulated the prices at which it has sold oil and other commodities handled by it in the conduct of its business, independently of any control by the Standard Oil Company, then, as to the alleged ground of the fixing and regulating of its selling prices by the Standard Oil Company, you should find for the defendant," as contended by appellant in its 72nd assignment of error and proposition thereunder.

47.

Because this court erred in not holding, as contended by appellant in its 73rd assignment of error, and propositions thereunder, that it was error for the trial court to refuse to give to the jury special charge No. 14 requested by appellant, relating to the right of the Standard Oil Company, as a stockholder in defendant com-
1881 pany, to examine and audit the books, records and accounts of defendant, and with reference to the effect of such stock ownership and such auditing and inspection of defendant's books, records and accounts.

48.

Because this court erred in not holding, as contended by appellant in its 74th assignment of error and proposition thereunder in its 74th assignment of error and proposition thereunder that it was error for the trial court to refuse to give the jury the special instruction No. 23 requested by defendant, relating to the right of the defendant to confine its business operations to any territory desired by it.

* * * * * * *

51.

Because this court erred in not holding, as contended by appellant in its 75th and 76th assignments of error, and propositions there-

under, that the trial court erred in that portion of the eighth paragraph of its charge in regard to the Act of May 25th, 1899, wherein it instructed the jury to find for the plaintiff if they should find from a preponderance of the evidence that on June 1st, 1900, or any date subsequent thereto, and prior to March 31st, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or permitted any combination or a union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the trade in oil refined from petroleum in Texas was sought to be controlled or limited.

52.

Because this court erred in not holding that the provisions of the Anti-trust Act of May 25th, 1899, and in regard to which the trial court instructed the jury in the eighth paragraph of its charge, and reading "If any two or more persons or corporations who are engaged in buying or selling any article of commerce * * * shall enter into any pool, trust, agreement, combination, confederation, or understanding to control or limit the trade in any such article or thing * * * it shall be in violation of this Act," is of such doubtful construction as to be wholly inoperative, and in fur-
1882 ther holding that to inflict penalties upon this defendant for alleged violations of such provision would be to take the property of this defendant without due process of law, contrary to the provisions of the first Section of the Fourteenth Amendment to the Constitution of the United States, as contended by appellant in its first and second propositions under its 75th and 76 assignments of error.

53.

Because this court erred in not holding, as contended by appellant in its third proposition under its 75th and 76 assignments of error, that the Anti-trust Act of May 25th, 1899, made agreements, combinations or understandings between two or more persons or corporations to control or limit the trade in an article of commerce, unlawful, if at all, only when entered into between two or more persons or corporations engaged in buying or selling such article of commerce in this State, and in not further holding, as contended by appellant in its fourth proposition under said assignment of error, that, since it was admitted on the trial that the Standard Oil Company of New Jersey had never transacted any business in Texas, an agreement, combination or understanding between said Standard Oil Company of New Jersey and defendant to control or limit the trade in oil could not, if made, have constituted a violation of said Act of May 25th, 1899, and that the trial court erred in so instructing the jury.

54.

Because this court erred in not holding, as contended by appellant in its fifth proposition under its 75th and 76th assignments of error, that the trial court erred in instructing the jury, as it did in the eighth paragraph of the charge, that a combination or union of the

capital of defendant with the capital of the Standard Oil Company of New Jersey whereby the trade in oil in Texas was sought to be controlled or limited, constituted an offense, in that said instruction assumed as a fact that the Standard Oil Company of New Jersey was engaged in buying or selling oil in Texas from June 1st, 1900, up to March 31st, 1903, contrary to the express admissions of the
1883 parties to this suit made upon the trial of this cause.

55.

Because this court erred in holding that it was not error for the trial court to instruct the jury, as it did in the eighth paragraph of its charge, that it could convict the defendant of violating the law for each day embraced between May 31st, 1900, and March 31st, 1903, during which it remained or continued to be a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined from petroleum, which error is presented in appellant's 75th assignment of error, and its sixth proposition thereunder.

56.

Because this court erred in not holding, as contended by appellant in its 77th and 78th assignments of error, and its first and second propositions thereunder, that that portion of the Anti-trust Act of May 25th, 1899, defining a monopoly, is of such doubtful and uncertain meaning as to be wholly inoperative, and that to convict defendant of a violation of said provisions would be to take the property of this defendant without due process of law, in contravention of the 1st Section of the Fourteenth Amendment to the Constitution of the United States, and that, therefore, it was error for the trial court to submit to the jury, as it did in the eighth paragraph of its charge, the question as to whether or not the defendant was a party to a monopoly, as defined in said provision of said Act.

57.

Because this court erred in not holding, as contended by appellant in its third proposition under its 77th and 78th assignments of error, that that portion of said Anti-trust Act of May 25th, 1899, whereby a monopoly is defined as "Any union, combination or consolidation of capital * * * between persons, firms or associations of persons, or corporations, * * * *whereby the several results described herein are reasonably calculated to be produced,*" is too indefinite to define any offense, and that to convict defendant of an offense under said provisions would be to take the property of
1884 this defendant without due process of law and contrary to the Fourteenth Amendment to the Constitution of the United States, and that, therefore, the trial court erred in instructing the jury, as it did in the eighth paragraph of its charge, that they would convict the defendant if they found from the evidence that on June 1st, 1900, or any date subsequent thereto, and prior to March 31st, 1903, the defendant * * * had brought about or permitted any combination or union of its capital with the capital of the

Standard Oil Company of New Jersey whereby the price of oil * * * *would be reasonably calculated to be fixed or regulated.*

58.

Because this court erred in not holding, as contended by appellant in its 79th and 80th assignments of error, and propositions thereunder, that the trial court erred in instructing the jury, in relation to the Act of March 31st, 1903, as it did in the ninth paragraph of its charge, that a combination of the capital of defendant, entered into by defendant's duly authorized agent, with the capital of the Standard Oil Company of New Jersey *for the purpose of creating in Texas or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil* would constitute an offense.

59.

Because this court erred in not holding, as contended by appellant in its first and second propositions under its 79th and 80th assignments of error, that that portion of the Anti-trust Act of March 31st, 1903, which defines a trust as "A combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons to create, or which may tend to create or carry out, restrictions in trade or commerce * * * or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State," is too vague and uncertain to define any offense, and that to convict this defendant of violating said provision would be to take its property without due process of law, contrary to the provisions of the 1st Section of the Fourteenth Amendment to the Constitution of the United States.

60.

Because this court erred in not holding, as contended by ap-
1885 pellant in its third proposition under its 79th and 80th assignments of error, that the trial court erred in instructing the jury, as it did in the ninth paragraph of the charge, to convict the defendant if they found from the evidence "that the defendant * * * entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, *to* carry out in Texas, *restrictions in the free* pursuit in this State of the business of selling oil refined from petroleum * * * and that defendant remained or was a party to such combination * * * on March 31st, 1903, or on any date subsequent thereto and prior to April 29th, 1907," for the reason that it gave the jury no instruction as to what facts would constitute "restrictions in the free pursuit in this State of the business of selling oil refined from petroleum," and left the jury to determine as a matter of law what facts would constitute such restrictions.

61.

Because this court erred in not holding, as contended by appellant in its fourth proposition under its 79th and 80th assignments of

error, that the trial court erred in instructing the jury, as it did in the ninth paragraph of the charge, that they would convict the defendant, if they found from the evidence that the "direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31st 1903, or on any date subsequent thereto and prior to April 29th, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers under such circumstances that such common management or control * * * created or tended to create or carry out restrictions in the sale in Texas of oil * * * ," in that said charge gave the jury no instruction as to what was meant by the term "restrictions in the sale in Texas of oil," and gave the jury no instructions as to what facts would constitute such restrictions, and left the jury to determine for themselves as a matter of law what facts would constitute such restrictions.

62.

Because this court erred in not holding, as contended by ap-
1886 pellant in its fifth proposition under its 79th and 80th assignments of error, that it was error for the trial court to instruct the jury, as it did in the ninth paragraph of the charge, to convict the defendant if it entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refeined from petroleum in that by such instructions the court ignored the statutory requisite that the business refered to should be a business authorized or permitted by the laws of the State of Texas, since the uncontradicted evidence established and it was admitted on the trial that the Standard Oil Company of New Jersey had never applied for or obtained a permit to do business in Texas.

63.

Because this court erred in not holding, as contended by appellant in its 81st and 82nd assignments of error, and propositions thereunder, that the trial court erred in instructing the jury, as it did in the tenth paragraph of its charge, relating to the Act of March 31st, 1903, to the effect that they would convict the defendant if they should find from the evidence that the direction of the affairs of the defendant and the Standard Oil Company of New Jersey were under the same management or control * * * and that they were placed under such common management or control * * * under such circumstances that such common management or control * * * *created, or tended to create, or carry out restrictions in the sale in Texas of oil.*

64.

Because this court erred in not holding, as contended by appellant in its third proposition under its 81st and 82nd assignments of error, that the trial court erred in instructing the jury, as it did in the tenth

paragraph of the charge, as set forth in the immediately preceding grounds for rehearing, in that the court in said portion of the charge omitted to instruct the jury that in order to constitute the offense thereby sought to be defined, it was necessary that there should
1887 be a "combination or consolidation" of the two or more corporations in order to constitute a monopoly under Section 2 of the Anti-trust Act of March 31st, 1903.

65.

Because this court erred in not holding that the trial court erred in admitting in evidence over the objections of defendant the certified copy of the articles of incorporation of the Standard Oil Company of Ohio, as contended by appellant in its 84th assignment of error, and proposition thereunder.

67.

Because this court erred in not holding, as contended by appellant in its 86th assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence the copy of the Standard Oil Trust Agreement copied in plaintiff's petition, over the objections of defendant made to the admission thereof on the ground that the same was immaterial and irrelevant to any issue in the case, and was made prior to the passage of any anti-trust laws of this State, and on the further ground that defendant was not a party to said trust agreement.

68.

Because this court erred in not holding, as contended by appellant in its 88th assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence that portion of the answer of the witness Ida M. Butts to the seventh interrogatory propounded to her by plaintiff, to the effect that while George Rice held certificates in the Standard Oil Trust a suit was brought by the Attorney General of the State of Ohio "to force the Standard Oil Company out of the Standard Oil Trust or cause it to cease doing business in the State of Ohio if it remained in the Trust, and that the decision of the Supreme Court of Ohio was in favor of the state," and which evidence was admitted by the court over the objections of defendant thereto made on the ground that the same was not the best evidence of said facts, and that it was not competent for the witness to
1888 state her conclusion as to the effect of the decision referred to of the Supreme Court of the State of Ohio, and on — further ground that said answer appeared to be hearsay, and on the further ground that said answer appeared to be but a conclusion of the witness.

69.

Because this court erred in not holding, as contended by appellant in its 89th assignment of error, that the trial court erred in admitting in evidence that portion of the answer of the witness Ida M. Butts to the seventh interrogatory propounded to her, to the effect that after the decision of the Supreme Court of Ohio in the suit brought by the

Attorney General of that state, the Standard Oil Trust "pretended to go out of existence; and to this effect caused an order to be issued to all certificate holders, including George Rice, to exchange their trust certificates into certificates called assignments of legal title," over the objections of defendant made on the ground that said evidence appeared to be hearsay.

70.

Because this court erred in not holding, as contended by appellant in its ninetieth assignment of error, and propositions thereunder, that the trial court erred in admitting in evidence, over the objections of defendant, the answer of the witness, Ida M. Butts, to the seventh interrogatory propounded to her, to the effect that, after the decision of the suit brought by the Attorney General of Ohio the capital stock of the Standard Oil Company of New Jersey was increased and said Company made, to all intents and purposes, the same in effect as the Standard Oil Trust, and that they made it the holding company for all the companies of the Standard Oil Trust.

71.

Because this court erred in not holding, as contended by appellant in its 91st assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence that portion of the answer of the witness Ida M. Butts wherein she referring to the Standard Oil Trust, testified "the Trust is not dissolved and could not be dissolved until all Trust certificates were surrendered.

72.

Because this court erred in not holding, as contended by
1889 appellant in its 96th assignment of error, and proposition thereunder, that the trial court erred in permitting the witness C. W. Cahoon, who was sworn as witness for the plaintiff, and testified to having been in the employ of defendant as its agent at Dallas for several years prior to the trial, and that the brand of oil as P. W. and S. W. oils were inferior grades to that known as Eupion oil, to testify over the objections of defendant, that for a period of about sixty days during the first part of the year 1906 defendant sold P. W. and S. W. oils as Eupion oil—the objection made by defendant to the admission of such evidence being that such fact did not constitute a violation of the law, and could only be used for the purpose of an inflammatory argument.

74.

Because this court erred in not holding, as contended by appellant in its 92nd assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness Ida M. Butts to the tenth interrogatory in which, after detailing, the corporations and persons originally entering into the Standard Oil Trust, she testified "that others were added until in the early part of 1906 there were twenty companies in the great grand division of the Trust," and naming the companies.

75.

Because this court erred in not holding, as contended by appellant in its 93rd assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence, over the objections of defendant, that portion of the answer of the witness Ida M. Butts to the fourteenth interrogatory, wherein, in answer to the following question, "After the judgment of the Supreme Court of Ohio state what difference, if any, was made with reference to the conduct and control of the companies which had been in the Trust by the trustees of the Standard Oil Trust, and state what is the present method of controlling and managing the companies that went into the Trust?" she testified: "They made little or no change until contempt proceedings were brought in 1897, when they transferred more trust certificates into assignments of legal title certificates, and soon 1890 thereafter closed as many of — as possible into stock in the Standard Oil Company of New Jersey, which is the present method of controlling and managing the companies now in the Trust, the Standard Oil Company of New Jersey being able to hold stock of the other companies of the Trust, became the holding Company," and in not further holding that the witness was not shown to have had any personal knowledge of the matters testified to by her in said answer, and that said answer was but a conclusion of the witness.

76.

Because this court erred in not holding, as contended by appellant in its 94th assignment of error, and proposition thereunder, that the trial court erred in admitting in evidence, over the objections of the defendant, the third, fourth, fifth, sixth, seventh and eighth paragraphs of the agreement between plaintiff and defendant, being Stipulation No. 1, as shown on pages 43 to 46 of the stenographer's report.

77.

Because this court erred, in not holding, as contended by appellant in its 97th assignment of error, and propositions thereunder, that the trial court erred in admitting in evidence, over the objections of defendant, and for the purpose for which the same was stated to be offered by plaintiff, to-wit, that the witness Wade Hampton, at the time that his deposition was taken, attempted to conceal the fact that the Standard Oil Company of New Jersey audited the books of the Waters Pierce Oil Company through auditors sent by said witness, Wade Hampton, to the office of defendant for that purpose, wherein the witness, in answer to the following question "Please state whether or not the books and accounts of the Waters Pierce Oil Company of Missouri have ever been audited by you, or under your direction," the said witness answered, "Not the present organization."

78.

Because this court erred in not holding, as contended by appellant in its 98th assignment of error, and proposition thereunder, in permitting the witness, Royer Campbell, to testify, over the objections

of defendant, that in the year 1894 when he quit buying oil
1891 from the original Waters Pierce Oil Company in San Antonio, Texas, and bought from other parties to supply his trade in San Antonio, said Waters Pierce Oil Company immediately cut the price of oil from 16¢ or 17¢ to 8¢ and 10¢ per gallon, as shown on pages 470-473 of the stenographer's report.

79.

Because this court erred in not holding, as contended by appellant in its 99th assignment of error, and proposition thereunder, that the trial court erred in permitting the witness, Royer Campbell, to testify, over the objections of defendant, as to the character of warfare and competition that the old Waters Pierce Oil Company carried on with him during the year 1894 at San Antonio, as shown on pages 472-475 of the stenographer's report.

80.

Because this court erred in not holding, as contended by appellant in its 100th assignment of error, that the trial court erred in permitting the witness, A. W. Clem, to testify over the objections of defendant, with reference to the old Waters Pierce Oil Company cutting prices of oil at Seymour and other places in Texas during the year 1891, as shown on pages 545-547 of the stenographer's report.

81.

Because this court erred in not holding, as contended by appellant in its 101st assignment of error, that the trial court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, that the old Waters Pierce Oil Company in the year 1894, after it had bought out the business of the said A. W. Clem at Dallas, Texas, advanced its selling price of oil from 9½¢ per gallon to 22¢ per gallon, and in not holding that said evidence was irrelevant to any issue in the case and calculated to prejudice the jury against the defendant.

82.

Because this court erred in not holding, as contended by appellant in its 102nd as-ignment of error, that the trial court erred in permitting the witness, A. W. Clem, to testify, over the objections of defendant, that in the year 1904 he wrote the Security Oil
1892 Company for prices on naptha and lubricating oil, and that the prices quoted him by said Company were about 2¢ above the market price, and that in the year 1906 he wrote said Security Oil Company for prices on naptha, and that said Company quoted him about the market price he was selling at in Dallas, as shown on pages 581-583 of the stenographer's report.

83.

Because this court erred in not holding that the trial court erred, as contended by appellant in its 103rd assignment of error, in permitting the witness, C. W. Cahoon, who was shown to be one of defendant's general agents in Texas, to testify, over the objections of defendant, that at some points in Texas where there was no competi-

tion defendant's prices at which it sold oil were higher than at points where there was competition, as shown on pages 650-651 of the stenographer's report, and in not further holding, as contended by appellant in its said assignment of error, and proposition thereunder, that the admission of said evidence was prejudicial to defendant in that it was calculated to prejudice the jury against defendant.

84.

Because this court erred in holding that there was any evidence adduced upon the trial sufficient to show that the defendant had, at any time, since June 1st, 1900, committed any act or did anything in violation of the Anti-Trust Laws of the State of Texas, and in not holding that the trial court erred, as contended by appellant in its 104th assignment of error, *that the trial court erred* in refusing to grant the defendant a new trial upon the ground that the verdict of the jury was not supported by the evidence, and that the evidence wholly failed to show any violation by defendant of such anti-trust laws.

85.

Because this court erred in holding that the action of the jury in assessing penalties against the defendant at the sum of $1,549,500.00 for alleged violations of law between May 31st, 1900 and March 31st, 1903, was not so grossly and shockingly excessive as to show passion and prejudice on the part of the jury against the defendant, and in not holding, as contended by appellant in its 109th as-
1893 signment of error, and proposition thereunder, that the trial court erred in refusing to grant the defendant a new trial upon the ground, set up in its motion for a new trial, that the verdict was, in the respect above stated, so grossly and shockingly excessive as to show passion and prejudice on the part of the jury against the defendant.

86.

Because this court erred in not holding, as contended by appellant in its 110th assignment of error, that the trial court erred in not granting the defendant a new trial upon the ground, set up in its motion for a new trial, that the verdict of the jury in assessing penalties against defendant for alleged violation of the law between May 31st, 1900, and March, 1903, at the sum of $1,549,500.00 was so manifestly excessive as to amount to depriving defendant of its property without due process of law, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

87.

Because this court erred in not holding, as contended by appellant in its 111th assignment of error, that the trial court erred in refusing to grant the defendant a new trial upon the ground, set up in its motion for a new trial, that the verdict of the jury in assessing penalties against the defendant for alleged violations of the anti-trust acts of May 25th, 1899, at the sum of $1,549,500.00, and in assessing penalties against the defendant for alleged violations of the Anti-trust Act of March 31st, 1903, at the sum of $74,400.00, is so manifestly

excessive as to amount to the deprivation of its property, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

88.

Because this court erred in holding that the verdict of the jury in assessing penalties against the defendant for the alleged violations of the Anti-trust Act of May 25th, 1899, at $1,549,500.00 was not so manifestly excessive as to amount to the imposition of excessive fines, in violation of Section 13, Article 1, of the Constitution
1894 of the State of Texas, and in not holding, as contended by appellant in its 112th assignment of error, that the verdict of the jury, in the respect above stated, amounted to the imposition of excessive fines within the meaning of said Article of the Constitution.

89.

Because this court erred in not holding, as contended by appellant in its 113th assignment of error, that the trial court erred in refusing to grant defendant a new trial upon the ground, set up in its motion for a new trial, that the verdict of the jury in assessing penalties against defendant for the alleged violations of the Anti-trust Act of May 25th, 1899, at $1,549,500.00, and in assessing penalties against the defendant for alleged violations of the Anti-trust Act of March 31st, 1903, was so manifestly excessive as to amount to the imposition upon defendant of excessive fines in violation of Section 13, Article 1, of the Constitution of the State of Texas.

90.

Because this court erred in not holding, as contended by appellant in its 114th assignment of error, that the trial court erred in refusing to grant the defendant a new trial upon the ground set forth in said motion for a new trial, that the verdict of the jury in so far as it assesses penalties against the defendant on each of the issues submitted to the jury for each of the days between May 31st, 1900, and March 31st, 1903, is unsupported by the evidence, in that there was no evidence showing that the defendant if it violated the law in any of the respects complained of between May 31st, 1900, and March 31st, 1903, committed such violation on any particular day, nor was there any evidence showing that the defendant, if it violated the law in any of the respects complained of between May 31st, 1900, and March 31st, 1903, committed such violation for either 1033 days, or any other definite number of days.

91.

Because this court erred in not holding, as contended by appellant in its 115th assignment of error, that the trial court erred in refusing to grant defendant a new trial upon the ground, set forth in
1895 its motion for a new trial, that the verdict of the jury, in so far as it finds for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1st, 1903, and April 29th, 1907, being 1488 days, is unsupported by the evidence, in that there was no evidence showing that the defendant, if it violated the law in any of the respects complained of between said

days, committed such violations on any particular day, nor was there any evidence showing that the defendant violated the law in any of the respects complained of between said days on 1488 days, or any other definite number of days.

92.

Because this court erred in not sustaining Appellant's motion to consolidate with this proceeding all matters connected with the appointment of Robert J. Eckhardt as Receiver of Appellant's property embraced in the separate transcript docketed as a separate appeal in this Court, since the same matters are embraced in the transcript of the record in this cause and presented in Appellant's brief herein; which motion to consolidate was filed by Appellant in this Court on the first day of this term on October 7th, 1907, and particularly since both transcripts were filed in this Court on the same day and this cause was first docketed in this Court.

93.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 116 and in not holding the motion or application for the appointment of a receiver to be insufficient to confer jurisdiction on the trial court to appoint a receiver.

94.

Because this court erred in not considering and sustaining Appellant's assignment of error No. 117.

95.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 118.

96.

Because this Court erred in not considering and sustaining Appellant's first proposition under its assignment of error No. 120,
1896 and in not holding that when Appellant gave its supersedeas bond in connection with its appeal from the main judgment of June 1st, 1907, on June 15th, 1907, that the legal effect of such bond was to vacate and set aside the order appointing a receiver.

97.

Because this Court erred in not considering and sustaining Appellant's second proposition under its assignment of error No. 120, and in not holding that to deny to appellant the effect of its said supersedeas bond as contended in its said first proposition, results in depriving Appellant of its property without due process of law, and a denial to it of the equal protection of the law, in violation of section one of the 14th Amendment to the Constitution of the United States. This error is also presented in Appellant's assignment of error No. 121.

98.

Because this Court erred in not considering and sustaining Appel-

lant's assignment of error No. 122, and in not holding that the Act of the Legislature of the State of Texas, approved April 11th, 1907, was unconstitutional and in violation of section one of the 14th Amendment to the Constitution of the United States, because of the arbitrary power therein conferred.

99.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 123, and in not holding said Act of April 11th, 1907 to be in violation of Section 16 of Article One of the Constitution of the State of Texas.

100.

Because this Court erred in not considering and sustaining Appellant's first proposition under its assignment of error No. 124, and in not holding said Act of April 11th, 1907, to be in violation of Section 10 of Article One of the Constitution of the United States, because by creating a lien on Appellant's property for offenses committed before said Act took effect the penalty for such offenses was thereby increased.

1897

101.

Because this Court erred in not considering and sustaining Appellant's second proposition under its assignment of error No. 125 and in not holding said Act of April 11th, 1907, to be in violation of section one of the 14th Amendment to the Constitution of the United States, because by the provisions of said Act the creation of liens and the right to appoint receivers is limited to suits against corporations, when as against individuals for the same offense and otherwise similarly situated, no lien is created and no right to appoint a receiver exists.

102.

Because this Court erred in not considering and sustaining Appellant's first proposition under its assignment of error No. 126.

103.

Because this Court erred in not considering and sustaining Appellant's second proposition under its assignment of error No. 126.

104.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 127, and in not holding that the action of the trial court in appointing a receiver of appellant's property as a means of preventing it from the further or continued violation of the laws, results in depriving Appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. This error is presented in Appellant's first proposition under said assignment.

105.

Because this Court erred in not considering and sustaining Appellant's second proposition under its assignment of error No. 127.

106.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 128, and in not holding that the trial court erred in appointing a receiver of appellant's property without evidence being introduced to show that Appellant could not make use of its property in conformity with law. This error of the
1898 trial court thus permitted to stand by this court results in depriving Appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

107.

Because this Court erred in not considering and sustaining Appellant's assignment of error No. 129, and in not holding the said Act of April 11th, 1907, to be in violation of Section 10, Article 1, of the Constitution of the United States, because by providing that a receiver may be appointed for the property of a corporation in a suit involving the violation of the anti-trust laws of the State, this Act as applied and construed by the trial court as authorizing the appointment of a receiver of appellant's property in this case, is an *ex post facto* law and void under Section 10, Article 1, of the Constitution of the United States.

Wherefore, and upon each of the foregoing grounds of error committed by this court, appellant moves the court to grant it a rehearing herein, and to set aside and vacate its said judgment affirming the judgment of the District Court of Travis County herein complained of.

Appellant represents that the Honorable R. V. Davidson, who is the Attorney General of the State of Texas, and Jewell P. Lightfoot, an Assistant Attorney General of said State and John W. Brady, County Attorney of Travis County, and T. W. Gregory and R. L. Batts composing the firm of Gregory & Batts, and George W. Allen and W. D. Hart, composing the firm of Allen & Hart, are the attorneys of record for the appellee, the State of Texas, upon whom service of this motion may be made, and that each of said attorneys resides and may be found in said Travis County, Texas, and service of this motion is prayed to be made upon the said attorneys, as required by law.

Respectfully submitted,

N. A. STEDMAN,
COCHRAN & PENN,
*Attorneys for Appellant.*

1900 (Endorsements on back of Motion for rehearing:) Motion 2872. With App. No. 5744. Waters Pierce Oil Company *vs.* The State of Texas. Motion for Rehearing. Overruled.

Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Dec. 24, 1907. R. H. Connerly, Clerk. Filed in Supreme Court Feb. 13 1908. F. T. Connerly, Clerk.

Errata.—There is no page 1899. Same was accidentally skipped.

R. H. CONNERLY, *Clerk.*

1901 *Order Made January 15th, 1908, Overruling Motion for Rehearing.*

Motion 2872. #4212.

WATERS PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

Appeal from Travis County.

Motion for a rehearing; the motion is overruled.

1902 *Order of Supreme Court of Texas Refusing Application for Writ of Error.*

FEBRUARY 26, 1908.

App. No. 5744.

WATERS-PIERCE OIL CO.
*vs.*
THE STATE OF TEXAS.

From Travis County, Third District.

This day came on to be heard the application of Waters-Pierce Oil Co. for a Writ of Error to the Court of Civil Appeals for the 3rd District, and the same having been duly considered, it is ordered that said application be refused; That the Applicant, The Waters-Pierce Oil Company, a corporation, and its sureties, The American Surety Company of New York, and John H. Kirby, pay all costs incurred on this Application.

(Endorsed:) Application No. 5744. Waters Pierce Oil Co. *vs.* The State of Texas. Copy of Judgment in Supreme Court. Application for writ of error. Refused. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin Texas, Mar. 26, 1908. R. H. Connerly, Clerk.

1903 *Bill of Costs, Supreme Court of Texas.*

CLERK'S OFFICE, SUPREME COURT.

No. 5744.

WATERS PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

Certified Copy Bill of Costs, Supreme Court.

| | |
|---|---|
| Filing Application | .50 |
| Docketing Petition | .50 |
| Entering appearance of counsel | .50 |
| Filing two briefs | .50 |
| Filing three papers | .90 |
| Entering orders | 1.00 |
| Entering judgment on application | 1.00 |
| Certified copy of judgment | 1.00 |
| Taxing costs of application | .50 |
| Certified copy bill of costs | 1.00 |
| Filing and entering motion | .55 |
| Total | $8.05 |

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above copy of the original bill of costs is true and correct. Witness my hand and seal of said court, at Austin, this the 26th day of March, 1908.

F. T. CONNERLY, *Clerk.*

(Endorsed:) Application No. 5744. Certified Copy bill of costs in Supreme Court, Austin. Waters Pierce Oil Co. *vs.* State of Texas. $8.05. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 26, 1908. R. H. Connerly, Clerk.

1904 In the Supreme Court of the United States.

Between

THE WATERS PIERCE OIL COMPANY (Defendant), Plaintiff in Error,
and
THE STATE OF TEXAS (Plaintiff), Defendant in Error.

*Assignment of Errors.*

The defendant the said Waters Pierce Oil Company says that in the record and proceedings aforesaid and in giving and affirming the judgment aforesaid of the District Court and in the order

appointing a receiver as a consequence of the said judgment there is manifest error in this to-wit

1. That it was decided in and by the said judgment that the defendant the Waters Pierce Oil Company which was incorporated under the laws of Missouri on the 29th May 1900 and not before was liable to the penalties imposed by the statute of 1903 in the record mentioned for and on account of the acts of the Standard Oil Company in acquiring a majority of the shares of the Waters-Pierce Oil Company before the said statute of 1903 was passed or took effect which acts were not done in the state of Texas. And by means thereof the defendant the Waters-Pierce Oil Company is thereby deprived of its property without due process of law. And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

2. There is also manifest error in this that it was decided in and by the said judgment that the said Waters Pierce Oil Company was liable to the penalties imposed by the statute of 1899 in the record mentioned for and on account of a supposed union or
1905 combination of its capital with the capital of the Standard Oil Company by means of acts done by the said Standard Oil Company long before the passage of the said statute and long before the incorporation of the said Waters Pierce Oil Company in acquiring a majority of the shares of another then existing company (hereinafter called the old Waters Pierce Oil Company) incorporated under the laws of Missouri by the same name as the said Waters Pierce Oil Company which acts were not done in the state of Texas. And by means thereof the defendant the Waters Pierce Oil Company is deprived of its property without due process of law. And it was also thereby decided that the said statute was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

3. There is also manifest error in this that it was decided in and by the said judgment that the defendant the Waters Pierce Oil Company was liable to the penalties imposed by the said statutes of 1899 and 1903 respectively for and on account of certain supposed agreements or understandings entered into before the passage of either of the said statutes between the Standard Oil Company and the old Waters Pierce Oil Company whose property and business the defendant the Waters Pierce Oil Company afterwards acquired without becoming in any way bound by or answerable in respect of any of the said supposed agreements or understandings and never became so bound or answerable or did any act in carrying any of them into effect which supposed agreements or understandings if they existed were entered into out of the state of Texas. And by means of the said decision the said Waters Pierce Oil Company is

deprived of its property without due process of law contrary to the provisions of the said Constitution.

1906 4. There is also manifest error in this that the Court upon hearing the exceptions of the defendant to the plaintiff's amended original petition before the said trial overruled among others of them the exception (No. 9) whereby the defendant excepted to all parts and paragraphs of the said petition by which it was sought to hold the defendant subject to the provisions of the said statute of 1903 and to cancel its permit to do business in Texas and to recover penalties against it on account of the alleged holding or ownership by the Standard Oil Company of New Jersey of a majority of its stock because according to the allegations in the said petition the said stock was so held and owned by the said Standard Oil Company at and long prior to the passage of the said statute of 1903 and its ownership of the said stock being a vested right and not in violation of the laws of the state of Texas when the defendant's permit to transact business in Texas was granted to it on May 31st, 1900, it was not competent or within the constitutional power of the legislature of the state of Texas to interfere with such ownership or divest the said Standard Oil Company of its said property or to make it an offence by the defendant subjecting it to penalties and to a forfeiture of its said permit for such vested ownership to continue and that the said statute of 1903 is violative of the Constitution of the United States for that it is both *ex post facto* and retroactive in its operation and for the additional reason that if given the effect of prohibiting the continuance of such ownership of the said stock by the said Standard Oil Company and of making it an offence on the part of the defendant for such holding to continue it would deprive the defendant of its property without due process of law and deny to the defendant the equal protection of the laws and impair the obligations of a contract contrary to the provisions of the said Constitution in the said exception referred to and for these reasons the defendant therein said that it was apparent that all allegations in the said petition with respect to the alleged ownership of the defendant's stock by the

1907 Standard Oil Company should be stricken out and of this special exception the defendant prayed the judgment of the court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said majority of the stock of the defendant before the passage of the said statute of 1903 and continuing afterwards to hold the same. And the defendant has thereby been denied the equal protection of the laws and is deprived of its property without due process of law. And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

5. There is also manifest error in this that the Court in like manner also overruled another of the said exceptions No. 20 to the said

petition whereby if the Court should construe the plaintiff's petition as alleging that the defendant was the same corporation—the same entity as the old Waters Pierce Company (which the said petition does plainly allege) then the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provision of the said statute of 1899 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreement between the defendant and the said Standard Oil Company or on account of the alleged agreement between the defendant and the said Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the
1908 reason that if the petition be so construed it then affirmatively appeared from the said petition that the said alleged ownership of the stock of the defendant by the said Standard Oil Company existed at the time of and prior to the taking effect of the said statute of 1899 and that all of the said alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character of the said alleged agreements so set forth in the said petition it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the legislature to authorize the recovery against the defendant of the penalties provided for in the said statute on account of the continuation of the said alleged ownership of its stock by the said Standard Oil Company or on account of the performance by this defendant of any of the alleged agreements so alleged to have been made prior to the taking effect of the said statute then such act so construed would be violative of the said Constitution in that it would be retroactive in its effect and impair the obligations of contracts any deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1899 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters Pierce Oil Company before the passage of the said statute of 1899 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such
1909 majority of the shares of the defendant the Waters Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters Pierce Oil Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of the alleged agreements and understandings between the old Waters Pierce Oil Company and the said Standard Oil Company and the said other corporations and persons entered into

before the passage of the said statute of 1899 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor. And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law.

6. There is also manifest error in this that the Court in like manner also overruled another of the said exceptions (No. 21) to the said petition whereby the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provisions of the said statute of 1903 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreements between the defendant and the said Standard Oil Company or on account of the alleged agreements between the defendant and the said Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the reason that it affirmatively appeared from the said petition that the alleged ownershop of the stock of the defendant by the said Standard Oil Company existed at the time of and prior to the passage of the said statute of 1903 and that all of the alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character set forth in the said petition it

1910 was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the legislature to authorize the recovery against the defendant of the penalties provided for in the said statute on account of the continuance of the said alleged ownership of the stock by the said Standard Oil Company or on account of the performance by the defendant of any of the agreements so alleged to have been made prior to the taking effect of the said statute such statute so construed would be violative of the said constitution in that it would be retroactive in its effect and impair the obligations of contracts and deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters Pierce Oil Company before the passage of the said statute of 1903 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such majority of the shares of the defendant the Waters Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters Pierce Oil Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of

the alleged agreements and understandings between the old Waters Pierce Oil Company and the said Standard Oil Company and the said other corporations and persons entered into before the passage of the said statute of 1903 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor. And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law.

1911 7. There is also manifest error in this that the Court in like manner overruled another of the said exceptions (No. 25) to the said petition whereby the defendant objected that each of the said statutes of 1899 and 1903 was so indefinite vague and uncertain in its terms that it could not be ascertained by the language used that particular acts constituted an offence subjecting the offender to punishment as therein prescribed and for that reason a person could not know in advance of committing the act whether he was violating the law and that to subject the defendant to heavy penalties for an alleged violation thereof would result in the taking of the defendant's property without due process of law contrary to the provisions of the said Constitution. And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly.

8. There is also manifest error in this that the Court in like manner overruled others of the said exceptions (No. 52 and 53) to the said petition whereby the defendant objected that the said statutes of 1899 and 1903 respectively were so indefinitely framed and of such doubtful construction that they could not be understood either from the language in which they were expressed or from some other written law of the state and by reason of their failure to designate an offence by the plain import of their words the infliction of the penalties prescribed by the said statute would be the taking of property without due process of law contrary to the provisions of the said Constitution. And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly.

1912 9. There is also manifest error in this that evidence having been adduced at the trial of the said cause that the Standard Oil Company from some time in the year 1882 owned a majority of the shares of the old Waters Pierce Company down to the incorporation of the defendant the Waters Pierce Oil Company on the 29th May 1900 and that on or about the 24th September 1900 a majority of the shares of the defendant the Waters Pierce Oil Company which had up to that time been held by H. C. Pierce in trust for the said Standard Oil Company (the same having been so issued to him upon the formation of the defendant company on account of the interest of the said Standard Oil Company in the old Waters Pierce Oil Company) were transferred to the said Standard Oil Company by an indorsement of the certificates therefor in blank by the said H. C.

Pierce without any evidence of the registration of any transfer of the same on the books of the defendant company until early in the year 1904 when the said Standard Oil Company caused the same to be transferred on the said books into the name of M. M. Van Beuren and evidence having been also adduced at the said trial that the old Waters Pierce Company carried on its business throughout the whole of Texas and in certain other states and in Mexico and obtained its supplies of refined oil almost exclusively from the Standard Oil Company and that the said Standard Oil Company did not carry on such business in the said territory in which the old Waters Pierce Company so carried on business and that the defendant the Waters Pierce Oil Company after acquiring the business of the old Waters Pierce Company as above mentioned carried on the said business in the same territory and in the same way without extending its business into other territory and that the said Standard Oil Company did not extend its business into the territory in which the defendant so carried on business the judge before whom the said cause was tried at the said trial although there was no other evidence of any such agreement or understanding between the defendant and the
1913 Standard Oil Company as next hereinafter mentioned or of any other act by the defendant in carrying any other such agreement or understanding into effect directed the jury (in paragraph VII of his charge) upon the said evidence that if they found that the defendant the Waters Pierce Oil Company entered into or became a party to an agreement or understanding with the Standard Oil Company on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum and if they further found that the defendant remained or continued to be a party to the said agreement or understanding if any and persisted in carrying the same out in Texas on June 1, 1900, or any subsequent date or dates prior to March 31, 1903, and that the oil with reference to which the said agreement or understanding was so made and carried out was the subject of local as distinguished from interstate commerce the jury should return a verdict for the state and thereby say that they found in favor of the state upon the issues submitted for their consideration in paragraph seven (VII) of the Court's charge and further instructed the jury that each day between May 31, 1900, and March 31, 1903, during which the defendant remained a party to the agreement or understanding therein mentioned would constitute a separate and distinct violation of the anti-trust laws of Texas. And the said judge also directed the jury that the said statute of 1899 was in force on May 31, 1900, and thenceforth until March 31, 1903, and that the said statute of 1903 became effective on March 31, 1903, and has since continued in force and that if the jury should convict the defendant of any violation or violations of the said statute of 1899 they should specify in their verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas should be forfeited and the amount of money which should be adjudged against it as penalties for such violations fixing the same at not less than $200 or more than $5,000 per day for each day that they should find it had so vio-

lated the law. And the jury in pursuance of the said
1914 directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph (VII) of the judge's charge for each of the days between May 31, 1900, and March 31, 1903, stating the same in their verdict as being 1033 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found that any such agreement or understanding as above mentioned entered into between the old Waters Pierce Company and the said Standard Oil Company became an agreement or understanding on the part of the defendant the Waters Pierce Oil Company with the said Standard Oil Company as soon as the defendant acquired the property and business of the old Waters Pierce Company and conducted the said business in the same manner and in the same territory as the old Waters Pierce Company had done and without extending the said business into any other territory although the defendant had not otherwise than by its said acts entered into any such agreement or understanding and also that the defendant the Waters Pierce Oil Company having entered into such an agreement or understanding as mentioned in the said paragraph of the judge's charge although not in the state of Texas and having persisted in carrying the same out in Texas on the 1st June 1900 was guilty of a violation of the said law on every subsequent day including Sundays and holidays down to the 31st March 1903 although it did not on any such subsequent day or did not upon some of such subsequent days do any act in Texas in or towards carrying out the said agreement or understanding but only remained a party thereto. And by the judgment upon the said verdict upon the issues submitted to the jury in the said paragraph (VII) of the judge's charge the defendant the Waters Pierce Oil Company is deprived of its property without due process of law.

1915 10. There is also manifest error in this that upon the evidence mentioned in the last preceding paragraph without any other evidence or suggestion of such a combination or union as next hereafter mentioned the said judge also directed the jury (in paragraph VIII of his charge) that if they found that on June 1, 1900, or any date subsequent thereto and prior to March 31, 1903, the defendant had brought about or permitted any combination or union of its capital with the capital of the said Standard Oil Company whereby the price in Texas of such oil as mentioned is the said clause of the charge was sought to be fixed or regulated or would reasonably calculated to be fixed or regulated or whereby the trade in such oil in Texas was sought to be controlled or limited the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph eight (VIII) of the court's charge and further directed the jury that if the defendant became a party to a pool of the character mentioned in that paragraph each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool would constitute a separate violation of the anti-trust laws of Texas and the jury in pur-

suance of the said directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph of the judge's charge for each of the days between May 31, 1900, and March 31, 1903, stating the same in their verdict as being 1033 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the two paragraphs seven (VII) and eight (VIII) of the judge's charge at $1,549,500 and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant the
1916 Waters Pierce Oil Company guilty of having brought about or permitted such a combination or union of its capital with the capital of the Standard Oil Company as above mentioned by means of the acts of the said Standard Oil Company acquiring a majority of the shares of the old Waters Pierce Company long before the passage of the said statute of 1899 and before the defendant came into existence and in holding the said shares until the defendant was incorporated and acquired the property and business of the old Waters Pierce Company and then taking the beneficial interest in a corresponding majority of the shares of the defendant the Waters Pierce Oil Company for its interest in the old Waters Pierce Company in which acts of the said Standard Oil Company the defendant had no part and although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or union or for any of the supposed purposes thereof on some or any of the days for which it was so convicted. And by the judgment upon the said verdict upon the last mentioned paragraph (VIII) of the judge's charge the defendant the Waters Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1899 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by any state.

11. There is also manifest error in this that upon the evidence mentioned or referred to in the next preceding paragraph hereof without any other evidence or suggestion of any such combination as next hereinafter mentioned and although it was agreed by the parties at the said trial for the purposes of this case that the said Standard Oil Company had from the time long before the
1917 passage of the said statute of 1903 owned a majority of the shares of the defendant the Waters Pierce Oil Company the said judge also directed the jury (in paragraph IX of his charge) that if they found that the defendant entered into a combination of its capital with the capital of the said Standard Oil Company for the purpose of creating in Texas or which tended to create in Texas or carry out in Texas restrictions in the free pursuit in that state of the business of selling such oil as is mentioned in the said paragraph of the charge or to fix maintain or increase the price of such

oil in Texas or to prevent or lessen competition in Texas in the sale of such oil and that the defendant remained or was a party to and acted under such combination on March 31, 1903, or any date subsequent thereto and prior to April 29th, 1907, the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph nine (IX) of the court's charge and further directed the jury that if the defendant became a party to a trust of the character mentioned in that paragraph of the charge each day between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust would constitute a separate violation of the anti-trust laws of Texas and that if the jury should convict the defendant of any violations of the said statute of 1903 they should specify in the verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas should be forfeited and the sum of money that should be adjudged against it as a penalty for such violations fixing the sum at $50 per day for each day that they should convict it of having violated the said law. And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them by the said paragraph of the judge's charge

1918 for each of the days between April 1, 1903, and April 29, 1907, stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be canceled by means whereof the jury found the defendant the Waters Pierce Oil Company guilty of having entered into such a combination as last above mentioned by means of the acts of the said Standard Oil Company in acquiring the said majority of the shares of the said Waters Pierce Oil Company long before the passage of the said statute of 1903 although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for any of the supposed purposes thereof on some or any of the days for which it was so convicted and although the defendant had no means of requiring or inducing the said Standard Oil Company to part with the said majority of shares or any part thereof.

12. There is also manifest error in this that the said judge also directed the jury (in paragraph X of his charge) that if they found that the direction of the affairs of the defendant corporation and the affairs of the said Standard Oil Company was under the same management and control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such management or control by their respectively authorized officers under such circumstances that such common management or control created or tended to create or carry out restrictions in the sale in Texas of such oil as is referred to in the said paragraph of the charge or to fix maintain or increase the price in Texas of such oil or to prevent or lessen in Texas the competition in the sale of such oil the jury should return a verdict for the state and thereby say that they found for the state on the issues submitted for their consideration in paragraph ten (X) of the court's charge and further

directed the jury that if the defendant entered into a
1919 monopoly of the character mentioned in that paragraph of the charge each day between March 30 1903 and April 29 1907 that it remained a party to such monopoly constituted a separate violation of the anti-trust laws of Texas. And although there was no evidence that the direction of the affairs of the defendant and the said Standard Oil Company was after the passage of the said statute of 1903 brought under the same management or control or was under the same management or control on the 31st March 1903 when the said statute was passed or on the first or second or any subsequent day thereafter or that the said Standard Oil Company had any power to bring the direction of the affairs of the said two corporations under the same control or management until the said majority of the shares in the defendant corporation were transferred on its books into the name of M. M. Van Beuren as hereinbefore mentioned in the year 1904 or that the said Standard Oil Company exercised any such power by doing so either before or after the same were so transferred or that any of the things supposed to have been done had been done in Texas except carrying on business there as hereinbefore mentioned the jury in pursuance of the said direction of the judge found for the plaintiff against the defendant on the issues submitted to them by the said paragraph ten (X) of the judge's charge for each of the days between April 1 1903 and April 29 1907 stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of the offense of bringing the direction of its affairs under the same management and control as those of the said Standard Oil Company although it had had no part in doing so itself and although whatever was supposed to have been done to bring the direction of the affairs of the said two corporations under the same management and control had not been done in Texas and had been done before the passage of the said statute of 1903 or had not been done on some of the days for which it was so convicted and was not in fact done at all.

1920 13. There is also manifest error in this that the said judge also directed the jury (in paragraph XI of his charge) that if they found that the Standard Oil Company had on March 31st 1903 acquired a majority of the capital stock of the defendant the Waters-Pierce Oil Company and thereby effected a combination of the said corporations with the purpose and intention therein mentioned on the part of the managing officers and directors of the said Standard Oil Company the jury should return a verdict for the state and thereby say that they found in favor of the state upon the issues submitted for their consideration in paragraph eleven (XI) of the Court's charge and further directed the jury that each day between March 30 1903 and April 29 1907 that the defendant remained a party to such monopoly constituted a separated violation of the anti-trust laws of Texas. And although at the said trial no evidence was adduced that the said Standard Oil Company acquired on or after the 31st March 1903 such a majority of the said capital

stock or any shares necessary to make such majority or ever acquired any such shares within the state of Texas and it was agreed by the parties at the said trial that since a time long previous to the 31st March 1903 the said Standard Oil Company had owned more than a majority of the said capital stock the jury in pursuance of the said direction found for the plaintiff against the defendant upon the issues so submitted to them for each of the days between April 1 1903 and April 29 1907 stating the same in their verdict as being 1488 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the three paragraphs nine (IX) ten (X) and eleven (XI) of the judge's charge at $74,400 and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of having effected a combination of itself and the said Standard Oil Company solely by reason of the acts of the said Standard Oil Company done long before the passage of the said statute of 1903 in ac-
1921 quiring the said majority of the shares of the said Waters Pierce Oil Company although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for giving effect to the supposed purpose or intention of the managing officers of the said Standard Oil Company on some or any of the days for which the defendant was so convicted. And by the judgment upon the said verdict upon the issues submitted to the jury in the three last mentioned paragraphs of the judge's charge respectively the said Waters Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1903 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

14. There is also manifest error in this that the said judge also declared — his opinion to the jury (in paragraph XI of his charge) that if the said Standard Oil Company acquired a majority of the capital stock of the defendant the Waters Pierce Oil Company a combination of the said two corporations would be thereby effected and with that direction he left the said issues to the jury whereas a combination of the said two corporations would not be thereby effect- And the jury in pursuance of the said direction found for the plaintiff against the defendant upon each of the issues submitted to them respectively in the four paragraphs (eight (VIII) nine (IX) ten (. and eleven (XI) of the judge's charge and thereby found the defendant guilty of having effected such combination solely by reason of the acts of the said Standard Oil Company in acquiring the said majority of shares although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination
1922 or for giving effect to any supposed purpose or intention thereof on some or any of the days for which the defendant

was so convicted. And by the judgment upon the said verdict upon the issues submitted to the jury in the four last mentioned paragraphs of the judge's charge respectively the defendant the said Waters Pierce Oil Company is punished for an act which it could not control and an offense that it could not commit and is thereby deprived of its property without due process of law contrary to the provision of the said Constitution.

15. There is also manifest error in this that the said judge upon the trial of the said cause arbitrarily and without any regard to the rules of law admitted evidence of (1) the incorporation of the Standard Oil Company of Ohio on or about the 10th January 1870; (2) the incorporation of the old Waters Pierce Oil Company in Missouri on the 1st May 1878 and the increase of its capital on the 13th June, 1882; (3) the agreement of the 2nd January, 1882, by which the Standard Oil Trust was formed and to which the old Waters Pierce Oil Company or the defendant the Waters Pierce Oil Company or H. C. Pierce who owned about two-fifths of the shares in these two companies never became a party; (4) the incorporation of the Standard Oil Company of New Jersey herein referred to as the Standard Oil Company on the 1st August, 1882; (5) the ownership by the Standard Oil Company of the majority of the shares of several other companies as stated in the agreement of counsel designated Stipulation No. 1; (6) the judgment in favor of the state of Texas against the old Waters Pierce Company on the 15th June, 1897, for the forfeiture of its permit to do business in Texas which judgment was affirmed by this Court on or about the 19th March, 1900, (177 U. S., 28) and also (7) the testimony of several witnesses relating to the doings and agreements of the agents of corporations other than the defendant and of the agents of the old Waters Pierce Company prior to the incorporation of the defendant the Waters Pierce Oil Company and prior to the 1st June, 1900, and to
1923 the doings and agreements of the defendant's agents and the agents of other corporations outside the state of Texas and to the doings and agreements of individuals both prior and subsequent to the 1st June, 1900, and both outside and within the state of Texas (to all of which evidence and testimony respectively counsel for the defendant duly objected at the trial as appears by the record.) And although there was not any other evidence nor any evidence whatever of an agreement at any time between the defendant or the governing officers of the defendant and any other persons whatever relating to the management of the defendant's business yet the said judge arbitrarily and without any regard to the rules of law and intending that the jury should identify the defendant with the old Waters Pierce Company as charged in the petition of the state and should convict the defendant of violations of the said anti-trust laws upon the issues submitted to them in the five paragraphs last above mentioned of the judge's charge without any legal evidence of any such violation and should for that purpose consider irrelevant evidence under color of first finding a conspiracy of which there was no evidence whatever overruled all the objections of the defendant to the admission of the said evidence and directed the jury (in the division V of his charge) that if they found from the other evidence

in the case independent of all declarations or statements made by any person or persons except their evidence given as witnesses personally or by deposition that on June 1, 1900, there was formed or existed an agreement between the governing officers of the defendant and the governing officers of any of the other corporations alleged in the state's petition to be co-conspirators with the defendant relating to the management of the defendant's business or between the governing officers of the defendant and any of the individuals alleged in the State's petition to be co-conspirators with the defendant relating to the management of the defendant's business then the jury might consider for what if anything they thought it worth
1924 such acts or declarations of all the parties to the said agreement and such acts and declarations of their authorized agents if any as were done or made during the existence of such agreement and in furtherance of its execution for the purpose of determining the character of such agreement and whether or not it contemplated a violation by the defendant of the anti-trust laws of Texas but that none of the said evidence could be considered by the jury for any other purpose whatever and none of it could be so considered by the jury against the defendant for the said purposes except such of it if any as they should think proper to be considered when tested by the rules so stated relating to its competency. And also directed the jury (in the division XIII of his charge) that they might consider so far as it tended to establish some one or more of the issues submitted for their consideration in the said five paragraphs (VII to XI) of his charge the evidence introduced before them that the defendant had given rebates and discounts in the course of its dealings and that the defendant had made contracts and entered into understandings other than those submitted for their consideration in the said five paragraphs of the charge and also the evidence introduced before them of the general course of dealings of the defendant in Texas and elsewhere including some of its business methods in meeting competition although he directed them that none of this evidence showed or tended to show any violation of the anti-trust laws of Texas unless it tended to establish some one or more of the said issues so submitted for their consideration. And the verdict was accordingly given for the State upon the said issues submitted to the jury whereas according to due process of law it ought to have been given for the defendant. And upon the appeal of the defendant the Court of Civil Appeals in affirming the said judgment unreasonably and wilfully disregarded the questions thereby raised
under the said Constitution as well as the rules of evidence ac-
1925 cording to the usage and practice prevailing in Texas. And the defendant is thereby deprived of its property without due process of law contrary to the provisions of the said Constitution.

16. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 5) as follows:

"You are instructed that inasmuch as the defendant is a corporation incorporated and existing under the laws of the state of Missouri the question of the legality of the ownership of a majority of its stock by the Standard Oil Company is not an issue in

this case and in this connection you are further instructed that the anti-trust laws of Texas being designed merely to prohibit unlawful combinations or agreements having the purpose of fixing and regulating prices and other forbidden purposes denounced by such laws could not be violated by the mere ownership by the Standard Oil Company of a majority of the stock of the defendant."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in owning in another state a majority of the stock of the defendant. And the verdict having been given for the state the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution.

17. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 7) as follows:

"You are instructed that it is admitted by the defendant that the Standard Oil Company of New Jersey acquired a majority of the shares of stock of the defendant company on or about the 4th day of September 1900 and thereafter continued to own the same.

Therefore the Court further instructs the jury that the ac-
1926 quiring and owning of said chares of stock by said Standard Oil Company did not constitute a violation of the act approved March 31st, 1903, even though the jury may believe that the said Standard Oil Company voted said shares of stock at the meeting of the stockholders of the defendant company for the election of director of said defendant company."

And there is also manifest error in this that the said judge also refused to direct the jury as requested by the defendant (Special Charges refused No. 24):

"You are instructed that since the Standard Oil Company acquired a majority of the stock of the defendant prior to the enactment of the anti-trust act of 1903 and since the defendant company being a corporation created by the laws of Missouri the acquisition of such stock by the Standard Oil Company cannot be inquired into by the courts of Texas but must be in all things treated as legal and valid the inhibition of the anti-trust act of 1903 against any corporation's acquiring the shares of stock of any other corporation for the purpose of preventing or lessening competition or tending to affect or lessen competition can have no application to this case."

Whereas the said directions ought respectively to have been given so that the jury might not convict the defendant of violation of the said statute of 1903 upon any of the three issues submitted to them as aforesaid in the paragraphs nine (IX) ten (X) and eleven (XI) of the judge's charge on account of the acts of the Standard Oil Company in acquiring the said majority of shares before the passage of the said statute of 1903. And the verdict having been given for the State the defendant is by reason of the said refusals deprived of its property by the said judgment without due process

of law and subjected to the said penalties by virtue of an *ex post facto* law passed by the state of Texas contrary to the provisions of the said Constitution.

1927 18. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 9) as follows:

"You are instructed that it is not in violation of the laws of the state of Texas and has not been a violation of such laws or any laws at any time since May 31st, 1900, for the Standard Oil Company of New Jersey or any other person or corporation to own a part of the stock of the defendant Waters Pierce Oil Company and you will therefore disregard any evidence that has been introduced before you upon this subject."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in ow-ing in another state a majority of the stock of the defendant. And the verdict having been given for the state the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution.

19. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges No. 13) as follows:

"You are instructed that in view of the fact that the Standard Oil Trust Agreement of January 2nd, 1882, and the supplemental agreement thereto of January 4th, 1882, were executed long prior to the creation of the defendant and there is no evidence showing that the defendant ever adopted said agreement you will not consider the execution of said agreement or the contents of the same as in any wise affecting this defendant."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas on account of this agreement between other persons made long before the defendant came into existence and

1928 long before the passage of the said anti-trust laws. And the verdict having been given for the State the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution.

20. There is also manifest error in this that the penalties of $1,549,500 and $74,400 assessed by the jury are respectively so plainly excessive that the defendant is thereby deprived of its property without due process of law.

21. There is also manifest error in this that the Court upon hearing the said exceptions of the defendant to the said petition in manner aforesaid overruled others of the said exceptions (Nos. 28 and 38) whereby the defendant objected that the recovery of penalties under the said statutes respectively for acts done more than two years before the commencement of the said action was barred by article 219 of the Code of Criminal Procedure of Texas.

And in this that the Court also overruled in like manner others of the said exceptions (Nos. 30, 31, 40, 41) whereby the defendant objected respectively that if the said limitation was not available to it the defendant would be denied the equal protection of the laws contrary to the provisions of the said Constitution and that the said statutes of 1899 and 1903 would respectively be invalid by reason thereof. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 32 and 42) whereby the defendant objected that the recovery of the said penalties for acts done more than two years before the commencement of the said action was barred by article 3354 of the Revised Statutes of Texas. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 34 and 44) whereby the defendant objected that if the said limitation was not available to it the defendant was denied the equal protection of the laws contrary
1929 to the provisions of the said Constitution and that the said statutes of 1899 and 1903 were invalid respectively by reason thereof. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 35 and 37) whereby the defendant objected respectively that the recovery of penalties under the said statute of 1899 for acts done more than four years before the commencement of the said action was barred by article 3358 of the said Revised Statutes and that if the said limitation was not available to it the defendant was denied the equal protection of the laws contrary to the provisions of the said Constitution. And in this that the judge also refused with like effect and consequences to direct the jury as requested by the defendant in the Special Charges refused Nos. 1, 2 and 3 respectively as regards the said limitations which were duly pleaded in the defendant's answer.

22. There is also manifest error in this that the Court in like manner overruled another of the said exceptions (No. 10) to the said petition whereby the defendant objected that the parts thereof which seek to hold the defendant liable to penalties and a forfeiture of its said permit because of the alleged agreement or understanding whereby in consideration of the defendant purchasing all its supplies from the said Standard Oil Company the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company because it appears from the petition that the said Standard Oil Company was and is a citizen of New Jersey and never obtained a permit to do business in Texas and it is not alleged that it ever contemplated entering Texas to do business therein or could have obtained a permit so to do and therefore an agreement such as alleged if made could not be construed as violating any laws of Texas without giving to such laws an extra-territorial effect and operation binding upon citizens of other states and with respect to inter-state commerce and in violation of the said Consti-
1930 tution and the defendant moved the Court to strike out the said allegations with respect to the said alleged agreement and understanding. And the said exception being overruled the

defendant is by the said judgment made liable to the penalties imposed by the said laws on account of the said alleged agreement or understanding contrary to the provisions of the said Constitution relating to commerce among the several states and is so deprived of its property without due process of law.

23. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 23) as follows:

"You are instructed that if you believe from the evidence that the defendant has entered into any agreement by which it has bound itself to transact business within a certain territory in the United States, including the State of Texas, and that in pursuance of such agreement the defendant has been and is transacting business in the State of Texas, the making of such agreement and the transaction of business thereunder by the defendant cannot be considered as in violation of the Anti-Trust Laws of Texas, and in this connection you are instructed that the defendant always had and now has the right to confine its business operations to any territory desired by it and that the fact that the defendant has not extended its operations to a broader field would not render the defendant guilty of violating the Anti-Trust Laws of Texas."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the said laws by reason of any such agreement or understanding as alleged as aforesaid by which the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company in consideration of the defendant purchasing all its supplies
1931 from the said Standard Oil Company and which agreement or understanding related to commerce among the several states. And the verdict having been given for the State the defendant is by the said judgment deprived of its property without due process on account of statutes passed by the State of Texas regulating commerce among the several states contrary to the provisions of the said Constitution in that behalf.

24. There was also manifest error in this that the said judge at the said trial arbitrarily and without any regard to the rules of law and for the purpose of exciting and inflaming the prejudices of the jury against the defendant admitted in evidence against the objection of the defendant proof of the Standard Oil Trust agreement of 1882 in the plaintiff's petition set out which was made many years before the incorporation of the defendant and to which it was admitted that the defendant never became a party. And in this that the said judge in like manner admitted in evidence the paragraphs (3rd, 4th, 5th, 6th, 7th and 8th) of the agreement of counsel called Stipulation No. 1 setting out subject to all legal objections that the Standard Oil Company of New Jersey owned a majority of the shares of the companies therein mentioned by the names of the Standard Oil Company of Indiana, New York and Kentucky respectively and of the Continental Oil Company and the Republic Oil Company at the times and in the manner therein mentioned and

that the said companies did not transact any business in Texas all of which were matters in which the defendant was in no way concerned and had no possible relation to any of the questions involved in this case. And also in this that the said judge in like manner admitted in evidence that the defendant had given rebates and discounts to certain dealers and had sold oil at different prices in different localities in Texas which evidence was irrelevant to all the issues in the case. And also in this that the said judge in like man-
1932 ner admitted in evidence the testimony of the witness C. W. Cahoon to the effect that at points in Texas where there was competition the defendant sometimes sold oils at less than at points where there was no competition which testimony had no tendency to show any violation of the laws of Texas and could have no effect except to prejudice the jury. And also in this that the said judge in like manner admitted in evidence the testimony of the said C. W. Cahoon to the effect that for about 60 days in 1903 certain brands of oil of grades inferior to that known as Eupion oil had been sold by the defendant as Eupion oil which evidence was frivolous and irrelevant. And also in this that the said judge in like manner admitted in evidence the testimony of the witness A. W. Clem to the effect that the old Waters Pierce Company in 1891 cut the prices of oil at Seymour and other places in Texas and also that the old Waters Pierce Company in 1894 after it bought out the business of the same witness advanced the selling-price of oil from 9½ cents to 22 cents per gallon which testimony did not relate in any way to the defendant or its doings or to any issue involved in this case. And in this that the said judge in like manner admitted in evidence the testimony of the witness Royer Campbell to the effect that in 1894 when he quit buying from the old Waters Pierce Company and bought from other persons in San Antonio the old Waters Pierce Company immediately cut the price of oil from 16 or 17 cents to 8 and 10 cents per gallon and also his testimony as to the character of war-fare and competition that the old Waters Pierce Company carried on with him in 1894 which evidence did not relate in any way to the defendant or anything in question in this case. And the said judge permitted the jury to consider all the said evidence so admitted so far as it might seem to establish any of the said issues submitted for their consideration. And by the admission of the said several pieces of evidence respectively the prejudices of the jury were excited and inflamed against the defendant and their attention was diverted from the true issues in the case
1933 and the defendant was prevented from having a trial of the said issues according to the due course of law. And by the judgment upon the verdict upon the issues submitted to the jury as aforesaid the defendant is deprived of its property without due process of law contrary to the provision of the said Constitution.

25. There is also manifest error in this that the Court appointed a receiver of the property and assets of the defendant and the bond of such receiver was received and approved as appears by the said record after the judgment given upon the said verdict was suspended by the proceedings by way of appeal on the part of the defendant from the

said judgment although the Court had no authority to appoint such receiver otherwise than as a consequence of the said judgment and for the purpose of carrying the same into effect. And the defendant was thereby deprived of its property without due process of law contrary to the provisions of the said Constitution.

26. There is also manifest error in this that the judgment given upon the said verdict and after notice of appeal therefrom by the defendant according to law the Court acting under color of the Texas statute of 1907 c. 87 but arbitrarily and wilfully disregarding its provisions and purposes appointed the said receiver for the purpose of depriving the defendant of its property and business and not for any purpose for which the appointment of a receiver was authorized by the said statute and on the alleged ground that the said judgment had been rendered against the defendant for violation of the said anti-trust laws and that newspaper interviews with the counsel for the defendant had been brought to the attention of the Court in which the said counsel had declared the purpose of the defendant to appeal from the said judgment and to continue to carry on its business in
the same manner as theretofore and without any evidence
1934 being submitted to the Court in connection with the application for the appointment of such receiver. And the Court disregarding the provisions of the said statute and the due course of law made the said appointment of a receiver not because any interest of the state seemed to require such action but for the pretended purpose of preventing the defendant from a continued violation of the law although the Court knew that the defendant had appealed from the said judgment and denied any violation on its part of the said anti-trust laws and although the court assumed as declared by the Court at the time of such appointment that the defendant would file its proper supersedeas bond upon the said appeal and had a right to do so within the time provided by law all of which appears by the bill of exceptions of the defendant as to matters connected with the appointment of the receiver which bill of exceptions was signed and allowed by the judge who held the said court at the time of the said proceedings. And the defendant by the appointment of the said receiver for such purpose and in such circumstances is deprived of its property without due process of law contrary to the provisions of the said Constitution.

27. There is also manifest error in this that the Court decided that the said statute of 1907 under color of which the said receiver was so appointed was valid and not repugnant to the said Constitution although the statute was passed after the commencement of the said action and provided that when any law of the said state including any of the said Anti-Trust Laws for the violation of which fines or penalties or forfeitures were provided had been theretofore violated or should be violated before the taking effect of the said statute by any corporation the said state should have a lien to secure the payment of such fine, penalties and costs from the time when the said statute took effect on all property of such corporation within the said state or which should thereafter become or be brought within the

said state and also provided for the appointment of a receiver
1935 for such corporation in the cases therein mentioned but did not provide for any lien or authorize the appointment of a receiver in the case of a violation of any of the said laws by any persons other than a corporation. Whereas it ought to have been decided that the said statute was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by any state and was also invalid because the defendant was thereby denied the equal protection of the laws and deprived of its property without due process of law contrary to the provisions of the said Constitution.

28. There is also manifest error in this that after judgment was improperly given upon the said verdict as aforesaid for the plaintiff the court appointed a receiver of the property and assets of the defendant the Waters Pierce Oil Company as specified in the orders appointing a receiver whereas the Court ought not to have appointed such receiver. And by the appointment of such receiver the defendant is deprived of its property without due process of law contrary to the provisions of the said Constitution.

And the said Waters Pierce Oil Company prays that the said judgment and order and the judgment affirming the same respectively for the errors aforesaid and others in the record and proceedings aforesaid may be reversed annulled and altogether held for nothing and that it may be restored to all things which it hath lost by occasion of the said judgment and order and the affirmance thereof as aforesaid.

MOORFIELD STOREY,
J. L. THORNDIKE,
J. D. JOHNSON,
*Counsel for the Plaintiff in Error.*

Endorsed: Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908, R. H. Connerly, Clerk. (4212 Assignment of Errors.)

1936 *Copy.*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Waters Pierce Oil Company incorporated under the laws of Missouri, Appellant, and the State of Texas, appellee, which judgment affirmed a judgment of the District Court of Travis County

upon a verdict against the Appellant and other proceedings therein being cause No. 4212, in the said Court of Civil Appeals, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Waters Pierce Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command
1936½ you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

To operate as a supersedeas on giving bond for one thousand ($1000) dollars.

Allowed by
EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

Endorsed: Copy of Writ of Error lodged for the Defendant in Error. Filed In Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30th, 1908. R. H. Connerly, Clerk.

1937 Know all men by these presents, That we, the Waters Pierce Oil Company, incorporated under the laws of Missouri, as principal, and the American Surety Company of New York incorporated under the laws of New York, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of one thousand dollars, to be paid to the said State of Texas or its certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators,

jointly and severally, by these presents. Sealed with our seals and dated this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Court of Civil Appeals for the Third Judicial District of Texas, in a suit depending in said court, between the said Waters Pierce Oil Company, Appellant, and the State of Texas, Appellee, being cause No. 4212 in the said court, a judgment was rendered against the said Waters Pierce Oil Company affirming a judgment of the District Court of Travis County upon a verdict against the said Appellant and other proceedings therein. And the said Waters Pierce Oil Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Texas citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof.

Now, the Condition of the Above Obligation is Such, That if the said Waters Pierce Oil Company shall prosecute the said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

WATERS PIERCE OIL CO.,
By J. D. JOHNSON, *Attorney.*

Sealed and delivered in presence of

R. B. LENNON,
E. K. COSTELLO.
As to all parties.

[Seal Waters Pierce Oil Co., St. Louis, Mo.]

1938

AMERICAN SURETY COMPANY OF NEW YORK,
[SEAL.] By A. ADAMS, *Resident Vice-President.*

Attest:

CLAUDE B. BROWN,
*Resident Assistant Secretary.*

Approved by—

EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

March 27th, 1908.

[Seal of the United States.]

Endorsed: Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908. R. H. Connerly, Clerk.

UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals for the Third Judicial District of Texas in cause No. 4212, in the last mentioned court, wherein the Waters Pierce Oil Company incorporated under the laws of Missouri is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this twenty-seventh
1939 day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

On this 30th day of March, in the year of our Lord one thousand nine hundred and eight, personally appeared Coley White before me, the subscriber, a Notary Public within and for Travis County, State of Texas, said White being an adult person and being duly sworn by me, makes oath that he delivered a true copy of the within citation to Thomas M. Campbell, the Governor of the State of Texas, on said day and also delivered a true copy of the within citation to Robert Vance Davidson, the Attorney General of said State of Texas, on said day and that he the said White is a duly appointed, qualified and acting Deputy under Eugene Nolte the United States Marshal for the Western District of Texas and as such Deputy served said copies.

EUGENE NOLTE,
*U. S. Marshall, Western District of Texas,*
By COLEY WHITE, *Deputy.*

Sworn to and subscribed the 31st day of March, A. D. 1908.

[SEAL.] ROSALIE DORSER,
*Notary Public, Travis Co., Texas.*

Endorsed: Came 3/30/08 5 P. M. 3/30/08 6 P. M. Filed in Court of Civil Appeals 3rd Supreme Judicial District Austin, Texas, Apr. 8, 1908, R. H. Connerly, Clerk.

1940 *Bill of Costs in Court of Civil Appeals, at Austin.*

No. 4212.

WATERS PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

From Travis County.

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| Filing record | .5 |
| Docketing cause | .5 |
| Appearances | 1.0 |
| Filing briefs | 1.0 |
| Filing and entering motions (2) | .7 |
| Orders (6) | 3 0 |
| Filing 31 extra papers | 3.1 |
| Continuance | .2 |
| Judgment | 1.0 |
| Taxing costs | .5 |
| Mandate | 1.5 |
| Recording opinion | 18.0 |
| Certified copy bill of costs | .7 |
| Certified copy orders to Supreme Court | 2.0 |
| Notices (33) | 16.5 |
| Copy of motion | 14.1 |
| Issuing 1 precept | 1.0 |
| Sheriff's fees | 1.0 |
| Supreme Court Costs (State) | 8.0 |
| Transcript to Supreme Court United States | $916.4 |
| Total | 990.8 |

1941 I, R. H. Connerly, Clerk of the Court of Civil Appeals o the Third Supreme Judicial District of The State of Texa do hereby certify that the foregoing 1940 pages contain true and correct copies of the transcript from the District Court of Travi County; the Stenographer's Report, Original Papers sent up with the record, Opinon of Court of Civil Appeals, and its judgment motion for rehearing in Court of Civil Appeals and order over ruling ame, the judgment of the Supreme Court of Texas refusing a writ of error and bill of costs in Sup. Court of Texas, Assignments of error in U. S. Supreme Court, Duplicate writ of error of Supreme Court of The United States, Appeal bond to Sup. Court of the United States, Citation from United States Supreme Court, Bill of costs in Court of Civil Appeals, and that the two original papers, the Writ of error and the Citation are hereto attached, after this certificate, all in the cause in said Court of Civil Appeals entitled—Waters Pierce Oil Company, Appellant *vs.* The State of Texas, Appellee, No. 4212, appealed to said Court of Civil Appeals from the District

Court of The Twenty-Sixth Judicial District, of Texas, Travis County, and all of said papers now on file in my office. Witness my hand and the seal of said court at Austin, Texas, this the 17th day of April, A. D. 1908.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY,
*Clerk of Court of Civil Appeals,*
*3rd Sup. Jud. Dist. of Texas.*

1942 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Waters-Pierce Oil Company, incorporated under the laws of Missouri Appellant and the State of Texas Appellee which judgment affirmed a judgment of the District Court of Travis County upon a verdict against the Appellant and other proceedings therein being cause No. 4212 in the said Court of Civil Appeals wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
1943 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Waters-Pierce Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

To operate as a supersedeas on giving bond for one thousand (1000) Dollars.

Allowed by

EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

1944 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30 1908. R. H. Connerly, Clerk.

1945 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals for the Third Judicial District of Texas in cause No. 4212 in the last-mentioned Court wherein the Waters-Pierce Oil Company incorporated under the laws of Missouri is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

On this 30th day of March, in the year of our Lord one thousand nine hundred and eight, personally appeared Coley White before me, the subscriber, a Notary Public within and for Travis County State of Texas, said White being an adult person and being duly sworn by me makes oath that he delivered a true copy of the within citation to Thomas M. Campbell the Governor of the State of Texas on said day and also delivered a true copy of the within citation to Robert Vance Davidson the Attorney General of said State of Texas on said day and that he the said White is a duly appointed, qualified

and acting Deputy under Eugene Nolte the United States Marshal for the Western District of Texas and as such Deputy served said copies.

EUGENE NOLTE,
*U. S. Marshal, Western District of Texas,*
By COLEY WHITE, *Deputy.*

Sworn to and subscribed the 31st day of March, A. D. 1908.

[Seal Notary Public, County of Travis, Texas.]

ROSALIE DORSER,
*Notary Public, Travis Co., Texas.*

1946 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 8 1908. R. H. Connerly, Clerk.

Endorsed on cover: File No. 21,130. Texas court of civil appeals, third supreme judicial district. Term No. 359. The Waters-Pierce Oil Company, plaintiff in error, *vs.* The State of Texas. Filed April 23d, 1908. File No. 21,130.

(21,131.)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1908.

## No. 360.

THE WATERS-PIERCE OIL COMPANY, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 25, 1908.

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a

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

1 *Caption.*

THE STATE OF TEXAS, *County of Travis:*

At a term of the District Court of the 26th Judicial District of Texas, begun and holden at Austin, within and for the County of Travis, before the Honorable V. L. Brooks, and ending on the 29th day of June, A. D. 1907, the following case came on for trial, to wit:

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

PROCEEDINGS IN RECEIVERSHIP.

*Application for a Receiver. Filed June* 1, 1907.

In the District Court, Travis County, Texas, Twenty-sixth Judicial District.

No. 24551.

STATE OF TEXAS, Plaintiff,
*vs.*
WATERS PIERCE OIL COMPANY, Defendant.

To the Honorable V. L. Brooks, Judge of said Court:

And now comes the State of Texas, acting by and through her Attorney General, and the County Attorney of Travis County, Texas, acting under the direction and supervision of the said Attorney General, and shows to the Court:

First. That on the 1st day of June 1907, in this court, in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, the Waters Pierce Oil Company for the sum of One Million Six hundred twenty-three Thousand, Nine Hundred Dollars, ($1,623,900.00) and said judgment further providing for the cancellation of the permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the Anti-trust law of the State of Texas.

Second. That in a certain suit pending in the State of Missouri, wherein the State of Missouri is plaintiff, and the said above named defendant, the Waters Pierce Oil Company, among others, is
2 defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters Pierce Oil Company and

prohibiting it doing business in said State, said suit being instituted in the Supreme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a Commissioner to hear testimony and make his report and findings of fact, and recommendation of law thereon; that after hearing the testimony, the said commissioner found in favor of the State of Missouri on all issues in said case, and recommended to the said Supreme Court of Missouri that the charter of the said Waters Pierce Oil Company be cancelled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of the said defendant, Waters Pierce Oil Company.

Third. That the penalties recovered in this cause by plaintiff, the State of Texas, cannot be collected outside the state of Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the payment of the said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal movable, property, and if carried beyond the limits of this State cannot be pursued by the State of Texas, and the State would have no way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11th, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

Fourth. That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

3 Wherefore, plaintiff requests the court to appoint a receiver to take charge of all the property and assets of every kind and description of the defendant situated within the State of Texas, pending the hearing of this application; that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas.

R. V. DAVIDSON,
*Attorney-General.*
JEWEL P. LIGHTFOOT,
*Ass't Attorney General.*
JOHN W. BRADY,
*County Attorney, Travis Co., Tex.*
GREGORY & BATTS,
ALLEN & HART,
*Attorneys for the State of Texas.*

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Jno. W. Brady, County Attorney of Travis County, Texas, who, after being by me sworn on his oath, says that the facts stated in the foregoing application are true, except where stated upon information and belief, and where so stated he verily believes them to be true.

JNO. W. BRADY.

Sworn to and subscribed before me this the 1st day of June, A. D. 1907.

ROSE LITTMAN,
*Notary Public, Travis Co., Texas.*

AUSTIN, TEXAS, *June* 1, 1907.

In Chambers.

4 The above application for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, being presented to me, it is hereby set down for hearing on the 8th day of June, 1907, at 10 o'clock A. M. at the Court House in Travis County, Texas, and the Clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the clerk of this court is instructed to issue such temporary injunction under his hand and the seal of court restraining and prohibiting the defendant, its officers, agents, attorneys and employés, or any of them, from removing beyond the State of Texas, any of the property or assets of defendant until the further orders of this court.

V. L. BROOKS,
*Judge 26th Judicial District of Texas.*

(Endorsed:) No. 24551. The State of Texas *vs.* Waters-Pierce Oil Co. Application for a Receiver. Filed June 1st, 1907. D. J. Pickle, Clerk, by J. A. Belger, Deputy.

*Defendant's Answer to Plaintiff's Application for Receiver.*

Filed June 10th, 1907.

In District Court of Travis Co., Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

Now comes the defendant in the above entitled and numbered cause, by its attorneys, and excepts to the application filed by the plaintiff herein on June 1st, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for the appointment of such receiver, and of this defendant prays judgment of the court.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Def't.*

And for answer to said application defendant denies all and singular the allegations therein contained.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Def't.*

And for further answer to said application, and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true, as stated in said application that the recommendation of said commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been rendered in said cause in said Supreme Court of Missouri, and said report of said commissioner does not have the effect of a judgment, but that said report and recommendations of said Commissioner may be either approved or rejected by said Supreme Court of Missouri, and will have no force or effect unless confirmed and approved by said Supreme Court of Missouri.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me first duly sworn on oath deposes and says that he is one of the attorneys for
6 defendant in the above numbered and entitled cause and that the facts stated in the foreg-ing special plea are true as he is informed and verily believes.

D. W. ODELL.
R. L. PENN.

Subscribed and sworn to before me by D. W. Odell & R. L. Penn, this 10th day of June, A. D. 1907.

[SEAL.] D. J. PICKLE,
*Clerk District Court, Travis Co., Texas,*
By E. HUPPERTZ, *Deputy.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's answer to plaintiff's application for Appointment of Receiver. Filed June 10th, 1907. D. J. Pickle, Clerk. By E. Huppertz, Deputy.

*Order Granting Injunction, June 1st, 1907.*

24441.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

IN CHAMBERS, AUSTIN, TEXAS, *June* 1, 1907.

On this day came on to be heard the application for a temporary injunction, restraining the defendant from removing beyond the State of Texas any of its property or assets, and the Court having considered said application is of the opinion that same should be granted:

It is therefore ordered, adjudged and decreed that the defendant, the Waters Pierce Oil Company, its officers, agents, attorneys and employees, each and all of them, are hereby restrained enjoined and prohibited from removing beyond the limits of the State of Texas any of the property or assets of the said defendant, the Waters Pierce Oil Company, until further orders of this court.

7 *Order Granting Application for Appointment of Receiver, June 10th, 1907.*

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this 10th day of June, 1907, at a regular term of this court, there came on to be heard the application of the State of

Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant the Waters Pierce Oil Company situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such furture time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas; that the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be and the same is hereby continued in force until the further orders of this court. To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

*Order Appointing Receiver, June 13th,* 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

8 On this, the 10th day of June, A. D. 1907, in this cause an order was made and entered by this court granting the application of the plaintiff the State of Texas, for the appointment of a receiver herein, the court at the time of the making of said order naming as receiver, Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described said Robert J. Eckhardt, with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two hundred and fifty thousand dollars.

And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

*Order Amending Orders Appointing Receiver, June 15th, 1907.*

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this 15th day of June, A. D. 1907, at a regular term of this court,

It is considered, ordered, adjudged and decreed by the court that the orders of this court made and entered in said cause on the 10th day of June, A. D. 1907, and on the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

And now on this 10th day of June, 1907, at a regular term of this court there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering
9 said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters Pi-rce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas, with the right, power and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as Receiver from any of the present employees or those hereafter engaged by him as he may think expedient and proper, and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business so that said business may be kept up to its present condition as near as may be; and the said Receiver shall have power, under control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally do such acts respecting the property as the court may authorize and all the expenses of said receiver-

ship, including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the Court costs of the suit.

That the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be and the same is hereby continued in force until the further orders of this court.

To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of the State of Texas.

And on the 13th day of June, A. D. 1907, the Court confirming said order and in pursuance thereof names and appoints as receiver herein of the property in said order described Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such Receiver at ($250,000.00) Two hundred and fifty thousand dollars, to be made payable to the Judge of this Court and his successors in office, for the use of all parties interested in said property and this suit.

And defendant renewed its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

*Order Fixing Amount of Appeal Bond in Receivership, June 15th, 1907.*

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this the 15th day of June, 1907, in open court it is ordered by the court in the above cause, that $100,000.00 be and the same is hereby fixed as the amount of the bond which the defendant shall be required to give in order to supercede the judgment of the court placing defendant's property in the hands of a receiver; and,

It is further ordered that upon the approval by the court and the filing with the clerk by defendant of a good and sufficient bond conditioned as required by law for said amount, further proceedings herein be suspended pending appeal.

But this order shall not effect, rescind the order heretofore entered prohibiting and enjoining the defendant, its servants, officers, agents and attorneys from removing any of its property or assets beyond the limits of the State of Texas, but said injunction shall remain in full force and effect pending the appeal from the order appointing a receiver herein.

And thereupon the defendant in open court tendered to the Court and Clerk certain papers which it stated to be its appeal bond, and

an affidavit with reference thereto, which bond purported to have as sureties thereon the American Surety Company of New York and John H. Kirby, and requested the Court and Clerk to approve the same, but the court deferred further action in the premises and stated that it would announce its further action on said bond at 10 o'clock A. M. June 10th, 1907.

*Order Approving Bond of Receiver, June 19th, 1907.*

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this 19th day of June, A. D. 1907, Robert J. Eckhardt having presented his oath and bond as Receiver under the appointment heretofore made in this cause, and said bond being examined and found to be in proper form and subscribed with competent sureties as required by law:

It is therefore ordered, adjudged and decreed by the court that the said bond be and the same is hereby approved and the Clerk of this court is directed to file said bond and enter the same in the minutes of this court.

*Bond and Oath of Receiver.*

12 "THE STATE OF TEXAS, *County of Travis:*

Know all men by these presents; That we, Robert J. Eckhardt, as principal and Francis Horace Welch, F. L. Welch, F. A. Allison, O. E. Roberts, J. Melasky, Jno. P. Sturgis, G. E. King, J. W. Womack, Howard Bland, S. G. Yakey, G. M. Booth, L. H. Goldstein, Carl Grau, C. T. Everett, Albert Eikel, T. W. Marse, C. A. Nelson, O. A. Nelson, W. Davidson, Walter W. Taylor, Howell E. Smith, T. E. Waggoner, R. H. Gaston, T. C. Dunn, J. L. Thompson, W. R. Eckhardt, E. P. Wilmot, P. L. Noroworthy, W. T. Brown, Walter Tips, as sureties, are held and firmly bound unto V. L. Brooks, judge of the District Court of Travis County, Texas, for the 26th Judicial District, and his successors in office, for the use of all parties interested in the action of the State of Texas *vs.* Waters Pierce Oil Company, No. 24,551, in said court and the property in said action placed in the hands of a receiver, in the sum of two hundred and fifty thousand dollars.

The condition of the above obligation is such that, whereas, the said Robert J. Eckhardt has by orders of the said District Court bearing date 10th day of June A. D. 1907, and the 13th day of June A. D. 1907, and amended by an order made and entered in said action in said court on the 15th day of June A. D. 1907, been appointed receiver in said action.

Now, if the said Robert J. Eckhardt shall faithfully discharge all of the duties of Receiver in said action of the State of Texas vs. Waters Pierce Oil Company, No. 24,551, in said court, and obey the orders of the court therein, then this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands, this the 15th day of June, A. D. 1907.

ROBERT J. ECKHARDT.
F. L. WELCH.
FRANCIS HORACE WELSH.
F. A. ALLSION.
J. MELASKY.
O. E. ROBERTS.
JNO. P. STURGIS.
G. E. KING.
J. W. WOMACK.
HOWARD BLAND.
S. G. YAKEY.
G. M. BOOTH.
L. H. GOLDSTEIN.
CARL GRAU.
C. T. EVERETT.
ALBERT EIKEL.
T. W. MARSE.
C. W. NELSON.
O. A. NELSON.
W. DAVIDSON.
WALTER W. TAYLOR.
HOWELL E. SMITH.
T. E. WAGGONER.
R. H. GASTON.
T. C. DUNN.
J. L. THOMPSON,
By L. N. THOMPSON,
*Att'y in Fact.*
W. R. ECHARDT, M. D.
E. P. WILMOT.
WALTER TIPS.
O. L. NOROWORTHY, M. D.
W. T. BROWN.

*Approval.*

13 Examined and approved by the undersigned and ordered filed this 19th day of June, 1907, at 10.29 o'clock A. M.

V. L. BROOKS, *Judge.*

Approved June 19th, 1907, 10.35 A. M.

D. J. PICKLE, *Clerk.*

*Oath of Receiver.*

THE STATE OF TEXAS, *County of Williamson:*

I, Robert J. Eckhardt, do solemnly swear that I will faithfully perform all the duties of Receiver in the action of the State of Texas *vs.* Waters Pierce Oil Company, No. 24551 in the District Court of Travis County, Texas for the 26th Judicial District.

ROBERT J. ECKHARDT.

Sworn to and subscribed before me this 15 day of June, A. D. 1907. Given under my hand and seal of office.

[SEAL.] O. E. ROBERTS,

*Notary Public in and for Williamson County, Texas."*

*Order Approving Supersedeas Bond.*

Filed June 19th, 1907.

24551.

THE STATE OF TEXAS

*vs.*

THE WATERS PIERCE OIL CO.

And now on this the 19th day of June, 1907, came the defendant by its attorneys and presented in open court their supercedeas bond in Receivership proceeding and the court having examined said bond and finds same in proper form and subscribed with sufficient sureties as required by law:

14 It is therefore ordered, adjudged and decreed by the court that the said supersedeas bond be and the same is hereby approved and the clerk is directed to file said bond and enter the same in the minutes of this court.

*Defendant's Bill of Exceptions to Orders and Proceedings in Reference to Receivership.*

Filed June 29th, 1907.

In the District Court of Travis County, Texas, 26th Judicial District, May Term, A. D. 1907.

No. 24551.

THE STATE OF TEXAS

*v.*

WATERS PIERCE OIL COMPANY.

Be it remembered that on the 22nd day of September, A. D. 1906, the State of Texas instituted suit by original petition filed in the

above court against the defendant, the Waters Pierce Oil Company, in which petition and for cause of action against the defendant, the plaintiff alleged that defendant had on each and every day from June 1st, 1900, down to and including the 31st day of March, 1903, in each and every county in the State of Texas, committed acts in violation of chapter 146 of the Acts of the Twenty-sixth Legislature, known as the Anti-trust law of 1899, and being entitled "An Act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; and to provent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that vi*o*ates the terms of this act, and to authorize the institution of prosecutions and suits therefor"; and that said defendant had in each and every county in the State of Texas, and on each and every day from the 1st day of April, 1903, to the filing of said suit committed acts in violation of chapter 94 of the acts of the Twenty-eighth Legislature of the State of Texas, known as the Anti-trust law of 1903, and being entitled, "An Act to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade; to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies; and to provide for the suppression of the same and to promote free competition in the State of Texas; and to repeal all laws in conflict therewith". and in said petition the plaintiff sued for the maximum penalty provided in each of said statutes, and for the aggregate sum of $5,228,400.00.

That after the filing of said petition the defendant was duly served with citation, filed its answer to the October Term of said Court, A. D. 1906, and thereafter said cause was continued at said October Term, and likewise at the March Term of said Court, A. D. 1907, and the pleadings of both parties having been amended the State filed its Second Amended original petition by leave of the court, in which the plaintiff alleged that defendant had in each and every county and on each and every day from the 1st day of June, A. D. 1900, down to the 29th day of April, 1907, committed acts in violation of each of the two anti-trust statutes above set out, and in said amended petition the State continued to claim the maximum penalty provided in each of said statutes.

In said original petition and in the said second amended original petition the State alleged that the defendant was a foreign corporation chartered under the laws of the State of Missouri, and had during the period aforesaid, been engaged in transacting business in the State of Texas under a permit granted to the defendant by the Secretary of State of the State of Texas on May 31st, 1900, and in said second amended original petition the said State of Texas prayed for relief as follows:

"Plaintiff prays that it have judgment cancelling the permit issued to defendant on the 31st day of May, 1900, and for an injunction restraining it from doing business within this State, and that it have judgment for the sum of $2,239,000.00, penalties, and it prays for costs and general relief."

And be it further remembered that in its answer to the said last named petition filed by the State, the defendant, among other things,

denied all and singular the allegations contained in said petition and plead not guilty to the offenses therein charged against it, and upon said petition and said answer a trial was had before said court
16 and a jury duly impannelled, beginning on the 20th day of May, A. D. 1907, and concluding on the 1st day of June, A. D. 1907, when the jury returned a verdict in favor of the plaintiff and the court rendered judgment thereon in words and figures as follows:

"24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

And now on this 20th day of May, 1907, the above cause coming on for trial, both parties appeared by Attorneys, and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impannelled and sworn to try the case, and thereafter the case proceeded to trial, when, by agreement of all parties on the 24th day of May, 1907, one of the jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the court and the eleven jurors theretofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings and evidence and argument of counsel had been submitted to the jury, and after being duly charged by the court, the jury retired in the custody of the proper officer to consider of their verdict, and thereafter on the 1st day of June, 1907, they returned in*o*t open court the following verdict:

"AUSTIN, TEXAS, *June* 1, 1907.

"We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties $1,549,500.00 dollars.

"And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty days and fix the penalties at seventy four thousand four hundred dollars.

"We further Find that the permit of the defendant to do business in the State of Texas should be cancelled.

"We find for the defendant upon all issues made by the pleadings and not submitted in the charge of the court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
C. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS.
W. T. THOMPSON.
17 H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN.

which verdict was by the court received, ordered filed and made a part of the record of this cause.

"It is therefore considered, ordered, adjudged and decreed that the plaintiff, the State of Texas, do have and recover of and from the defendant, the Waters Pierce Oil Company, a corporation, the sum of $1,623,900.00) One Million, Six Hundred and Twenty-Three Thousand Nine Hundred Dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

"It is further ordered, adjudged and decreed that the permit of the defendant, the Waters Pierce Oil Company, to do business in the State of Texas, be, an the same is, hereby cancelled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas."

And be it further remembered that upon said 1st day of June, A. D. 1907, the defendant filed with the clerk of said court its motion to set aside the verdict of the jury aforesaid and the judgment thereon rendered, and to grant it a new trial.

And be it further remembered that after the filing of the motion aforesaid, the plaintiff, the State of Texas, through its attorneys, presented to the Honorable V. L. Brooks, Judge of this court, its application for the appointment of a receiver and upon the application the said Judge of this court endorsed his fiat, and said application and fiat was thereupon, on said 1st day of June, A. D. 1907, filed with the Clerk of this court, and the same is in words and figures as follows:

In the District Court, Travis County, Texas, Twenty-sixth Judicial District.

No. 24551.

STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY, Defendant.

To the Honorable V. L. Brooks, Judge of said Court:

18 And now comes the State of Texas, acting by and through her Attorney General, and the County Attorney of Travis County, Texas, acting under the direction and supervision of the said Attorney General, and shows to the court:

First. That on the 1st day of June, 1907, in this court in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, The Waters Pierce Oil Company, for the sum of One Million, Six Hundred Twenty-Three Thousand, Nine Hundred ($1,623,900.00) Dollars, and said judgment further providing for the cancellation of the

permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the Anti-trust law of the State of Texas.

Second. That in a certain suit pending in the State of Missouri, wherein the State of Missouri is plaintiff, and the said above named defendant, the Waters Pierce Oil Company, among others, is defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters Pierce Oil Company and prohibiting it doing business in said State, said suit being instituted in the Supreme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a commissioner to hear testimony and make his report and findings of fact, and recommendation of law thereon; that after hearing the testimony, the said commissioner found in favor of the State of Missouri on all issues in said case, recommended to the said Supreme Court of Missouri that the charter of the said Waters Pierce Oil Company be cancelled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of the said defendant, Waters Pierce Oil Company.

Third. That the penalties recovered in this cause by plaintiff, the State of Texas, cannot be collected outside of the State of Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the payment of the said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of
19 money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal, movable, property and if carried beyond the limits of this State cannot be pursued by the State of Texas, and the State would have no way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

Fourth. That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

Wherefore plaintiff requests the court to appoint a receiver to take charge of all the property and assets of every kind, character and description of the defendant situated within the State of Texas, pending the hearing of this application; that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of

them, from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas.

R. V. DAVIDSON.
*Attorney General.*
JEWEL P. LIGHTFOOT,
*Ass't Attorney General.*
JNO. W. BRADY,
*County Attorney, Travis Co., Tex.*
GREGORY & BATTS,
ALLEN & HART,
*Attorneys for the* Texas *of Tex.*

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day per-
20 sonally appeared Jno. W. Brady, County Attorney of Travis County, Texas, who after being by me duly sworn on his oath, says that the facts stated in the foregoing application are true, except where stated upon information and belief, and where so stated he verily believes them to be true.

JNO. W. BRADY.

Sworn to and subscribed before me on this the 1st day of June, A. D. 1907.

[SEAL.]

ROSE LITTMAN,
*Notary Public, Travis Co., Tex.*

AUSTIN, TEXAS, *June* 1, 1907.

In Chambers.

The above application for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, being presented to me, it is hereby set down for hearing on the 8th day of June, 1907, at 10 o'clock A. M., at the Court House in Travis County, Texas and the Clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the Clerk of this court is instructed to issue such temporary injunction under his hand and the seal of court, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing beyond the State of Texas any of the property or assets of the defendant until the further orders of this court.

V. L. BROOKS,
*Judge 26th Judicial District of Texas.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Application for a receiver. Filed June 1st 1907. D. J. Pickle, Clerk, By J. A. Belger, Deputy.

And be it further remembered that on Friday, June 7th, 1907, defendant's motion for a new trial was taken up, argued and
21 considered by the court and on said day was overruled, to which action and ruling the defendant in open court excepted, and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas; and said defendant thereupon, on said June 7th, 1907, tendered and placed in the hands of D. J. Pickle, the Clerk of said Court, an appeal bond with the American Surety Company of New York as its sole surety, which said bond is in words and figures as follows:

"THE STATE OF TEXAS, *County of Travis:*

"Whereas, in a certain cause pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas was plaintiff and the Waters Pierce Oil Company was defendant, and numbered 24,551 on the docket of said court, a judgment was on June 1st, 1907, rendered by said court in favor of the plaintiff, the State of Texas, and against the defendant, The Waters Pierce Oil Company, for the sum of One Million, Six Hundred and twenty-three thousand, and nine hundred ($1,623,900.00) Dollars, and for costs of suit, and cancelling the permit of said defendant, the Waters Pierce Oil Company, to do business in the State of Texas; and, whereas, said defendant, the Waters Pierce Oil Company, has appealed from said judgment to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, and desires to suspend the execution of such judgment pending such appeal;

Now, Therefore, know all men by these presents, that we, the said Waters Pierce Oil Company, as principal and —— American Surety Company of New York, as surety, do hereby acknowledge ourselves bound to pay to the State of Texas the sum of Three Million and Two hundred and Seventy-five Thousand ($3,275,000.00) Dollars, conditioned that said Waters Pierce Oil Company shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence, or decree, and pay all such
22 damages as said court may award against it.

" Witness our hands this 7th day of June, A. D. 1907.

WATERS PIERCE OIL COMPANY,
By R. L. PENN, *Att'y in Fact.*
AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY, *Res. Vice President,*
[L. S.] By W. T. DECHARD, *Res. Ass't Secretary.*"

And be it further remembered that on Saturday, June 8th, 1907, at 10:00 o'clock A. M. and in open court the Honorable V. L. Brooks, Judge, announced that the time for consideration of the application for the appointment of a receiver, above copied, had been reached, and the same was then called for consideration, whereupon, the defendant by its attorneys, stated that before considering said application they desired to call the attention of the

court to the fact that they had tendered their supersedeas appeal bond, above copied and that they desired to know the action of the Clerk as to whether he would approve or reject said bond, and thereupon, said Clerk, by written motion, requested instructions or advice from the court as to whether said bond was legally sufficient and as to whether he was authorized to approve the same with the said single surety thereon, and thereupon the court stated that before considering said application for a receiver he would consider the Clerk's request for advice, without assuming to have any power to dictate or control his action in approving or rejecting said bond, and after argument by counsel for the State and defendant as to the sufficiency of said bond because of the admitted fact on the part of defendant that said American Surety Company of New York was a bonding Company chartered under the laws of another State and only had as assets within this State the $50,000.00 required to be deposited with the State Treasurer, as required by Article 734 of the Revised Statutes of the State of Texas, and after the said Judge gave advice to the said Clerk and without directing him to approve or reject said bond, the Clerk made known his refusal to accept said bond, and thereupon the defendant, by its counsel, requested a postponement of the further consideration of said application for
23 a receiver for a period of two weeks to allow it a reasonable time to procure other sureties and to give a supersedeas bond in connection with its appeal from the judgment rendered against it, and after full argument by both parties upon said application for postponement and the propriety and authority of the court to appoint a Receiver, the Court announced that he would take the matter under advisement until 10:00 o'clock on Monday morning, June 10th, 1907.

And be it further remembered that on said June 10th, 1907, at the hour of 10:00 o'clock A. M. the court announced its ruling refusing to grant the postponement of the consideration of said application for a receiver and again called the same for consideration and action, and thereupon, defendant, by its counsel, read its answer and response to said application, same being in words and figures as follows:

In District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

Now comes the defendant in the above entitled and numbered cause by its attorneys, and excepts to the application filed by the plaintiff herein on June 1st, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for the

appointment of such receiver, and of this defendant prays judgment of the Court.

CLARK & BOLINGER,
COCHRAN & PENN,
W. W. ODELL,
N. A. STEDMAN,
*Attorneys for Def't.*

And for further answer to said application and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true,
24 as stated in said application, that the recommendation of said commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been rendered in said cause in said Supreme Court of Missouri, and said report of said Commissioner does not have the effect of a judgment, but that said report and recommendations of said commissioner may be either approved or rejected by said Supreme Court of Missouri, and will have no force or effect unless confirmed and approved by said Supreme Court of Missouri.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Att'ys for Def't.*

Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me duly sworn on oath deposes and says: that he is one of the attorneys for defendant in the above entitled and numbered cause, and that the facts stated in the foregoing special plea are true as he is informed and verily believes.

(Signed) D. W. ODELL.
R. L. PENN.

Subscribed and sworn to before me by D. W. Odell and R. L. Penn, this 10th day of June, A. D. 1907.

D. J. PICKLE,
*Clerk District Court of Travis County, Texas.*
[L. S.] By E. HUPPERTZ,
*Deputy.*

And be it further remembered that after reading the foregoing answer and response, counsel for defendant proceeded to argue its said general exception or demurrer to the said application for the appointment of a receiver, and at the conclusion of such argument when counsel for the State started to argue the same, the Court announced that it was unnecessary for counsel for the State to make any further argument, and the Court thereupon proceeded to announce his conclusions with respect to said application and defendant's objections thereto, and stated that the Court would take judi-

cial notice of the proceedings in the main case and of the
25 rendition of judgment against the defendant for violating the anti-trust laws of the State, as charged against it in plaintiff's said second amended original petition, and that it had been found guilty of violating the said anti-trust laws on each and every day from the 1st day of June, 1900, to the 29th day of April, 1907, and that its permit to do further business in the State had been forfeited and cancelled by reason of said violations, and that defendant had since May 31st, 1900, *had* been a member of an agreement which had its very existence in Texas, in violation of the Civil and Criminal laws of Texas, and that it had been and still is in possession of certain instrumentalities by means of which it, in violation of the public welfare and interests, intended to continue its violation of the law pending appeal from the judgment of conviction, and that the Court would assume that the defendant would fine its proper supersedeas bond from the said judgment of conviction, but that notwithstanding defendant's right to so file said supersedeas bond within the time provided by law, the Court was of the opinion that the Legislature had provided as a remedy or means of preventing defendant from the continued violation of the law, that a receiver should be appointed to take charge of its property and business and deprive it of the instrumentalities by which it had so violated the law, and would continue to violate the law; and that because of said Statute and of the declared purpose of defendant, speaking through its general counsel, John D. Johnson, in newspaper interviews which had been brought to the attention of the court, in which said Johnson had discussed the effect of the aforesaid judgment of conviction against defendant. and had declared the purpose of defendant to appeal from said judgment of conviction and to continue to carry on its business in the same manner that it had theretofore done, notwithstanding such judgment of conviction; and without any evidence being submitted to the court in connection with said application, the court thereupon announced that it would grant said application and appoint a receiver as therein prayed for, and that the court had made up its mind as to the gentleman so to be appointed receiver, and would invite counsel for the State and for defendant to his room, where he would disclose the name of the gentleman so determined upon, and give to counsel
for both sides an opportunity to present any objections which
26 they might have to the gentleman so determined upon, to which action of the court, and before the Judge left the bench and retired to his room for the conference aforesaid, the defendant, by its attorneys, in open court, then and there excepted and gave notice of appeal from the action of the court to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, and thereupon the court caused an order to be prepared and entered of record evidencing its action in granting the application of the State of Texas for the appointment of a receiver aforesaid, which said order is in words and figures as follows:

"24551.

THE STATE OF TEXAS
*v.*
WATERS PI-RCE OIL COMPANY.

"And now on this the 10th day of June, 1907, at a regular term of this court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business and supplying oil to the public in the State of Texas; that the temporary injunction heretofore granted, prohibiting defendant from moving any of its property and assets beyond the limits of the State of Texas be, and the same is hereby continued in force until the further orders of this court.

"To all of which action the defendant in open court excepts, and in open court give- notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas."

And be it further remembered that after the proceedings aforesaid had taken place in the manner above recited, the Honorable V. L. Brooks, Judge of said Court, did announce that he
27 had determined upon the selection of Robert J. Eckhardt to be receiver, and was willing to hear any objections that might be urged against his appointment, and, at the request of defendant's counsel, the matter of the final order naming the said Eckhardt as receiver was postponed until June 13th, 1907, and on said last mentioned date the court, did make its order naming said Robert J. Eckhardt as receiver, and caused the same to be entered of record in words and figures as follows:

No. 24551.

THE STATE OF TEXAS
*v.*
WATERS PIERCE OIL COMPANY.

"On this the 10th day of June, A. D. 1907, in this cause an order was made and entered by this court granting the application of the plaintiff, the State of Texas, for the appointment of a receiver herein, and the court at the time of the making of said order naming

as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the court now on this 13th day of June 1907, confirming said order and in pursuance thereof names and appoints as receiver herein of the property in said order described said Robert J. Eckhardt with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two Hundred and Fifty Thousand Dollars;

"And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin."

To which action of the court at the time said order was entered defendant excepted and again gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

And be it further remembered that thereafter on the 15th day of June, A. D. 1907, the defendant having tendered to the Clerk of this court another supersedèas appeal bond from the main judgment rendered against it on June 1st 1907, with the American Surety Company of New York and John H. Kirby as its sureties thereon, and before the approval of said bond, as hereinafter recited, the court caused the following amendment to the above recited
28 orders of June 10th and June 13th 1907, to be entered, which said order directing said amendment of said order was made over the objections of the defendant, and to the action of the court in so amending said orders defendant then and there excepted and again gave notice of Appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, which said amendment is in words and figures as follows:

In District Court, Travis County, Texas, June 15th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this 15th day of June, A. D. 1907, at a regular term of this court, it is considered, ordered, adjudged and decreed by the court that the orders of this court made and entered in said cause on the 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

And now on this 10th day of June 1907, at a regular term of this court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property

and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the Public in the State of Texas, with the rights, power, and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as Receiver from any of the present employees as he may think
29 expedient and proper; and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business so that said business may be kept up to its present condition as near as may be; and the said receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the Court may authorize and all the expenses of said receivership including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the Court costs of the suit. That the temporary injunction heretofore granted, prohibiting the defendant from removing any of its property and assets beyond the limits of the State of Texas, be, and the same, is hereby continued in force until the further orders of this court;

To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

And on this 13th day of June, A. D. 1907, the Court confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described, Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such Receiver at ($250,000.00) Two Hundred and Fifty Thousand Dollars, to be made payable to the Judge of this court, and his successors in office, for the use of all parties interested in said property and this suit.

And defendant renewed its exceptions to the apointment of a receiver and gives notice of appeal from the order appointing a

receiver to the Court of Civil Appeals for the Third Supreme
30 Judicial District of Texas, at Austin.

And be it further remembered that after the entry of said amended orders aforesaid, the Clerk of this Court, duly approved and filed defendant's said supersedeas appeal bond last above mentioned, and the same is in words and figures as follows:

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Know all men by these presents:

That, Whereas, in the above entitled and numbered cause in the District Court of Travis County, State of Texas, twenty-sixth Judicial District, a judgment was rendered in behalf of the plaintiff, the State of Texas, against the defendant, the Waters Pierce Oil Company, in words and figures as follows, towit:

In District Court, Travis County, Texas, June 1st, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL CO.

And now on this the 20th day of May, 1907, the above cause coming on for trial, both parties appeared by attorneys, and announced ready, and a jury having been demanded, a jury of twelve good and lawful men were duly impaneled and sworn to try the case, and thereafter the case proceeded to trial, when by agreement of all parties on the 24th day of May, 1907, one of the Jurors, Aaron Davis, theretofore selected, was excused on account of sickness, which disabled him from acting as a juror in the cause, and the trial then proceeded before the court and the eleven jurors theretofore duly selected and sworn, and the case continued on trial from day to day, and after all the pleadings, evidence and argument of counsel had been submitted to the jury, and after being duly charged by the court, the jury retired in the custody of the proper officer to consider of their verdict, and ther-after on the 1st day of June, 1907, they returned into open court the following verdict:

AUSTIN, TEXAS, *June* 1, 1907.

"We the jury find for the plaintiff against the defendant
31 on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties 1,549,500.00 dollars.

And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty-eight days and fix the penalties at seventy-four thousand four hundred dollars.

We further find that the permit of the defendant to do business in the State of Texas should be canceled.

We find for the defendant upon all issues made by the pleadings and not submitted in the charge of the court.

W. T. HART, *Foreman.*
W. J. CRISWELL.
G. A. BERGSTROM.
J. C. BRODIE.
L. B. STUBBS.
W. W. CHILDRESS.
W. T. THOMPSON.
H. E. TOWNSEND.
J. C. GRINDSTAFF.
EARNEST GOWER.
CHAS. KROHN."

which verdict was by the court received, ordered filed and made a part of the record of this cause.

It is, Therefore, considered, ordered, adjudged and decreed that the plaintiff, the State of Texas, do have and recover of and from the defendant, The Waters Pierce Oil Company, a corporation, the sum of ($1,623,900.00) One Million, Six Hundred and twenty-three thousand nine hundred dollars, together with interest thereon from this date at the rate of six per cent. per annum, together with all costs of suit, for which execution may issue;

It is further ordered, adjudged and decreed that the permit of the defendant, The Waters Pierce Oil Company, to do business in the State of Texas, be and the same is, hereby canceled and held for naught, and that the said defendant be enjoined and prohibited from doing business in the State of Texas, except interstate business, but all other business it is hereby perpetually enjoined and prohibited from transacting within the State of Texas.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of the judgment in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as same appears of
32 record in Minute Book 12, page 349 *et seq.*, of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the 14th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
*Clerk District Court, Travis County, Texas,*
By J. A. BELGER, *Deputy.*

And, whereas, the defendant in said cause duly filed its motion for a new trial, which said motion was by the court overruled and refused by order and judgment entered on the 7th day of June, A. D. 1907, and the said defendant then and there in open court excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

And, whereas, the defendant desires to perfect its said appeal and supersede the judgment aforesaid pending its said appeal;

Now, Therefore, we, the said Waters Pierce Oil Company, defendant aforesaid, and appellant, as principal, and the American Surety Company of New York, a corporation duly qualified and authorized to execute this bond, as surety, together with Jno. H. Kirby, as further surety herein, do hereby each acknowledge ourselves indebted, held and firmly bound to pay to the State of Texas, plaintiff aforesaid and appellee herein, the full sum of Three Million, Two Hundred and seventy-five Thousand ($3,275,000.00) Dollars, conditioned that the said appellant, the Waters Pierce Oil Company, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree, and pay all such damages as said court may award against it.

In witness of all of which the said Waters Pierce Oil Company causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York, causes this bond to be executed by J. E. Lucy, its Resident Vice President and duly appointed agent and attorney in fact, and the said Jno. H. Kirby, execute- the same in his own proper person, this the 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN,
33 *Attorney at Law and in Fact.*
[SEAL.] THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
*Resident Vice President and Agent.*

Attest:
W. T. DECHARD,
*Resident Assistant Secretary.*

JNO. H. KIRBY.

Approved June 15, 1907,
D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Appeal Bond No. 1. Filed June 15, 1907. D. J. Pickle, Clerk.

Be it further remembered that on June 15th, 1907, the court made and entered its order fixing the amount of bond which defendant was required to give in order to perfect its said appeal from the orders appointing a receiver and supersede the said orders so

appointing a receiver at the sum of $100,000.; and thereupon, defendant tendered and placed in the hands of the Court its supersedeas appeal bond in said sum last named, with the American Surety Company of New York and John H. Kirby as its sureties, and the Court having announced its refusal to consider said bond at said time and its purpose to postpone the further consideration thereof until the succeeding Wednesday morning, June 19, 1907, at 10:00 o'clock, defendant at the time of such refusal to consider said bond and the postponement thereof excepted to the action of the Court.

Be it further remembered that on said 19th of June, 1907, at the hour of 10:00 o'clock, the court having announced that it would consider the matter of the approval of the receiver's bond of Robert J. Eckhardt, receiver, which had been tendered to him on the — day of June, A. D. 1907, and would also consider the matter of the approval of defendant's said supersedeas appeal bond so tendered to him on June 15th, 1907, the defendant in open Court objected to the consideration and approval of the receiver's bond before acting upon its appeal bond, which had been first placed with the Court, and for the additional reason that as defendant had duly filed with the Clerk of this Court its said supersedeas appeal bond from the main judgment of June 1st, 1907, the Court was
34 without authority or jurisdiction to make any further orders with respect to said receivership or to approve said receiver's bond, which said objection was then and there overruled and defendant in open court excepted, and thereupon the court proceeded and first entered its order of approval of the said receiver's bond, and, after so approving the same, did enter its order approving defendant's said supersedeas appeal bond so placed with the Court on June 15th, 1907, to which action of the court at the time defendant excepted; and defendant having announced to the court its desire to submit this said last mentioned supersedeas appeal bond to the Clerk for his approval, the court directed the Clerk to first consider the bond of the receiver before approving defendant's said bond, to which action of the Court in so directing the Clerk defendant excepted.

And defendant now tenders this its bill of exceptions to all matters connected with the appointment of a receiver, as hereinbefore recited, and prays that this bill be signed and orders filed as part of the record in this proceeding.

Examined and allowed:

V. L. BROOKS,
*Judge, 26th Judicial District.*

(Endorsed:) No. 24551. The State of Texas *vs.* Waters-Pierce Oil Co. Defendant's Bill of Exceptions to Orders and Proceedings *to Orders and Proceedings* in reference to Receivership. Filed June 29th, 1907. D. J. Pickle, Clerk.

35 *Appeal Bond — In Receivership.*

Filed June 15th, 1907.

In the District Court of Travis County, State of Texas, Twenty-sixth District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

Know all men by these presents that, whereas in the above entitled case in the District Court of Travis County, State of Texas, Twenty-sixth Judicial District, before the Hon. V. L. Brooks, Judge presiding, the following orders, judgments and proceedings were had and duly entered of record, namely:

In District Court, Travis County, Texas, June 10th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

And now on this the 10th day of June, 1907, at a regular term of this Court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters Pierce Oil Company, a corporation, pending the further disposition of this cause, and the Court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all of the property and assets of the defendant, the Waters Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this Court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the Court may direct, keeping and preserving the property coming into his custody and carrying
36 on the business of marketing and supplying oil to the public in the State of Texas; that the temporary injunction, heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be, and the same is hereby continued in force until the further orders of this Court.

To all of which action the defendant in open Court excepts, and in open Court give- notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

In District Court, Travis County, Texas, June 13th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

On this the 10th day of June, A. D. 1907, in this cause an order was made and entered by this Court granting the application of the plaintiff, the State of Texas, for the appointment of a receiver herein, the Court at the time of the making of said order naming as receiver Robert J. Eckhardt and time being given both parties to urge any objection they might have to *to* said Eckhardt as such receiver, and no objection having been made to said Eckhardt, the Court now on this 13th day of June, 1907, confirming said order and in pursuance thereof names and appoints as Receiver herein of the property in said order described said Robert J. Eckhardt with the duties and powers therein named and fixes the amount of his bond as such receiver at ($250,000.00) Two hundred and fifty thousand dollars;

And defendant renews its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the within
37 and foregoing is a true and correct copy of Orders of Court appointing Receiver in cause No. 24,551, The State of Texas *vs.* Waters Pierce Oil Company, as the same appear of record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 13th day of June, A. D. 1907.

[SEAL.]

D. J. PICKLE,
*Clerk District Court, Travis County, Texas.*

And Whereas, the said defendant, Waters Pierce Oil Company, havin*f* duly excepted to the action of the Court in making said orders and judgments, and given notice of appeal therefrom to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, and the said V. L. Brooks, Judge presiding, having fixed the amount of the appeal bond required to be given by said Waters Pierce Oil Company at the sum of One Hundred Thousand Dollars, and said Company desiring to perfect its said appeal and supersede and suspend said orders and judgments as provided by law;

Now, therefore, we, the said Waters Pierce Oil Company, appellant, as principal, and the American Surety Company of New York and Jno. H. Kirby, as sureties, do hereby acknowledge ourselves in-

debted, held and firmly bound to pay to the State of Texas, appellee the full sum of One Hundred Thousand Dollars, conditioned that the said Waters Pierce Oil Company, appellant, shall prosecute its appeal with effect, and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against it, it shall perform its judgment, sentence or decree and pay all such damages as said Court may award against it, and further conditioned that the said Waters Pierce Oil Company, appellant, shall, in case judgment is affirmed, pay to the State of Texas, appellee, the value of the rent or hire of all such property embraced in the orders and judgments aforesaid in any suit which may be brought therefor.

In witness of all which the said Waters Pierce Oil Company
38 causes this bond to be executed by T. B. Cochran, its agent and attorney at law and in fact, and the said The American Surety Company of New York causes this bond to be executed by J. E. Lucy, its Resident Vice President and duly appointed agent and attorney in fact, and said Jno. H. Kirby execute the same in *their* own proper person, this the 15th day of June, A. D. 1907.

THE WATERS PIERCE OIL COMPANY,
By T. B. COCHRAN, *Agent,*
*Attorney at Law and in Fact.*

[SEAL.] THE AMERICAN SURETY COMPANY OF NEW YORK,
By JAS. E. LUCY,
*Resident Vice-President and Agent.*

Attest:
W. T. DECHERD,
*Resident Assistant Secretary.*

JNO. H. KIRBY.

Examined, approved and ordered filed by the undersigned this 19th day of June, 1907, at 10:30 o'clock A. M.

V. L. BROOKS, *Judge.*

Approved June 19, 1907, 10:36 A. M.

D. J. PICKLE, *Clerk.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Appeal Bond No. 2. Filed June 19, 1907. D. J. Pickle, Clerk.

39 *Assignment of Errors in Receivership Proceeding.*

Filed July 10, 1907.

In the Twenty-Sixth Judicial District Court of Travis County, Texas.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

In the above entitled cause, now comes the defendant, and files the following assignments of error to the different rulings, orders and judgments of the said Court appointing Robert J. Eckhardt receiver of the property of this defendant, to-wit:

I.

The Court erred in overruling defendant's general exception to the motion or application of the State for the appointment of a receiver.

II.

As the judgment recovered by the State of Texas against defendant on June 1st, 1907, was a personal judgment and did not attempt to foreclose the lien claimed upon defendant's property in the State, the Court was without jurisdiction by motion filed in the same cause to appoint a receiver, and erred in considering the same and in appointing the said Eckhardt receiver upon said motion.

III.

The Court erred in overruling defendant's request for a postponement of action upon the said application until defendant should have a reasonable time to file a supersedeas bond in con-
40 nection with its appeal from the main judgment rendered against it on June 1st, 1907.

IV.

The Court erred in making its order granting the application of the State of Texas for the appointment of a receiver of defendant's property by its order entered on June 10th, 1907.

V.

The Court erred in making and appointing Robert J. Eckhardt to be the receiver of defendant's property by its order entered on June 13th, 1907.

VI.

The Court erred in refusing to consider and approve defendant's supersedeas bond in the sum of One Hundred Thousand Dollars

($100,000.00) tendered on June 15th, 1907, and in withholding its approval thereof until after the bond of the said Robert J. Eckhardt as receiver was tendered and approved on June 19th, 1907.

VII.

When defendant's appeal bond was approved and filed on June 15th, 1907, superseding the judgment recovered against it by the State of Texas on June 1st, 1907, in the main cause, the appointment of said Robert J. Eckhardt as receiver, and all orders and proceedings there-fore had in connection with such appointment, were thereby vacated and became null and void, and the said Court erred in not entering a formal order recognizing the legal effect of the said supersedeas bond and vacating said appointment and setting aside all of its said orders, and in further considering said appointment as in force for any purpose.

VIII.

The Act of the Legislature of the State of Texas approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in so far as it
41 attempts to create a lien upon this defendant's property for acts committed before the said Act took effect, in violation of Sec. 16, Art. 1, of the Constitution of the State of Texas.

IX.

The Act of the Legislature of the State of Texas approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in that it attempts to create a lien upon this defendant's property for acts committed before said Act took effect, in violation of Section Ten of Article Two of the Constitution of the United States which denies to any State the right to pass an *ex post facto* law, and the Court erred in considering said Act as the basis of its orders appointing the said receiver.

X.

The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void in so far as it authorizes the appointment of a receiver in a suit brought to recover a personal judgment in which no lien upon defendant's property was set up and adjudicated, and the action of the Court in appointing the said receiver in this cause was in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that it results in depriving defendant of its property without due process of law and in denying to defendant the equal protection of the law.

XI.

The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the

said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated
42 in the opinion of the Court at the time said appointment was made, was unauthorized in law, and in violation of Section 17 of Article One of the Constitution of the State of Texas.

## XII.

The said Act of the Legislature of the State of Texas, approved April 11th, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the Court in appointing a receiver for defendant's property on that ground and for that purpose as indicated in the opinion of the Court at the time said appointment was made, was unauthorized in law, and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, in that the result of said action was and is to deprive the defendant of its property without due process of law and to deny to defendant the equal protection of the laws.

## XII.

The Court erred in appointing the said receiver without any evidence being introduced before it at the time said appointment was made, to show that defendant did not intend to change its status and methods of doing business so as to conform to the laws of the State of Texas, and without affirmatively showing that defendant could not make use of its property and carry on its business in accordance with law, and in holding that the Court was authorized to so appoint a receiver for defendant's property in the State of Texas and deprive defendant of the instrumentalities by which it had been convicted of violation — the laws of said State, based upon its past conduct and the said judgment of conviction rendered against it on June 1st, 1907.

Wherefore, defendant says that the said action of the Court
43 was unauthorized and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, and has the effect of depriving defendant of its property without due process of law, and in denying to it the equal protection of the laws.

## XIV.

The Court erred in disregarding the supersedeas bond filed by defendant in connection with its appeal from the main judgment

recovered against it on June 1st, 1907, and in requiring defendant to file the additional bond in the sum of One Hundred Thousand Dollars to supersede the orders appointing the said receiver and to avoid having to surrender its property to said receiver by reason of said appointment and this action on the part of the Court was without lawful warrant and in violation of section one of the Fourteenth Amendment to the Constitution of the United States, in that the effect of such action by the Court was to deprive the defendant of its property without due process of law and to deny to it the equal protection of the law.

Wherefore, and upon each of the foregoing errors committed by the said District Court, the defendant prays the reversal of the action of said Court in appointing the said Robert J. Eckhardt as receiver, and that all orders and proceedings had in connection therewith be vacated and held for naught, and for such other orders as may be necessary to correct the errors committed by the said District Court in the premises.

CLARK & BOLINGER,
COCHRAN & PENN,
N. A. STEDMAN,
D. W. ODELL,
*Attorneys for Defendant.*

(Endorsed:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Assignment of Errors in Receivership Proceedings. Filed July 10, 1907. D. J. Pickle, Clerk, by J. A. Belger, Deputy.

44 *Additional Assignments of Error in Receivership Proceedings.*

Filed August 7th, 1907.

In the District Court of Travis County, State of Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

In the above entitled and numbered cause, now comes the defendant and files the following additional assignments of error to the action of the Court in appointing Robert J. Eckhardt receiver of the property of defendant, to-wit:—

No. 15. The Act of the Legislature of the State of Texas, approved April 11th, 1907, being Chapter 87 of the General Laws of the State of Texas, passed by the Thirtieth Legislature at its Regular Session, in so far as it authorizes the appointment of a receiver of appellant's property in this suit or prosecution instituted against appellant prior to the passage of said Act and for offenses alleged

to have been committed prior to its passage, is unconstitutional, null and void, in that it violates the Tenth Section of Article One of the Constitution of the United States, which provides that no State shall pass a bill of attainder or an *ex post facto* law.

No. 16. The said Act of the Legislature of the State of Texas, approved April 11th, 1907, is unconstitutional, null and void, in so far as it attempts to create a lien upon appellant's property for the alleged violation of the anti-trust laws of said State, in that the lien is not created by the terms of the Act, based alone upon
45 the commission of the offense, but is left to be created by the action of the prosecuting officer in filing suit to recover the prescribed penalties. The Statute therefore does not prescribe a fixed and uniform rule of law, applicable to all persons alike, but is a delegation of the legislative power to officers of the executive department to create the lien, or not to create it, and to arbitrarily discriminate between persons at will, and the appointment of the receiver to take charge of appellant's property under this statute, results in depriving appellant of its property without due process of law, and in denying to it the equal protection of the law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, which provisions of the Constitution of the United States are here urged and relied upon by appellant as against the validity and application of said Act of the Legislature of the State of Texas to the matters involved in this case, and to the act of the Court in appointing the said receiver thereunder.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
*Attorneys for Defendant.*

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters-Pierce Oil Co. Additional Assignments Nos. 15 & 16 in Receivership Proceedings. Filed Aug. 7th, 1907. D. J. Pickle, Clerk.

46 *Bill of Costs.*

No. 24551.

THE STATE OF TEXAS
*vs.*
WATERS PIERCE OIL COMPANY.

To Officers of Court, Dr.

Clerk:
Transcript in Receivership Proceedings.....$33.00

47 *Clerk's Certificate.*

THE STATE OF TEXAS, *County of Travis:*

I, D. J. Pickle, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the within and foregoing on 60 pages is a true and correct Transcript of all proceedings had in this Court in regard to Receivership Proceedings, in cause No. 24,551, The State of Texas *vs.* Waters-Pierce Oil Company, as the same appear on file and record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 13th day of August, A. D. 1907.

[SEAL.] D. J. PICKLE,
*Clerk District Court, Travis County, Texas.*

48 (Transcript Cover:) No. 4213. Waters Pierce Oil Co. (Receivership Proceedings) Appellant *vs.* The State of Texas, Appellee. From the District Court of Travis County, for the 26th Judicial District of Texas, at Austin, Texas. Filed in Court of Civil Appeals, 3rd Judicial District, Austin, Texas, Sep. 10, 1907, R. H. Connerly, Clerk. Applied for by Cochran & Penn, Attorney- for Appellant on the 19th day of June A. D. 1907, and delivered to the above named attorneys on the 14th day of August 1907. D. J. Pickle, Clerk of the District Court of Travis County. Affirmed 10-23-'07. Overruled 12-11-'07.

49 *Opinion of Court of Civil Appeals.*

Filed June 28th, 1907.

No. 4179.

WATERS-PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

On June 21st, 1907, the State of Texas, a party to the above styled cause, through and by its Attorney General and the County Attorney of Travis County and Robert J. Eckhardt, receiver of the property of the Waters-Pierce Oil Company, presented to this Court an application on behalf of the State and the receiver, stating substantially that on the 22nd day of September, 1906, the State instituted in the District Court of Travis County, Texas, a suit against the Waters-Pierce Oil Company, a corporation organized under the laws of Missouri, and exercising and carrying on its business in this State under a permit so to do. The purpose and object of the suit was to recover of the Oil Company penalties and to cancel its permit to do business in the State on account of the violation of certain provisions of the Anti-trust laws of this State. That the case, upon issues joined, came on for the trial on the 20th day of May 1907, and terminated on June 1st, 1907, with a verdict and judgment in

favor of the State against the defendant for the sum of $1,623,900, and cancelling the permit of the defendant to carry on and conduct its business within this State. That on the first day of June 1907, after the return of the verdict and the entry of the judgment, the State presented to the judge of the court where the case was pending an application for the appointment of a receiver of the property and assets and business of the defendant corporation within the State of Texas, which application was set down for hearing on the
50 8th day of June, 1907. In that application the State also requested an injunction restraining the defendant from removing any of its property from the limits of the State of Texas; and also stating in the application that the State, by virtue of a recent act of the Legislature, had a lien upon all of the properties and assets of the defendant Company for the satisfaction of the judgment that the court had rendered.

At the same time the court, upon application therefor, issued a temporary restraining order to the effect prohibiting the defendant, its agents, officers and attorneys, from removing beyond the State any of the assets of the defendant corporation, which order, by subsequent decree, was kept alive and was not superseded by the appeal. Upon this application for receiver and injunction, etc. notice was issued and served on the defendant on the first day of June, 1907. The matter coming on for hearing on the 8th day of June, the court passed the same until the 10th day of June, when upon that day he announced that he would appoint a receiver, as requested, but would for forty-eight hours defer naming the person to be so appointed, in order to give the parties through their respective counsel opportunity to make any objections they so desired to Robert J. Eckhardt, otherwise, at the end of that time, Eckhardt would be appointed. Thereafter, on the 13th day of June, 1907, no objections being made, the court entered an order confirming the order of June 10th, providing for the appointment of a receiver, and named and appointed Eckhardt receiver of all of the property and assets of the defendant Waters-Pierce Oil Company within this State, or that may thereafter come within the State; and further provided that the temporary injunction previously granted should continue in force. On June 15th, the court, by amended order, specifically and more largely defined the duties of the receiver, but in no wise affected his power and authority to take possession of the property of the defendant Company. The amended order is as follows:

"In District Court, Travis County, Texas, June 15th, 1907.

24551.

THE STATE OF TEXAS
*vs.*
WATERS-PIERCE OIL COMPANY.

51 "And now on this 15th day of June, A. D. 1907 at a regular term of this Court,

"It is considered, ordered, adjudged and decreed by the court that

the orders of this court made and entered in said cause on the 10th day of June, A. D. 1907, and the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

"And now on this 10th day of June, 1907, at a regular term of this Court there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters-Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters-Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas, with the right, power and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion and to require such bonds and security to himself as receiver from any of the present employés, or those hereafter engaged by him, as he may think expedient and proper, and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver, and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business, so that said business may be kept up to its present condition as near as may be; and the said receiver
52 shall have power under control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise, as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the court may authorize and all the expenses of said receivership, including taxes, insurance premiums, attorney's fees, his own compensation and all expenses of said receivership to be paid as a part of the court costs of the suit;

"That the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be, and the same is, hereby continued in force until the further orders of this court.

"To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas;

"And on this the 13th day of June, A. D. 1907, the court con-

firming said order and in pursuance thereof names and appoints as receiver herein of the property in said order described Robert J. Eckhardt, who is a resident citizen of the County of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such receivership at ($250,000) Two Hundred and Fifty Thousand Dollars, to be made payable to the Judge of this Court and his successors in office, for the use of all parties interested in said property and this suit.

"And defendant renewed its exceptions to the appointment of a receiver and gives notice of appeal from the order appointing a receiver to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin."

The bond of the receiver was fixed at $250,000, and on the 19th day of June 1907, at 10 o'clock A. M., the bond, with proper sureties, was approved and filed and the said Eckhardt at the same time accepted and qualified as receiver.

53 The court in said cause on the 15th day of June, 1907, made and entered an order fixing the sum of $100,000 as the amount of bond which the Waters-Pierce Oil Company was required to give in order to perfect an appeal from the order appointing a receiver. On the 19th day of June, 1907, at 10 o'clock A. M., the Waters-Pierce Oil Company perfected its appeal from the order appointing a receiver under a bond approved by the court.

On the 15th day of June, 1907, a motion for a new trial previously filed by the Waters-Pierce Oil Company, was by the court overruled; and in open court notice of appeal was given to the Court of Civil Appeals, which notice was entered in the minutes of the court. Thereupon, in the main case, the Waters-Pierce Oil Company, defendant, executed a supersedeas appeal bond from the judgment for penalties and cancellation of permit, which bond was in due form and was properly approved by the clerk of the court.

That on the 19th day of June, 1907, after all of the above mentioned proceedings were had, there was filed in the Circuit Court of the United States for the Eastern District of Texas, on behalf of one Bradley W. Palmer, who claims to be a stockholder in the Waters-Pierce Oil Company, a bill of complaint against the Waters-Pierce Oil Company, with the request for the appointment of a receiver of all the property and assets of the defendant Company situated within the State of Texas. That in response to the prayer of the bill, the Hon. David Bryant, Judge of the Circuit Court of the Eastern District of Texas, appointed one C. B. Dorchester receiver of all of the property and assets of the Company situated within the State. The petition proceeds to state that Dorchester, as receiver, will dispose of the property of the Waters-Pierce Oil Company, thereby depriving the State Court of its authority under the receivership to administer same. The application concludes with a prayer for extensive relief against the receiver appointed by the Judge of the United States Circuit Court, and for all orders and decrees that may be necessary and proper to be entered in protecting this court in the jurisdiction it had acquired over the property

54 by virtue of the appeal from the orders and decrees and judgments of the trial court.

The application when presented, was set for hearing by this Court for Monday, June 24th, 1907; and, under instructions of the Court, notices were caused to be issued to the receiver appointed by the Federal Court and attorneys for the Waters-Pierce Oil Company, of the time and place when the application would be considered. On the day appointed the State and the Waters-Pierce Oil Company appeared; and from statements and arguments in open court then made, and from affidavits and records then presented, the facts substantially alleged in the application of the State were found to be true. And in addition thereto, the fact was established that Dorchester, as receiver, had qualified, and that he was in actual possession of the property of the Waters-Pierce Oil Company situated within the State, and that the receiver appointed by the State was not, and had never been, in possession of any of the property of the defendant Company; that the order of the United States Court was very comprehensive, authorizing the receiver to take possession of all the property of the Waters-Pierce Oil Company within this State, and to carry on and conduct its business and sell its property. The receivership in that court is, like that of the State court, merely confined to the business and property within this State; and there is nothing in the decree of the United States Circuit Court recognizing the right of the State, as fixed by the judgment and decree on appeal in this Court. Nor does it appear that the receivership is merely temporary and for the purpose of protecting the property of the defendant during the pendency of the appeal, but that decree is so comprehensive that final action under it may go to the extent of the final and complete disposition and diversion of all the property and assets of the Waters-Pierce Oil Company within this State.

There is a rule, not only one of comity, but by force of judicial decisions of the highest Court in the land has become one of jurisdiction, a rule so universally recognized that no court will question it, and it may be stated to be, that when the power of a court of jurisdiction is first invoked to seize and administer property, its jurisdiction is exclusive, and no other court of concurrent jurisdiction can interfere to materially disturb or hinder the former in the
55 exercise of its authority and jurisdiction over the *res*.

In Farmers Loan & Trust Company *vs.* Lake Street Elevated Ry. Co. 178 U. S., 59 44 L. Ed. 671, it is said: "The possession of the *res* vests the court which has first acquired jurisdiction with the power to hear and determine all controversies relating thereto; and, for the time being, disables other courts of co-ordinate jurisdiction from exercising like power. This rule is essential to the orderly administration of justice, and to prevent unseemly conflicts between courts whose jurisdictions embraces the same subjects and persons. Nor is this rule restricted in its application to cases where property has been actually seized under judicial process before a second suit is instituted in another court, but it often applies as well where suits are brought to enforce liens against specific property, to marshal assets, to administer trusts or liquidate insolvent estates, and in suits of a similar nature where, in the progress of the litigation, the court may be compelled to assume the possession and con-

trol of the property to be affected. The rule has been declared to be of especial importance in its application to federal and state courts. Peck *vs.* Genness, 7 How. 612, 12 L. Ed. 841; Freeman *vs.* Howe, 24 How. 450, 16 L. Ed. 749; Moran *vs.* Sturges, 154 U. S. 256, 38 L. Ed. 981; Central Nat'l Bank *vs.* Stevens, 169 U. S. 432, 42, L. Ed. 807; Harkrader *vs.* Wadley, 172 U. S. 148, 43 L. Ed. 399."

Chief Justice Fuller, in *Ex parte* Tyler, 149 U. S. 187, 37 L. Ed. 696, said: "In Covell *vs.* Heyman, 111 U. S. 176, where the question arose as to the replevin by process from a state court of property held by a United States Marshal, which this Court held could not be permitted, Mr. Justice Matthews delivering the opinion said: 'The forbearance of courts of co-ordinate jurisdiction administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity, with perhaps no higher sanction than the utility which comes from concord; but between state courts and those of the United States, it is something more. It is a principle of right and of law, and, therefore, of necessity. It leaves
56 nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other, as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void.'

"This principle is applicable here, for whether the sheriff were armed with a writ from a state court or with a distress warrant from a county treasurer, this property was as much withdrawn from his reach as if it were beyond the territorial limits of the State."

This principle has often been recognized and applied when jurisdiction has been exercised in appointment of receivers, which is illustrated in many of the cases to be hereafter cited. Whether this principle shall be applied in affording the complainants in this instance any relief, three matters must first be determined:

1. What was the nature and character of the controversy in the trial court? Was the procedure and relief merely *in personam* or *in rem*, or partly so; and if the latter, at what stage of the proceeding did jurisdiction attach?

2. If it was a proceeding wholly or quasi *in rem*, did this Court retain jurisdiction when the appeals were prosecuted under supersedeas bonds?

3. If an affirmative answer is given to the second question, does the action of the Circuit Court of the Eastern District, in appointing a receiver and taking possession of the property, materially interfere with the exercise of jurisdiction by this Court, or does its acts come within a recognized exception to the general rule?

Before determining these questions we desire to say that, from

what was said in argument in submitting this controversy, and from statements made by counsel who represented the complainant in the Circuit Court, the learned Judge of that court was, in appointing a receiver, influenced to some extent by the opinion in Peoples Cemetery Assn. *vs.* Oakland Cemetry Company, 60
57 S. W., 679, and like cases. We are also impressed with the idea that the learned Judge in making the appointment did not have before him the act of the Legislature which took effect April 11th, 1907. The case relied on was doubtless correctly decided upon the fact peculiar to it, but is not, in our opinion, authority for the proposition that this Court if jurisdiction was obtained by appeal, lost its power over the *res* upon execution of a supersedeas bond. The decision is merely to the effect that the appeal by supersedeas suspends the enforcement of the judgment of the trial court. There is in the opinion an expression that the supersedeas is security for the judgment. This, in one sense, is correct; but it cannot be held to mean that if there is a *res* in controversy which has been brought within the jurisdiction of the court when the appeal was perfected, that the supersedeas bond deprived the court of its power and jurisdiction over the *res* and to finally dispose of the same, and to protect it by the exercise of its jurisdictional authority during the time the controversy is pending. No one denies the fact that a supersedeas appeal suspends the enforcement of the judgment of the trial court; but when we reach the broad question of the jurisdiction over the thing involved in the controversy, the authorities which we will cite in disposing of the questions suggested, are presuasive to the effect that it was never intended that the supersedeas appeal should deprive the appellate court of jurisdiction of the property in controversy, which, in whole or in part, was the subject of litigation.

In disposing of the first question the inquiry is: What was the nature and purpose of the controversy in the State court? A proper answer depends largely upon the purpose and effect of the act of the Legislature of April 11th, 1907, which, as before said, went into operation from its passage. The provisions of that act which relate to the subject under consideration, are as follows:

In Section 1 it is provided: "Whenever any corporation created under the laws of this State, or any foreign corporation authorized to do business in this State, shall violate any law of this State, including any law against trusts, monopolies and conspiracies
58 or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time of such violation or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for all costs of suit and of collection, and the State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney General or district or county attorney acting under his direction in any court of competent jurisdiction within this State for the purpose of forfeiting the charter or cancelling the permit of such corporation, or for such fines or pen-

alties. The institution of such suit for such fine, penalties or forfeiture shall constitute notice of such lien. Where any such law has heretofore been violated, or shall be violated before the taking effect of this act, and a cause of action exists for such fine, penalties or forfeiture, or shall come into existence before the taking effect of this act, and suit shall be filed in such case, the State shall have a lien to secure the payment of such fine, penalties and costs from the time this act shall take effect on all property of such corporation within this State or which shall thereafter come or be brought within the State."

Section 2 is as follows: "Any action or cause of action for any fine, forfeiture or penalty that the State of Texas has or may have against any corporation chartered under the laws of this or any other state, territory or Nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter. Whenever a corporation against which the State has heretofore instituted suit or shall hereafter institute suit, for forfeiture of its charter, or cancellaion of its permit, or for fines or penalties under any law of this State, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this state in which suit is pending shall appoint a receiver for the property and business of such corporation within this State or that may come or be brought within this State during such receivership, or the court may, in any case wherein the State is suing any such corporation for the forfeiture of its charter
59 or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation, whenever the interests of the State may seem to require such action. If such dissolution shall take place or judgment of forfeiture be rendered against such corporation before this act takes effect, the court shall, upon the taking effect of this act, appoint a receiver for the property and business of such corporation in this State; and the State shall have the right to the writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this act; and all property that may come into the possession of any receiver appointed under the provisions of this act, not otherwise exempt by law, shall be subject to the lien herein created, and for the payment of any such fine or penalty."

Section 3 is as follows: "The Attorney General, or any district or county attorney acting under his direction, may bring suits in the name of the State of Texas for the foreclosure of such lien in the district court of any county in the State of Texas, and in case the suit for foreclosure should be brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent of any such corporation in this State at the

time of such dissolution or forfeiture of charter or cancellation of permits."

The validity of this act in any of its terms was not questioned at the submission of this controversy; and we know of no good reason why its main features, which we propose to discuss, could be objected to on constitutional grounds. But, however, that question is not before us, and for the purposes of the disposition of this application, we must treat the act in all respects as valid.

It is apparent the trial court had before it the act in question, and that it largely governed that court in granting the injunction and entering the order appointing a receiver. Reasonable minds can hardly differ as to the purpose, scope and effect of this act. One of its principal purposes is to subject the property of the cor-
60 poration to the jurisdiction of the court upon judgment for penalties and decree of forfeiture of permit, in order that an ultimate benefit would result to the State from the judgment rendered; and that, in keeping with the policy of the statute that condemned in the interest of the public the illegal business, the State could, upon dissolution of the franchise to do business, by control of the property and the business, administer the same in the interest of all concerned, and thereby could effectually check a further pursuit of the illegal business by the corporation adjudged guilty. A proceeding having for its purpose these objects, is clearly one *in rem*, and if the terms of the statute are invoked to accomplish all the purposes authorized, a seizure of the property is absolutely essential, and the way opened by the statute to accomplish this is through a receiver, and the court having so ordered and decreed the appointment of one, there was drawn to the custody of the court all of the property of the corporation, and for all of the purposes enumerated, as stated in the order. For the efficient enforcement of the terms of the statute, in addition to the lien created by it it also provided for a judicial possession and seizure of the property; and when the court, by virtue of this law, laid its hands upon it, its jurisdiction completely attached, not only to the person of the defendant, but to the thing that the law made liable for the consequences of the illegal acts denounced by the statute upon which the suit is based.

When did the property become in *custodia legis*, and when did the jurisdiction of the trial court attach? For the purpose of this controversy we need not discuss the conflict of decisions which on the one hand hold that the jurisdiction is complete from the filing of the bill, and upon the other that it does not attach until service of subpœna, for here in this instance it is clear that the defendant corporation was in court properly served and appeared in the receivership proceeding. When service is had or there is the equivalent by appearance, if there could be any doubt as to which of the two lines of decisions should prevail, the weight of reason and authority is clear to the effect that the jurisdiction of the court will, under the doctrine of relation, after order made commence
61 from the time of the filing of the bill for appointment, although no possession has been taken by the receiver of the property sought to be administered by the court. This principle

is well settled. "The commencement of a suit, the object of which is to have certain property sequestered and administered for the benefit of all having an interest therein, and the possession and control of which are necessary to grant the full relief prayed for, constitutes an equitable levy; and, pending the suit, such property is in *gremio legis*, and the court whose jurisdiction is first invoked, whether state or federal, has the exclusive rights to seize and administer the property over another court of concurrent jurisdiction in which a subsequent suit is commenced, though a receiver be first appointed therein and actually takes possession of the property." Alderson Receivers 24.

In Illinois Steel Co. *vs.* Putnam, 60 Fed. Rep. 515, in the Circuit Court of Appeals presided over by the circuit judge of the district, in reaffirming the doctrine of Adams *vs.* Mercantile Trust Company, 66 Fed. Rep. 621, a decision also participated in by Judges Pardee and McCormick, the court said "Where a bill in equity brings under the direct control of the court all the property and estate of the defendants or of certain named defendants, or certain designated property of all or either of the defendants, to be administered for the benefit of all entitled to share in the fruits of litigation, and the possession and control of the property are necessary to the exercise of the jurisdiction of the court, the filing of the bill and the service of the process is an equitable levy on the property; and, pending the proceeding, such property may properly be held to be in *gremio legis*. The actual seizure of the property is not necessary to produce this effect where possession of the property is necessary to granting of the relief sought. In such cases the commencement of the suit is sufficient to give the court whose jurisdiction is invoked the exclusive right to control the property."

It is said by the court in Dillon *vs.* The Oregon Short Line Ry., 66 Fed. Rep., 1622, that this rule is founded not only on comity, mere courtesy, but on utility and principles of sound policy. There are many authorities that announce substantially the same rule, among which may be mentioned Thompson *vs.* Holliday, 15 Ore. 34, 14 Pac. Rep. 725; Marian *vs.* Ross, 122 Mo. 435, 25 S. W.,
62 942; Judd *vs.* Bankers and *and* Merchants Tel. Co., 31 Fed. Rep. 182; Union Trust Co. *vs.* Rock Island Ry. 6 Biss., 197, and another like case in the same book on page 286; May *vs.* Printup, 59 Ga. 129; People *vs.* Central Bank, 53 Bar. 412; *In re* Hall & Stillson, 69 Fed. Rep., 425; Reisner *vs.* the Gulf, Colorado & Santa Fe Ry., 89 Tex., 659; Northwestern Iron Co. *vs.* Lehigh Coal Co. 92 Wis. 487, and Texas Trunk Ry. *vs.* Lewis. 81 Tex., 1. The two Texas cases cited are instructive upon this subject, and fully support the text as quoted.

In Reisner *vs.* Gulf, Colorado & Santa Fe Railway Co., *supra*, it is said in speaking of the appointment of a receiver: "This action of the judge was sufficient, if followed up in due time by the appointment of a receiver, to fix the jurisdiction of that court upon all of the property of defendant in that suit as to liens thereafter attempted to be acquired through the process of other courts. Under such cir-

cumstances the appointment, when made, would relate back to the filing of the bill."

Hence in this case, from the orders reviewed in the light of these authorities, it is clear that the State court had acquired complete jurisdiction of the *res*, which it fully retained until the appeal to this court was perfected; and during the existence of its authority, under the doctrine stated, no court had the power to disturb its jurisdiction or invade its limits; and here at this point it is proper to consider the second question.

In Gulf, Colorado & Santa Fe Ry. *vs.* F. W. & N. O. Ry. 68 Tex., 103, it is said: "When an appeal from a final judgment of the district court is duly perfected, the jurisdiction over the case ceases in that court upon its adjournment for the term and attaches to the Supreme Court. An injunction existing in the lower court at the time of appeal may be conceded to become the injunction of the court to which the appeal is taken. Teas *vs.* McLaughlin, 6 Grat., 609, Ry. Co. 105 Pa. St., 13; Yoeman *vs.* Leasley, 36 Ohio St., 416; Slaughter House Cases, 10 Wall 292."

In San Antonio Street Ry. *vs.* State, 38 S. W., 95, it appears a mandamus was issued by the trial court requiring the Street
63 Railway Company to operate a part of its road. There was an appeal by the Street Railway Co., under a supersedeas bond from this decree. During the pendency of the appeal it was made known to the Court of Civil Appeals where the case was pending, that the Railway Company was removing the rails and destroying the track. Thereupon that court issued an injunction restraining a further destruction of the track, etc. In the opinion delivered, in the exercise of its jurisdiction by injunction, and in holding the officers of the Company guilty of contempt, it was said: "The appeal from the trial court removed the case from that court and placed it with the parties, as well as the subject matter of litigation, wholly within the jurisdiction of this tribunal; but the judgment of the district court is not affected by the appeal further than proceedings to enforce it are stayed, a supersedeas bond having been filed."

The court in the case of Churchhill *vs.* Martin, 65 Tex., 368, in speaking of its jurisdiction, says: "That the execution of a judgment awarding a p-remptory writ of mandamus may be suspended by a proper appeal bond, is not an open question in this court. Griffin *vs.* Wakelee, 42 Tex., 513. After the approval of such a bond the district court, during the term, still has jurisdiction to modify or set aside the judgment appealed from (Blum *vs.* Wettermark, 58 Tex., 125, Garza *vs.* Baker, 58 Tex., 487), but not to enforce such judgment. When the bond has been filed and approved the complaining party has done substantially all required of him to give this court jurisdiction of the case; and this court may then, under the Constitution to protect and enforce its jurisdiction, issue writs of injunction, etc."

In Wells *vs.* Littlefield, 62 Tex., 30, the Supreme Court, in speaking of its jurisdiction, says: "So soon as the jurisdiction attaches under an appeal or writ of error, this Court has full control of the cause, and can make such orders concerning it as may be necessary

to preserve the rights of the parties and enforce its mandates. This jurisdiction continues until the case as made by the appeal or writ of error is fully determined by this Court, and its judgment is completely executed by the court below. If the judgment below is affirmed, or reversed and rendered or reformed, this Court
64 can see that the party in whose favor its decision has been given has the benefit of all proceedings below necessary to enforce its judgment."

Of course, it is needless to say that what is said in these cases with reference to the jurisdiction of the Supreme Court under the old system is applicable to the jurisdiction of the Courts of Civil Appeals under the present system. It would be idle to engage in argument to demonstrate this proposition.

When an appeal is perfected the jurisdiction of the appellate court attaches, not partially or imperfectly, but to the entire controversy that is involved in the proceeding on appeal. The supersedeas bond does not affect the jurisdiction of the court over the subject of controversy; it merely suspends the enforcement or execution of the judgment below. The purpose of the law is to keep alive the jurisdiction over the subject matter, and this upon appeal is a mere transfer from one tribunal to another; and can it be reasonably contended that when it reaches the tribunal in which a bond is required of the party appealing that he will abide by the judgment, sentence or decree of the court, that all jurisdiction of the subject matter ceases, and that the court is limited in its authority only to what liability may be established against the obligors in the bond. Of course, such a proposition is absurd; for in many cases the subject of litigation, the *res,* would, by reason of this process of evolution, be finally converted when the appellate court reached its decision into practically a proceeding *in personam.* If there is a *res* in controversy it remains so to the end; and it was never intended that a supersedeas bond would destroy the power of the court to determine the rights of the litigants to the thing in controversy and enter such a decree as may be proper to its disposition. The State, by reason of the appeal bond, lost no remedy it invoked in the trial court and for which a judgment or decree went in its favor; and when the case reached here it fell into our jurisdiction with all of the authority of this Court extended over all of its parts, which jurisdiction was as full and complete as that possessed by the trial court before appeal; and if that court had such jurisdiction of the *res* before appeal that no tribunal of co-ordinate jurisdiction could disturb it, for a like reason there should be no invasion of the jurisdiction of this Court.

65 In disposing of the third question it is sufficient to say that it is hardly possible to make a decree broader than that of the Circuit Court. It requires the receiver to take possession of the property of the Oil Company, and to administer and dispose of it as he sees proper. It would be improbable that the State would reap much benefit from its judgment if the receiver appointed by the Circuit Court would exercise all of the powers and authority conferred upon him by the decree. Hence it is clear that the exercise of jurisdiction by that Court will materially affect the interests

of the State and the exercise of jurisdiction by this Court. An examination of the authorities illustrating the question that a second receivership will be allowed by another court, in certain instances, affords no case that will justify the assumption of jurisdiction by the Circuit Court of the Eastern District in taking possession of the property in controversy. The decree of each court appointing a receiver is as broad as the other. Under each the same purposes can be accomplished, and the same protection and rights accorded; and we see no peculiar circumstances existing which would justify the interference by the Circuit Court on the ground that the proceedings as to the receivership in that court is different from the one pending in this court; nor can that decree be construed as a mere temporary expedient looking to the preservation and protection of the property during the time the case in this Court is pending on appeal.

Complainant's prayer is for very enlarged orders, going to the extent of asking this Court to appoint a receiver to recover and take possession of the property and mandatory injunction against the receiver Chester B. Dorchester to forthwith cease acting as receiver and to turn over and deliver to the receiver to be appointed by this Court control and management of all of the property of the defendant Company, and an injunction enjoining and restraining the Waters-Pierce Oil Company, and its agents and representatives from selling and disposing of all or any of the property, and from removing the same out of the State of Texas pending the final disposition of this appeal. There is also a request for an order

66 authorizing the receiver so appointed by this Court, either alone or in conjunction with the State of Texas, to take all necessary and proper steps, and to file and prosecute in said receivership proceedings in the Circuit Court of the United States for the Eastern District of Texas and elsewhere, any and all suits, pleas and applications as he and the attorneys for the State may consider proper and expedient to procure the surrender of all of the property from Chester B. Dorchester, or other receiver that may be appointed to act with him or as his successor.

There are only two members of this court present, the third being unavoidably absent on account of sickness, therefore, the Court has been unable to agree upon the questions whether the plaintiff is or is not entitled to all of the relief asked; and if we see proper to do so, each member of the Court may, in separate opinions or orally, state his views on the questions of difference. But, however, we have agreed that while the receiver Eckhardt appointed by the State court is, by virtue of the supersedeas bond, unable to take possession of the property, he is so far subject to the jurisdiction of this Court, by virtue of his qualification as receiver, as would permit us to request and direct him, in conjunction with the plaintiff, the State of Texas and its attorneys, to appear before the Hon. Circuit Court of the United States for the Eastern District of Texas, and there by suit, pleas and applications urge and insist upon the rights of the State and the jurisdiction of this Court in and to and over the property in controversy, and to ask for such orders, decrees and judgments as they may deem necessary and proper, and to appeal and

perfect such appeals and writs of error as they may deem proper and necessary.

In Shields *vs.* Coleman, 157 U. S. 153, 39 L. Ed. 662, where there was a clash of jurisdiction between the state and circuit courts, the course here suggested was the one that was pursued in the case cited. In other words, it appears that the state receiver appeared before the Circuit Court of the United States when he was deprived of possession of the property by order of that Court, and filed his motion setting up the facts entitling him to possession, which was passed upon by the Circuit Court and the relief prayed for was denied.

67 There was an appeal from that decree and its merits are considered in an opinion by Judge Brewer, where final relief was by the Supreme Court of the United States accorded the state receiver in accordance with the terms of his prayer.

We feel that if the distinguished Judge who presides over the Circuit Court and who granted the receivership, after full consideration concludes that our views as expressed in the opinion handed down are correct, that he will readily and promptly grant such relief as the State and the receiver appointed by the State court are entitled to.

FISHER,
*Chief Justice.*

Filed June 28, 1907.

(Endorsed:) No. 4179. The Waters-Pierce Oil Co. *vs.* The State of Texas. Opinion. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, June 28, 1907. R. H. Connerly, Clerk. Fisher, Chief Justice.

No. 4179.

THE WATERS-PIERCE OIL CO.
*vs.*
THE STATE OF TEXAS.

The questions of remedy upon which the two members of this Court differ are, first, whether this Court has the power to issue writ of injunction or other process in any wise disturbing the possession and control of the Circuit Court of the Eastern District and its receiver over the property in controversy; second, whether the act of the Legislature of April 11th, 1907 confers upon this Court original jurisdiction to appoint a receiver, or whether this Court would have jurisdiction, independent of this statute, to appoint a receiver during the pendency of the appeal.

68 In my opinion the power of this Court in neither of the instances stated exists. I am not going into any extended discussion of these questions, but will state, in a general way, my reasons why we are lacking in jurisdiction. It is clear to my mind whether the Circuit Court has possession of the property rightfully or wrongfully is not a question to be considered in determining whether or not process from this Court, one of co-ordinate jurisdic-

tion, will issue to restrain it and its agents in the control and possession of the property. There have been possibly a few instances in which the court that first acquired jurisdiction has undertaken to run its process against a court of co-ordinate authority, such possibly, as the cases of Home Insurance Co. *vs.* Howell, 24 N. J. Eq., 238 and Ackerly *vs.* Vilas, 15 Wis., 401, but the weight of authority and in my opinion, the reason upon which it is based, precludes the exercise of such jurisdiction. The principle is correctly stated in Central National Bank *vs.* Stevens, 169 U. S., 458, 42 L. Ed. 817, which voices the great volume of decisions upon this question, "that the state courts are exempt from all interference by the Federal tribunals, but they are destitute of all power to restrain either the process or proceedings in the national courts. Circuit courts and state courts act separately and independently of each other, and in their respective spheres of action the process issued by the one is as far beyond the reach of the other as if the line of division between them was traced by landmarks and monuments visible to the eye." When it is conceded that the jurisdiction of the court that first attaches is exclusive it may be that an anomoly results when jurisdiction is denied to assert its authority against the wrongful invasion by some other tribunal; but in many of the cases that may be cited upon this question, the reasons are fully explained, and it would be a mere repetition upon our part to undertake to give them, why courts of co-ordinate jurisdiction will not interfere in the administration of jurisdiction by each other. Now it is a well settled principle that when property is brought in possession of the court under receivership proceedings, that the receiver is merely an arm
69 and agent of the court, and that the property is in the actual possession and control of the court merely through the medium of a receiver. If we would undertake to issue a restraining process or process of any other nature that undertook to interfere with the exercise of authority over the property by the receiver, it would, in its legal effect, operate against the possession and control of the court, and in my opinion this cannot be done.

The next question presents one of more difficulty, and I wish to say, in this connection, that while I have given the subject such consideration as the other business pending before this court and the short time remaining of our session would permit, I have reached a conclusion which may possibly hereafter be changed; but as I now at present view the question, the statute invoked does not in my opinion confer original jurisdiction upon this Court to appoint a receiver. The expression, "the court in this state in which the suit is pending," relates in my opinion to the court in which the suit is instituted. Time will not permit me to extensively review this statute, nor to give the reasons why in my opinion it was not the intention of the Legislature to confer original jurisdiction upon the courts of civil appeals to appoint receivers. It may be claimed that the provisions of the Constitution and the statutes generally that define our jurisdiction authorize us to appoint a receiver when it may become necessary to enforce the jurisdiction of this Court. I am of the opinion that such a construction would be unwarranted. I am not denying

the fact that the Legislature may, under the Constitution, confer original jurisdiction upon the Court of Civil Appeals to appoint a receiver, but in my opinion they have not done so.

The authority of this Court is also invoked to restrain the defendant the Waters-Pierce Oil Co. from removing from the limits of this State its property or from disposing of the same. The application of the State presents no case that would justify this interference. If the Circuit Court should see fit to accede to the views of this Court concerning its jurisdiction and discharge its receiver and release the property, the defendant the Waters-Pierce Oil Company
70 would under the supersedeas appeal be entitled to possession during the pendency of the appeal in this court, such property however subject to the exercise of the jurisdiction of this court if it should be made to appear that the defendant was attempting to disobey the injunction of the trial court or to destroy the thing in its possession, which constituted the subject matter within the jurisdiction of this Court. But, as said before, no such case has been made by the State. It is time enough to rule upon those questions when we are confronted with a state of facts that calls for their judicial consideration.

FISHER,
*Chief Justice.*

Filed June 28, 1907.

(Endorsed:) No. 4179. The Waters-Pierce Oil Co. *vs.* The State of Texas. Separate Opinion by Fisher, C. J. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas. June 28, 1907. R. H. Connerly, Clerk.

No. 4179.

THE WATERS-PIERCE OIL CO.
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THE STATE OF TEXAS.

Concurring with Chief Justice Fisher in the views so well expressed and sustained on the paramount question in this case, the writer deems it proper to reduce to writing his views upon the questions upon which we are unable to agree. Upon these questions I am of the opinion that this Court has the power to appoint a receiver, and that it should do so, in view of the facts stated in the verified motion and not in any wise controverted. I am also of the opinion that this Court has the power to and should issue a writ of injunction, or some other appropriate writ, against Mr. Dorchester, requiring him to surrender the property of the defendant, the Waters-Pierce Oil Company, to the receiver appointed by this Court.

71 1. As to the first question, in the absence of statutory authority I am not prepared to hold that the appellate courts of this state do not possess the inherent power to appoint receivers whenever such action may be necessary to a proper disposition of the litigation upon final appeal. That valuable compendium, the Amer-

ican & English Ency. of Law, in volume 8, page 28, states the rule upon that subject in the following language: "Every regularly constituted court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, and to prevent any abuse of its process." And the Supreme Court of the United States in Pacific Ry. Co. *vs.* Mo. Pac. Ry. Co. 95 U. S. 23, which was pending in that Court on appeal, considered an application presented for the first time in that Court for the appointment of a receiver. The application was not dismissed nor refused upon the ground that the Court was without jurisdiction to appoint a receiver; and the Court, speaking through Chief Justice Waite, said: "Without undertaking to decide whether a case may not arise in which we would exercise the power of appointing a receiver pending an appeal in this Court, we are clearly of the opinion that we ought not to do so upon the showing made here." But, aside from the question of the general and inherent power of this Court to appoint a receiver, and without committal upon that subject, the writer is satisfied that such power has been conferred, and now exists, by the second section of the act of the 30th Legislature, which was approved and became operative April 11th, 1907. It is there provided "Whenever a corporation against which the State has heretofore instituted suit, or shall hereafter institute suit, for the forfeiture of its charter or cancellation of its permit, or for fines or penalties, under any law of this State, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this State in which such suit is pending shall appoint a receiver for the property and business of such corporation within this State, or that may come or be brought within this State during such receivership; or the court may, in any case wherein the
72 State is suing any such corporation for the forfeiture of its charter or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation whenever the interests of the State may seem to require such action."

It will be observed that in framing this law, when the matter of power to appoint receivers was reached, the Legislature did not limit that power to the district court, or any other court designated as a class, nor to the court in which the suit was instituted, but in clear and unambiguous language, conferred that power "*upon the court in this State in which such suit is pending.*" The other reference to the court thereafter made in the same sentence and authorizing the appointment of a receiver whenever the interests of the State may seem to require it, is not, in terms, limited to the trial court and is equally applicable to an appellate court. It is not denied, and must be conceded, that the case is now pending in this Court, and that the State is sueing a corporation for the forfeiture of its permit to do business in this State and for fines and penalties, and no other court has jurisdiction over it. Therefore this Court comes within the literal terms of that portion of the statute which confers jurisdiction to appoint a receiver; and I find no reason in any portion of that law for the conclusion that the Legislature did not intend that

the language referred to should have its ordinary and usual significance. On the contrary, the rule of construction prescribed by statute in this state requiring statutes to be liberally construed in order to accomplish the legislative purpose, and the legislative history of this State upon the subject to which this statute relates, and especially the manifest purpose intended to be accomplished by this statute, lead, it seems to me, to the inevitable conclusion that it was the intention of the Legislature to confer power to appoint a receiver upon the court exercising jurisdiction over the case at the time of the happening of the contingencies referred to in the statute. It is not unreasonable to presume that the Legislature had in mind the probability that, in some instances, the contingencies referred to might arise after the case was disposed of in the trial court and was pending on appeal in an appellate court; and that, for that reason, the broad language referred to was used in order to better protect what the Legislature regarded as the interests of the
73 State. Since 1899 the Legislative department of this State has been enacting laws upon the subject of trusts, and each successive enactment has been an enlargement of those preceding, and they all manifest a fixed and continued purpose to control corporations and prevent them from committing acts regarded by the Legislature as detrimental to the public interest. Various other enactments of the 30th Legislature disclose such purpose, but the one now under consideration makes manifest an intense purpose to reach out and make available instrumentalities and powers not heretofore used for the purpose of rendering effective anti-trust legislation.

And here it is not inappropriate to quote and apply the language of Chief Justice Stayton in G. H. & S. A. Ry. *vs.* the State, 77 Tex., 410: "In construing a constitution, or any other law, the object sought is the true intent of the law maker, which must be ascertained from the language in which the law is written, and in considering this it is always important to keep in view the object which the law maker intended to accomplish through its enactment. The more intensely the law maker may be seen to have desired to accomplish the given purpose, the more weight should be given to the language used in a law looking to that end." While this language was used in a dissenting opinion it announces rules of construction that are well settled, and that seem specially applicable in the construction of the statute now under consideration.

Hence I conclude that this Court comes within both the letter and spirit of that portion of the statute referred to which confers power to appoint receivers. If such power constitutes original jurisdiction it was competent for the Legislature to vest it in this Court, because the Constitution as amended in 1891 expressly authorizes the Legislature to confer other jurisdiction, both appellate and original upon the Courts of Civil Appeals. As published in the Revised Statutes, that provision of the Constitution is omitted, but it is, nevertheless, a part of that instrument. If the court has the power to appoint a receiver, I think the facts stated in the applica-

tion and not controverted, make it appear that the interest of the State seems to require such appointment to be made.

2. By the terms of Art. 997 of the Revised Statutes of
74 this State, the Courts of Civil Appeals have the power to issue writs of mandamus and all other writs necessary to enforce their jurisdiction. Of course, it cannot be successfully contended that one court can issue and enforce any process against another court of co-ordinate jurisdiction and control its official action, but when a court goes beyond the limits of its jurisdiction, and undertakes to do that which it has no power to do, such action is null and void; and it is for this reason and upon this ground that I hold that this Court can properly issue an injunction against Mr. Dorchester. Authorities cited in the main opinion of Chief Justice Fisher satisfy my mind that this Court had jurisdiction of the property of the defendant Waters-Pierce Oil Company, and that that property was in *custodia legis* when the Judge of the Circuit Court of the United States attempted to appoint Mr. Dorchester receiver of that property; and, such being the case, the authorities referred to and many others, establish the proposition that the Federal Court at that time had no power to appoint a receiver for the property, and that the alleged appointment of Mr. Dorchester was and is absolutely null and void. My views on that subject cannot be *better* expressed than by borrowing the language of the Supreme Court of the United States in Covell *vs.* Heyman, 111 U. S., 176.

"The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity with perhaps no higher sanction than the utility which comes from concord; but between state courts and those of the United States it is something more. It is a principle of right and law and, therefore, of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no connom superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To at-
75 tempt to seize it by a foreign process is futile and void."

As I understand the law, whenever an alleged official act is in excess of power and utterly without authority, such act can confer no power or right upon anyone. Hence I am of the opinion that as Mr. Dorchester's alleged appointment as receiver is absolutely null and void, it is competent for this Court, upon a proper showing, to issue a writ of injunction against him. Such writ would not run against him as receiver of the property, acting under the authority of the Federal Court, but as an individual, acting without authority. Therefore if this Court should appoint a receiver to hold and preserve the property while the case is on appeal, I think it would be proper, if it became necessary, to issue a writ of injunction, or any

other appropriate writ, to enable such receiver to secure and retain possession of the property.

In conclusion, it is not inappropriate to say that we have dealt with this delicate matter upon the assumption that the Honorable Judge of the Circuit Court of the United States in dealing with it, acted upon no other motive than a high sense of official duty, and the matter has been dealt with in this Court upon the same exalted plane. Nevertheless, being of the opinion that the Honorable Judge referred to exceeded his powers, and that his order appointing Mr. Dorchester receiver conferred no authority upon the latter, and that Mr. Dorchester's conduct in taking possession of the property for the purposes stated in the application under consideration constitutes an invasion of the jurisdiction of this Court, I believe it is our duty, under the circumstances, disclosed, to take all necessary and proper steps to prevent its continuance.

W. M. KEY,
*Associate Justice.*

Filed June 28, 1907.

(Endorsed:) No. 4179. The Waters-Pierce Oil Co. *vs.* The State of Texas. Separate Opinion by W. M. Key, A. J. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, June 28, 1907. R. H. Connerly, Clerk.

76 *Order Made October 16th, 1907, on Motion to Advance the Cause.*

Motion 2825. #4213.

WATERS PIERCE OIL COMPANY
*vs.*
STATE OF TEXAS.

Appeal from Travis County.

Motion for advancement of cause; the motion is granted and cause set for hearing and submission on Monday, October 21st, 1907 at nine o'clock A. M. and that the clerk notify the parties hereof in the manner prescribed by law.

*Order Made October 23rd, 1907, on Motion to Consolidate the Causes.*

Motion 2827. #4213.

WATERS PIERCE OIL COMPANY
*vs.*
STATE OF TEXAS.

Appeal from Travis County.

Motion to consolidate this cause with cause No. 4212; the motion is overruled.

*Judgment Rendered October 23rd, 1907.*

No. 4213.

WATERS-PIERCE OIL COMPANY
*vs.*
STATE OF TEXAS.

Appeal from District Court of Travis County.

Opinion by Chief Justice FISHER:

"This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the Court that there was no error in the judgment; it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed; that the appellant, Waters-Pierce Oil Company, principal and its surety, American Surety Company of New York, pay all costs in this behalf expended, and this decision be certified below for observance."

77 No. 4213.

THE WATERS-PIERCE OIL CO., Receivership Proceeding,
*vs.*
THE STATE OF TEXAS.

Appeal from Travis County.

*Opinion.*

This is an appeal by the appellant from an order entered by the trial court appointing a receiver for the properties of the appellant Company situated within the State of Texas. The history of the proceedings and the subject matter of controversy and the result reached by the trial court is fully explained and set out in the opinion of this Court handed down in this case on June 28th, 1907. There is also set out in that opinion the act of the Legislature of April 11th, 1907, which we there construed and held to authorize the course pursued by the trial court, which is objected to in the appeal we are now considering. It is necessary for us to recapitulate what was stated in the opinion referred to. We there, in effect, held that the act of the Legislature referred to was constitutional, which ruling, after further consideration, we adhere to. The act in question clearly authorized the procedure pursued by the trial court, and the spirit, meaning and purpose of the act authorized the court, upon dissolution of the permit to do business within this State of appellant's Company at the instance of the suit by the State, to appoint a receiver for its properties within its jurisdiction. The reason for this conclusion we undertook to state in the opinion referred to, which agrees with the conclusion of the trial judge, as stated in the bill of exception which is a part of the record in this case.

Independent of the power conferred by the act of the Legislature reviewed, we are of the opinion that the court had the authority to appoint a receiver by virtue of subdivision 3 of Art. 1465, Sayles Civil Statutes. That subdivision is to the effect that a receiver may be appointed where a corporation is dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate
78 rights. The corporate right of the appellant Company to do business within this State was by virtue of a permit that had been granted to it by the State, and when an action is brought by the State to cancel and dissolve that permit, it is a proceeding which in our opinion comes within, if not the exact letter, the spirit and meaning of that part of the subdivision of the statute which relates to the forfeiture of the corporate rights of the corporation.

It is contended by the appellant that in the appointment of the receiver the trial court proceeded without pleading and evidence. The record and proceedings brought to this Court by the appellant for our review contains no statement of facts, but there is a bill of exception which was approved by the court, in which it is stated that the court in passing upon the question of the appointment of the receiver, took judicial notice of the facts exhibited in the main case upon which the receivership is predicated, and of the judgment and decree rendered in that case, wherein it appears from the record in this case the judgment against the appellant corporation was for a large sum, and also forfeiting its permit to carry on and conduct its business within this state. That branch of the case in which the receiver was appointed is merely an arm of the main case, and is incidental to that proceeding. Both of the statutes quoted and mentioned authorize and empower, if they do not expressly direct, the trial court to appoint a receiver when the State obtains its judgment canceling the permit. And there is another provision of the act of 1907 which authorized a receiver to be appointed when the interests of the State might require it to be done. In view of these statutes it is folly to say that the trial court must lose sight of the main controversy when he undertakes to appoint a receiver; that before that jurisdiction can be exercised he must again rehear and review the facts that were established in the original case upon which the receivership depends, and we are of the opinion that the court was correct in the conclusion that it could take judicial knowledge of the facts established in the main case and the judgment based thereon. The appellant has seen fit to perfect a separate appeal from the order appointing a receiver, and it has no statement
79 of facts in the record showing that the facts which the court took judicial knowledge of did not exist and were not sufficient to authorize the action of the court in making the appointment. The effect of the action of the court was to hold that the facts that he took judicial knowledge of were sufficient to authorize and justify the appointment. The record here shows that the State has actually recovered a judgment for penalties and for cancellation of the permit to do business. The presumption will be indulged in favor of the action of the trial court, and no fact appearing in the record brought up here by the appellant which would negative and destroy the

force of this presumption, we must hold that we have in this record facts sufficient to justify the judgment below.

It is contended by the appellant not only that the facts are not sufficient, which contention we have just disposed of, but that the appointment was made by the court without being predicated upon any pleading in the nature of a petition or bill by the State asking for and showing grounds for the appointment of a receiver. The document filed by the State upon which the court acted in making the appointment, we construe to be of the nature of a pleading. It is addressed to the court and states facts under the statutes discussed that would authorize the court to appoint a receiver. A general demurrer was interposed, it seems, to this application and was overruled. It states grounds and reasons why the court should make the appointment, and some of these reasons stated are of the nature embraced in the statutes upon which a court may act in making the appointment. But however, if it could be held that the application of the State could not be regarded as a petition or a bill or something in the nature of a pleading requesting the appointment of a receiver, or if an instrument of this character but fatally defective, then the question on in the case of forfeiture of the franchise or permit and the power of the court to appoint a receiver is set at rest by the case of San Antonio Gas Co. *vs.* the State, 54 S. W., 293. It is there, in effect, held that where there is a judgment forfeiting the cor-
80 porate rights the court can, independent of the request of anyone, exercise his judicial discretion as to whether he will or will not appoint a receiver. It is unnecessary to repeat what the court in that opinion says upon the subject. The proposition is forcibly discussed and the ruling is squarely to the effect that the court can, without request, make the appointment in such a case.

As said before, we find no constitutional objection to the statutes under which the court acted in making the appointment. What we have said is all that we think necessary to be said in disposing of this appeal.

FISHER,
*Chief Justice.*

Filed Oct. 25, 1907.

(Endorsed:) With App. No. 5668. No. 4213. Waters-Pierce Oil Company, Receivership Proceeding, *vs.* The State of Texas. Filed in Supreme Court Dec. 12, 1907. F. T. Connerly. Appeal from Travis County. Opinion. Affirmed. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Oct. 25, 1907. R. H. Connerly, Clerk. Fisher, Chief Justice.

In the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

WATERS PIERCE OIL COMPANY, Appellant,
*vs.*
THE STATE OF TEXAS, Appellee.

*Appellant's Motion for Rehearing.*

In the above cause now comes the Appellant, the Waters Pierce Oil Company, and moves the Court to set aside its judgment herein entered on the 23rd day of October, A. D. 1907, affirming the action of the District Court of Travis County in appointing Robert J. Eckhardt as Receiver of Appellant's property, and to grant to
81 appellant a rehearing in this Court of all matters involved in this appeal, and as grounds relied upon for such rehearing Appellant says that this Court erred in its said judgment of affirmance and in its rulings and decisions made in connection therewith and in support thereof, in the following particulars, viz:

1. This Court was without jurisdiction, and acted in excess of and beyond the proper exercise of its jurisdiction in considering the validity of the appointment of the said Eckhardt as Receiver before considering and deciding the validity of the judgment rendered June 1st, 1907, against Appellant in said District Court, which said judgment was made the basis for said appointment in the application filed by the State for the appointment of a receiver.

2. The Court erred in overruling appellant's motion to consolidate this proceeding with Appellant's appeal from said judgment of June 1st, 1907, and from said orders appointing said Eckhardt as Receiver in said main cause, as shown by the transcript of the entire record of the judgment and all orders and proceedings in said main cause, including the orders and proceedings in connection with said appointment of Eckhardt as Receiver, which said appeal embracing the entire case was first docketed in this Court as Cause No. 4212, and is now pending and undetermined before this Court.

3. This Court erred in overruling Appellant's eighth assignment of error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, to appoint a receiver to take charge of Appellant's property, because said Act of the Legislature is void and is an *ex post facto* law, in violation of Section 10, Article 1, of the Constitution of the United States, in attempting to create a lien upon Appellant's property for the acts committed by it before said Act took effect in violation of the Anti-trust Laws of the State of Texas, and for which it was convicted and penalties assessed against it in the said judgment of conviction rendered against it on June 1st, 1907.

4. This Court erred in overruling Appellant's sixth assignment of error and in holding that the said District Court was author-
82 ized by the Act of the Legislature of the State of Texas of April 11th, 1907, to appoint a receiver to take charge of Appellant's property, because said Act of the Legislature, in attempting

to create a lien upon Appellant's property for the alleged violation of the Anti-trust Laws of the State of Texas, by providing that the State shall have such lien from the date of the institution of a suit by the Attorney General, or a district or county attorney under his direction, in any court of competent jurisdiction in this State for the purpose of forfeiting the charter or cancelling the permit of a corporation violating the said Anti-trust Laws, and for fines and penalties against such corporation for such violation, does not prescribe a fixed and uniform rule of law applicable to all persons alike, but it a delegation of the legislative power to officers of the Executive Department to create the lien, or not create it, and discriminate between persons at will, and therefore the appointment of a receiver to take charge of Appellant's property under this statute was unconstitutional, since it results in depriving Appellant of its property without due process of law and in denying to Appellant the equal protection of the laws, in violation of Section 1, of the 14th Amendment to the Constitution of the United States, which provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

5. The Court erred in overruling Appellant's thirteenth assignment of error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, to appoint a receiver to take charge of the property of Appellant, because said Act of the Legislature is void and is an *ex post facto* law, in violation of Section 10, Article 1 of the Constitution of the United States, in attempting to confer authority for the appointment of a receiver to take charge of Appellant's property as an incident to, and in aid of, the said judgment of conviction rendered against Appellant on June 1st, 1907, in that the appointment of such receiver has the effect of inflicting an additional punishment upon Appellant, and of increasing the penalties prescribed
83 under the previous laws for acts committed prior to April 11th, 1907.

6. This Court erred in overruling Appellant's ninth assignment of error and in holding that the said District Court was authorized to appoint a receiver to take charge of Appellant's property by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, because under said Act of the Legislature the right to appoint a receiver is limited to actions against corporations, whereas, in a similar suit against an individual charged with violating the same laws, there is no provision made for the appointment of a receiver to take charge of his property, thereby making an arbitrary distinction between persons similarly situated, and rendering said Act of the Legislature unconstitutional and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

7. The Court erred in overruling Appellant's first assignment of error and in holding that the said District Court was authorized to

appoint a receiver to take charge of Appellant's property by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, because the right, if any existed, to appoint a receiver under said Act could be exercised only in an orderly manner upon pleadings setting up the particular grounds upon which such appointment was sought to be made, and showing sufficient reasons for the appointment of a receiver, and because there being no proper pleadings in this cause the appointment of a receiver for Appellant's property was unconstitutional, being in violation of that provision of Section One of the Fourteenth Amendment to the Constitution of the United States which prescribes that no state shall deprive any person of life, liberty or property without due process of law.

8. This Court erred in holding that the said District Court was authorized to appoint a receiver to take charge of Appellant's property by virtue of Sub-division 3, Article 1465, Sayles' Civil Statutes
84 of Texas, which is to the effect that a receiver may be appointed where a corporation has forfeited its corporate rights, because treating, as the Court did, the cancellation of the permit of Appellant to do business in the State of Texas as the forfeiture of the corporate rights of Appellant, such forfeiture was made by virtue of the judgment of said District Court entered June 1st, 1907, in the main suit convicting Appellant of violating the Anti-trust Laws of the State of Texas, and was a part of that judgment; and further, because the Appellant having superseded the execution of said judgment in such a manner that no process could be issued or proceedings had in aid of its enforcement from the date of its rendition, the appointment of the receiver to take charge of Appellant's property was without authority; and because further to sanction and sustain the appointment of the receiver and to hold that said appointment has any legal effect, results in denying to Appellant the benefit and protection which all other litigants enjoy under the laws of the State of Texas by superseding a judgment, and would therefore be unconstitutional and in violation of that part of Section One of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

9. This Court erred in not sustaining Appellant's second proposition under its Fifth Assignment of Error, and its Fourteenth Assignment of Error submitted as a proposition in connection with said Fifth Assignment of Error, wherein Appellant claimed the protection of said Section One of the Fourteenth Amendment to the Constitution of the United States, because of its said bond superseding and staying the execution of the said judgment of June 1st, 1907, rendered against it, and the action of this Court in affirming the judgment of said District Court appointing the receiver, and in holding that said appointment has any legal effect, results in denying to this Appellant the equal protection of the laws, in violation of said Section One of the Fourteenth Amendment to the Constitution of the United States.

10. This Court erred in overruling Appellant's Eleventh Assign-

ment of Error and in holding that the said District Court
85 was authorized by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, to appoint a receiver to take charge of Appellant's property in a suit brought against Appellant to recover fines and penalties for offenses committed in violation of the Anti-trust Laws of the State, as a means of preventing the Appellant from the further or continued violation of such Laws, and the action of said District Court in appointing a receiver for Appellant's property on that ground and for that purpose, as indicated in its finding — the time of the making of said appointment, by virtue of said Act of the Legislature, is in violation of Section One of the Fourteenth Amendment to the Constitution of the United States in that the result of said action, under the said Act of the Legislature, is to deprive Appellant of its property without due process of law and to deny to it the equal protection of the laws.

11. This Court erred in overruling Appellant's Twelfth Assignment of Error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, Approved April 11th, 1907, to appoint a receiver to take charge of Appellant's property without any evidence being introduced before the Court at the time the appointment was made to show that Appellant could not make use of its property and carry on its business in accordance with law, and such action by said District Court so affirmed by this Court results in depriving Appellant of the use of its property for the purpose of conducting an inter-state business guaranteed to it under the provisions of the Constitution of the United States in Paragraph Four, Section Eight, of Article One of said Constitution.

12. This Court erred in holding that Sub-division 3, Article 1465 of the Revised Statutes of the State of Texas has any application to the appointment of the receiver involved in this appeal, because the said Sub-division of said Article has no application to the cancellation of the permit of Appellant as a foreign corporation, and it has the right to continue in possession and enjoy the use of its property after the cancellation of its permit, and may conduct a business protected under the Commerce Clause of the Constitution of the United States, and may sell or remove its property at will,
86 and to deny to it the possession and use of its property for these purposes by the appointment of a receiver to take charge of its property, as was done under the orders of the said District Court and affirmed by the judgment of this Court, results in depriving Appellant of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.

13. This Court erred in holding that the appointment of the receiver in this proceeding at the suit of the State was authorized by the said Act of the Legislature of the State of Texas Approved April 11th, 1907, and also under the provisions of Sub-division 3, Article 1465 of the Revised Statutes, independent of the rights of the State as a creditor having a legal interest in Appellant's property, and since the judgment of the State against Appellant was secured by the supersedeas bond given by Appellant upon said judg-

ment, as required by law, the State had no such interest in Appellant's property as to authorize the appointment of a receiver, and both of said statutes, when construed as authorizing the appointment of a receiver for Appellant's property, are unconstitutional, and this action of the Court based thereon results in depriving Appellant of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.

14. This Court erred in its findings and conclusions of law in holding that the District Court was authorized at the hearing of the application for the appointment of a receiver in this proceeding, to consider the *the* evidence which was submitted in the main cause, and that the appointment of the receiver herein should be affirmed, based upon the presumption that sufficient evidence was introduced at the hearing of the main cause to show that the interests of the State of Texas required such appointment. This holding on the part of the Court was erroneous because if the trial court could take judicial notice of what occurred in the main cause, this Court is also required to take like notice thereof, and this can only be done by considering the appointment of the receiver in connection with the appeal in the main cause now pending before this court. This
87 holding is also erroneous because the application upon which the appointment was made did not set out any facts showing that the State had any interest requiring the appointment of the receiver beyond the collection of its judgment, and the act of this Court in sustaining the appointment based upon the presumption that something may have been shown at the hearing of the main case, although it was not set out in the application, results in depriving Appellant of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, and upon each of the foregoing grounds of error committed by this Court, Appellant moves the Court to grant it a rehearing herein, and to set aside and vacate its said judgment affirming the judgment of the District Court of Travis County appointing the said Robert J. Eckhardt receiver of Appellant's property.

Appellant represents that the Honorable R. V. Davidson, who is the Attorney General of the State of Texas, and Jewel P. Lightfoot, an Assistant Attorney General of said State, and T. W. Gregory and R. L. Batts, composing the firm of Gregory & Batts, and George W. Allen and W. D. Hart, composing the firm of Allen & Hart, are the attorneys of record for the Appellee, the State of Texas, and that each of said attorneys resides in Travis County, Texas, and service of this motion is prayed to be had upon one of said attorneys, as required by law.

Respectfully submitted,

CLARK & BOLINGER,
N. A. STEDMAN,
D. W. ODELL,
COCHRAN & PENN,
*Attorneys for Appellant.*

Appellee hereby accepts service of the above and foregoing motion and waives time and notice.

R. V. DAVIDSON,
*Attorney General of Texas.*
J. P. LIGHTFOOT,
*Assistant Attorney General.*
JOHN W. BRADY,
*County Att'y, Travis Co.*
GREGORY & BATTS,
ALLEN & HART,
*Attorneys for the State of Texas, Appellee.*

88 (Endorsed:) With app. No. 5668. Mo. 2838. No. 4213. Waters Pierce Oil Co., Appellant *vs.* The State of Texas Appellee. Motion for rehearing by Appellant. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Nov. 2, 1907, R. H. Connerly, Clerk. Filed in Supreme Court Dec. 12, 1907, F. T. Connerly.

*Order, Made December 11th, 1907, Overruling Motion for a Rehearing.*

Motion 2838. Cause No. 4213.

WATERS PIERCE OIL COMPANY
*vs.*
STATE OF TEXAS.

Appeal from Travis County.

Motion for a rehearing; the motion is overruled.

89 No. —.

WATERS-PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

Pending in the Supreme Court of the State of Texas.

To the Honorable the Supreme Court:

Now comes the State of Texas, by her Attorney-General, and respectfully shows:

1. That heretofore, to-wit, on the first day of June, 1907, a judgment was rendered in the District Court of Travis County, in the case of the State of Texas *vs.* The Waters-Pierce Oil Company, wherein it was adjudged that said company was operating its business within this state contrary to law, and canceling its permit to do business within this state.

2. In said cause judgment was rendered in behalf of the State of Texas for penalties in the sum of $1,623,900.

3. That by virtue of the statute of the State of Texas, the State has a lien upon all of the property and assets of said corporation in this state to secure the payment of said judgment.

4. That the conduct of said business by the Waters-Pierce Oil Company by and through its agents and employés constitutes and is a violation of the penal statutes of this state, and each of said employés and agents of said company will become liable to prosecution for such violation of the penal laws if they should conduct or help to conduct the business of said corporation within this state, or do any act in furtherance of the illegal business of said corporation.

5. That in a proceeding instituted by one Bradley W. Palmer against the Waters-Pierce Oil Company in the Circuit Court of the United States for the Eastern District of Texas, the facts hereinbefore stated were set up and the allegations were therein made that
90 it was necessary that a receiver be appointed to conduct the business of said corporation pending the final disposition of said cause in which said judgment had been rendered, and the following allegations, under oath, were made:

"That by reason of the fact that said oil company have been adjudged to be doing business in violation of the said anti-trust statutes, and is believed by the officials of the State of Texas, and especially the Attorney-General's Department, and some of the courts of the State of Texas, and especially the District Court of Travis County, before whom said cause was tried, that said defendant oil company is and has been doing business in the State of Texas in violation of said anti-trust statutes, and by reason of the provisions of said two acts passed by the 30th legislature, making it a felony punishable by confinement in the penitentiary for any one to have any connection with, or represent in any capacity, a corporation doing business in violation of such anti-trust statutes, your orator avers on information and belief that it will be impossible for said oil company to do and transact any business in the State of Texas after the 12th day of July, 1907, because it will be impossible for it (to) procure any managers, agents, salesmen, representatives or other employés to conduct, carry on or aid in the transaction of its business, because all such persons will be deterred therefrom by reason of the fear that they will be arrested and prosecuted for the commission of a felony, by reason thereof, and thereupon the property and business of said oil company will be left without any care, control or management, unless your Honors will sequestrate said property and appoint a receiver to take charge of the same, and from the time being conduct the business in which said oil company is now engaged, which can be done by the receiver appointed by this court without violating any of the laws of the State of Texas, which is the only method known to your orator of which he can conceive whereby the property and business of said oil company and the value of the stock therein can be preserved."

And the Waters-Pierce Oil Company filed an answer, wherein they admitted that said facts were true, joining in a prayer for the

appointment of a receiver for the protection of its property and for the protection of the employés and agents of the company.

6. That in said cause pending in the District Court of Travis County, a judgment was entered appointing Robert J. Eckhardt, receiver of the properties and business of the Waters-Pierce Oil Company; that a bond was filed by the company superseding said judgment appointing the receiver; that the judgment of said court in appointing said receiver has been affirmed by the Court of
91 Civil Appeals of the Third Supreme Judicial District; that an application has been made by said company for a writ of error to said court complaining of the action of said court in affirming said judgment; that by a judgment this day rendered by this court, it holds that it has jurisdiction of the case in which said judgment appointing said receiver was rendered, and thereby, that it has legal custody and control of the property and business of the Waters-Pierce Oil Company.

7. That it is necessary for the preservation of the property of the Waters-Pierce Oil Company, for the preservation of the security of the State of Texas, for the prevention of the violation of the laws of the State of Texas, for the safety of the persons in charge of the property of the Waters-Pierce Oil Company, and for the prevention of the conduct of a business in violation of the laws of the State, that the property and business of said Waters-Pierce Oil Company be taken into actual control of this court.

Wherefore, the State of Texas prays that this court direct that Robert J. Eckhardt take actual and physical possession of the property of the Waters-Pierce Oil Company and conduct the business of said corporation under such orders as this court may make pending the final disposition of this cause in this court.

R. V. DAVIDSON,
*Attorney-General.*
JEWEL P. LIGHTFOOT,
*Assistant Attorney-General.*
JOHN W. BRADY,
*County Attorney of Travis County.*
GREGORY & BATTS,
ALLEN AND HART,
*Attorneys for State of Texas.*

92 STATE OF TEXAS, *County of Travis:*

R. V. Davidson, being duly sworn, deposes and says that he has read the foregoing motion and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

R. V. DAVIDSON,
*Attorney-General.*

[SEAL.]

Sworn to and subscribed before me this the 14th day of December, A. D. 1907.

MILTON HARRIS,
*Notary Public, Travis County, Texas.*

Endorsed: Mo. No. 1774. No. —. Waters-Pierce Oil Company *vs.* The State of Texas. Motion for Receiver to take charge of the Property. Filed in Supreme Court, December 14, 1907, F. T. Connerly, Clerk, By J. S. Myrick, Deputy. Overruled Dec. 23, 1907.

*Amended Application for the Appointment of a Receiver.*

Filed December 18, 1907.

No. —.

WATERS-PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

Pending in the Supreme Court of the State of Texas.

To the Honorable the Supreme Court:

Now comes the State of Texas, by her Attorney-General, and files this her amended motion in lieu of the original motion filed herein on the 14th day of December, 1907, and respectfully shows:

1. That heretofore, to-wit, on the first day of June, 1907, a judgment was rendered in the District Court of Travis County, in the case of the State of Texas *vs.* the Waters-Pierce Oil Company, wherein it was adjudged that said company was operating its business within this State contrary to law, and cancelling its permit
93 to do business within this State.

2. In said cause judgment was rendered in behalf of the State of Texas for penalties in the sum of $1,623,900.

3. That by virtue of the statute of the State of Texas, the State has a lien upon all property and assets of said corporation in this State to secure the payment of said judgment.

4. That the conduct of said business by the Waters-Pierce Oil Company by and through its agents and employees constitutes and is a violation of the penal statutes of this State, and each of said employees and agents of said company will become liable to prosecution for such violation of the penal laws, if they should conduct or help to conduct the business of said corporation within this State, or do any act in furtherance of the illegal business of said corporation.

5. That in a proceeding instituted by one Bradley W. Palmer against the Waters-Pierce Oil Company in the Circuit Court of the United States for the Eastern District of Texas, the facts hereinbefore stated were set up and the allegations were therein made that it was necessary that a receiver be appointed to conduct the business of said corporation pending the final disposition of said cause in which said judgment had been rendered, and the following allegations, under oath, were made:

"That by reason of the fact that said oil company have been adjudged to be doing business in violation of the said anti-trust

statutes, and is believed by the officials of the State of Texas, and especially the Attorney-General's Department, and some of the courts of the State of Texas, and especially the District Court of Travis County, before whom said cause was tried, that said defendant oil company is and has been doing business in the State of Texas in violation of said anti-trust statutes, and by reason of the provisions of said two acts passed by the 30th Legislature, making it a felony punishable by confinement in the penitentiary for any one to have any connection with, or represent in any capacity, a corporation doing business in violation of such anti-trust statutes, your orator avers on information and belief that it will be impossible for said oil company to do and transact any business in the State
94 of Texas after the 12th day of July, 1907, because it will be impossible for it (to) procure any managers, agents, salesmen, representatives or other employees to conduct, carry on or aid in the transaction of its business, because all such persons will be deterred therefrom by reason of the fear that they will be arrested and prosecuted for the commission of a felony, by reason thereof, and thereupon the property and business of said oil company will be left without any care, control or management, unless your Honors will sequestrate said property and appoint a receiver to take charge of the same, and from the time being conduct the business in which said oil company is now engaged, which can be done by the receiver appointed by this court without violating any of the laws of the State of Texas, which is the only method known to your orator of which he can conceive whereby the property and business of said oil company and the value of the stock therein can be preserved."

And the Waters-Pierce Oil Company filed an answer, wherein they admitted that said facts were true, joining in a prayer for the appointment of a receiver for the protection of its property and for the protection of the employees and agents of the company.

6. That upon the foregoing application the said Circuit Court of the United States made an order appointing a receiver, who qualified and took immediate possession of all the property of the said Waters-Pierce Oil Company situated in the State of Texas; and thereupon the State of Texas, and Robert J. Eckhardt, who had been, by the District Court of Travis County, Texas, appointed receiver for all the property of the Waters-Pierce Oil Company situated within the State of Texas, acting under instructions from the Honorable Court of Civil Appeals for the Third Supreme Judicial District, in which latter court the controversy was then pending, applied to said Circuit Court of the United States for an order vacating the order appointing a receiver, and restoring the property of the said Waters-Pierce Oil Company to the custody and control of the State Courts. That upon a hearing of said application, the said Circuit Court refused to vacate said order appointing a receiver, and declined to discharge such receiver so appointed; and thereupon the State of Texas and the said Eckhardt prosecuted an appeal to
95 the United States Circuit Court of Appeals for the Fifth Circuit, which latter court reversed and vacated the order of the Circuit Court appointing a Receiver, and ordered said latter court to

discharge the receiver named by it. That the said judgment so reversing and vacating said order has become a final judgment, and the mandate from said Circuit Court of Appeals has been filed in the said Circuit Court. That said Circuit Court has indicated that it would immediately discharge its receiver, if there was a receiver appointed by the State Court ready and able to take possession of the said property. That the effect of the holding and decision of the Circuit Court of Appeals was, that neither the Circuit Court of the United States for the Eastern District of Texas nor any other court, except the District Court of Travis County and the courts to which the cause of action might be carried in a regular way by appeal or writ of error, had or have any jurisdiction whatever over the property in controversy or any right to interfere with the said State Courts in the custody and control of the said property, and the further effect of said holding is technically to make the receiver appointed by the said Circuit Court a naked trespasser so far as the State of Texas and the Waters-Pierce Oil Company are concerned in relation to said property of the Waters-Pierce Oil Company situated within the State of Texas. That the Judge presiding in said Circuit Court has stated in open court that he would make an order in compliance with said mandate from the Circuit Court of Appeals directing his said receiver to forthwith make an inventory of the property in his custody and control by virtue of the said appointment, and to make up his account after paying out of the property of the Waters-Pierce Oil Company all liabilities incurred by said receiver, and to state his account in regard thereto, and that upon the coming in of such inventory and account, he would dis-
96 charge his receiver and instruct him to turn loose the possession of the property. That the Waters-Pierce Oil Company, which the Circuit Court of Appeals has held was the legal custodian of said property under the supersedeas bond given in this cause, stated in open court in reply to the above suggestions that it was not ready or willing to take said property at this time; that it had no agents in the State of Texas; did not have a single representative in the State to take charge or possession of it, and the State is informed and believes and so charges the fact to be that it can get no agent who is willing to hold the property and conduct and carry on the business of the company, on account of the matters and things hereinbefore alleged. That under and by virtue of the order made by the District Court of Travis County, Texas, appointing a receiver for the property of the Waters-Pierce Oil Company and an injunction issued by it restraining the Waters-Pierce Oil Company from removing its property beyond the limits of the State of Texas, the said Waters-Pierce Oil Company or any person acting for or on its behalf or with its consent is prohibited from removing any property beyond the limits of the State, and the statutes and the obligation of its supersedeas bond given in this cause requires it to keep all of said property within the State of Texas subject to the orders and instructions of this court. That by reason of the taking possession of said property by a foreign receiver in a foreign jurisdiction with the consent and connivance of the Waters-Pierce Oil Com-

pany, a great deal of the property involved in this controversy has been changed in substance and in form; that many thousands of dollars worth of property has been sold and converted into money and the money in turn used in the purchase of other property; that many obligations have been incurred by the said receiver of a foreign jurisdiction, which it is claimed will be a charge and
97 lien upon said property that the State Courts are entitled to control and preserve; that many obligations are daily being incurred which it is claimed are a charge and lien upon said property, and the said property is being changed in form and character to such an extent that it cannot be traced or followed up and is, therefore, put beyond the reach of this court and the other State Courts, in case the judgment appointing a receiver is affirmed; that the said Waters-Pierce Oil Company, by virtue of its consent and connivance at said proceeding in said Circuit Court for the Eastern District of Texas has put it beyond it- power to carry out or abide by the decision of the court in case it should be against it in this cause, in so far as a large part of the property is concerned, that it had in its possession and control in the State of Texas at the time the receiver was appointed by the State Court and the injunction granted therein. That it will be further put beyond its power and control, if a receiver is not appointed or authorized by this court to take charge of said property; that the State is informed and believes and so charges that a large part of the corpus of the property over which the State Courts have exclusive control have been used in the payment of liabilities incurred by the receiver appointed by the Federal Court, including compensation to the said receiver and to his attorney and other agents and employees of the said Receiver, and that this is in violation of the rights of the State to have all of said property kept intact in accordance with the law and obligations arising by virtue of the above set out proceeding and the supersedeas bond given by the Waters-Pierce Oil Company herein, as well as in violation of the judgment, sentence and decree of the Circuit Court of Appeals reversing and vacating said order. That all of the acts and things done by the Circuit Court, as above set out, are in direct violation of and an infringement of the
98 prerogatives of this court and the other courts to which this cause has or may go upon appeal.

That the State of Texas is asserting a lien upon all of the property of the Waters-Pierce Oil Company situated within the State of Texas to secure the State in the payment of penalties for violating the anti-trust law for the period of time covering about seven years or more than seven years; that if the judgment recovered for penalties and forfeiture of franchise should be reversed by the Court of Civil Appeals or this court or the Supreme Court of the United States, that it would then be within the power of the Waters-Pierce Oil Company to quickly dispose of its entire holdings, such holdings being largely personal property, or convert the same into money as a great deal of it has been converted and is being converted, and remove the same beyond the limits of the State, and the State would be without a remedy to enforce any judgment that it

might thereafter obtain, unless a receiver or custodian is appointed by this court, or this court direct the receiver heretofore appointed and qualified in the District Court, to take charge of said property; that on account of the recall by this court of the mandate issued by the court of Civil Appeals, the said Robert J. Eckhardt's powers are suspended pending the final disposition of the cause in this court, and the said Eckhardt nor no other receiver appointed by any court, except this court, can legally take possession of or control said property, pending the final disposition of the case in this court, and that, as above stated, the rights of all parties and, especially, the State of Texas are liable to be greatly jeopardized and the property wasted and dissipated and changed and misappropriated.

7. That in said cause pending in the District Court of Travis County, a judgment was entered appointing Robert J. Eckhardt receiver of the properties and business of the Waters-Pierce Oil
99 Company; that a bond was filed by the company superseding said judgment appointing the receiver; that the judgment of said court in appointing said receiver has been affirmed by the Court of Civil Appeals of the Third Supreme Judicial District; that an application has been made to this court by said company for a writ of error to said court complaining of the action of said court in affirming said judgment; that by a judgment rendered by this court, it holds that it has jurisdiction of the case in which said judgment appointing said receiver was rendered, and thereby, that it has legal custody and control of the property and business of the Waters-Pierce Oil Company.

8. That it is necessary for the preservation of the property of the Waters-Pierce Oil Company, for the preservation of the security of the State of Texas, for the prevention of the violation of the laws of the State of Texas, for the safety of the persons in charge of the property of the Waters-Pierce Oil Company, and for the prevention of the conduct of a business in violation of the laws of the State, that the property and business of said Waters-Pierce Oil Company be taken into actual control of this court.

Wherefore, the State of Texas prays that this court revoke its order recalling the mandate of the Court of Civil Appeals or direct that Robert J. Eckhardt take actual and physical possession of the property of the Waters-Pierce Oil Company and conduct the business of said corporation under such orders as this court may make pending the final disposition of this cause in this court, and for general relief.

R. V. DAVIDSON,
*Attorney-General.*
JEWEL P. LIGHTFOOT,
*Assistant Attorney-General.*
JOHN W. BRADY,
*County Attorney of Travis County.*
100 GREGORY & BATTS,
ALLEN & HART,
*Attorneys for State of Texas.*

THE STATE OF TEXAS, *County of Travis:*

J. P. Lightfoot, being duly sworn, deposes and says, that he has read the foregoing motion and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

[SEAL.] J. P. LIGHTFOOT.

Sworn to and subscribed before me this the 17th day of December, A. D. 1907.

MILTON HARRIS,
*Notary Public, Travis County, Tex.*

(Endorsed:) With Mo. No. 1774. Waters-Pierce Oil Co. *vs.* The State of Texas. Amended Application for the Appointment of a Receiver. Filed in Supreme Court of Texas, Dec'r 18, 1907. F. T. Connerly, Clerk.

CLERK'S OFFICE SUPREME COURT.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above and foregoing eleven pages contain a true and correct copy of the original motion and a true and correct copy of the amended motion for the appointment of a Receiver, filed in this court respectively, Dec. 14th, 1907 and Dec. 18th, 1907 in motion No. 1774, Waters Pierce Oil Company *vs.* The State of Texas, and now on file in this office. Witness my hand and the seal of said court at the City of Austin, this the 3rd day of April, A. D. 1908.

[SEAL.] F. T. CONNERLY,
*Clerk of the Supreme Court of Texas.*

(Endorsed:) Mo. No. 1774. Waters Pierce Oil Co. *vs.* The State of Texas. Certified copy of original and amended motion. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, April 13, 1908. R. H. Connerly, Clerk.

101 *Opinion.*

Filed Dec. 23rd, 1907.

No. 1774.

WATERS-PIERCE OIL COMPANY, Plaintiff in Error,
*vs.*
THE STATE OF TEXAS, Defendant in Error.

From Travis County, Third District.

In this opinion we will give our reasons for the disposition made on a former day of this term of a motion presented by the Waters-

Pierce Oil Company on substantially the following statement of facts.

The Waters-Pierce Oil Company is a corporation created under the laws of the State of Missouri, which had been admitted by the authorities of this state to transact business in Texas under a permit duly issued. The state instituted suit in the district court of Travis County against the said Oil Company to forfeit its permit to do business in this state and also to recover from it penalties for the violation of the anti-trust statutes of the state of Texas. Upon a trial in the district court the state recovered judgment for $1,623,000.00 as penalties and declared the permit of the company to do business in this state forfeited. On a subsequent day to the judgment and during the term the Judge of the district court, upon motion of the state, appointed Robert J. Eckhardt receiver for the said corporation. After a motion for new trial had been overruled in that proceeding and also in the main case the Oil Company gave notice of appeal in the original case as well as in the proceedings for appointment of receiver and executed a bond in the main case according to law in double the amount of the judgment, and in the proceedings under the motion of the state for appointment of receiver a bond was given in the amount prescribed by the Judge of the district court, conditioned as required by law for a super-
102 sedeas bond. Two records were filed in the Court of Civil Appeals, one embracing both the main case and the motion for the appointment of a receiver and the other embracing only the proceedings upon the motion of the State for the appointment of a receiver. In the Court of Civil Appeals the Waters-Pierce Oil Company moved to consolidate the cases, which motion was by that court denied, and the judgment of the district court, appointing a receiver, was affirmed. Motion for rehearing of that judgment in the Court of Civil Appeals was filed in due time and by the court overruled. On the same day a mandate was issued by the clerk of the court of Civil Appeals and transmitted to the clerk of the District Court of Travis County, Texas. The judge of the district court entered an order based upon the mandate directing Eckhardt to proceed as receiver to discharge his duties. The Waters-Pierce Oil Company filed in the Court of Civil Appeals and presented to this court within the time prescribed by law a petition for writ of error, which is now pending before this court. The Waters-Pierce Oil Company filed in this court a motion setting up the facts before stated and praying that this court enter an order directing the clerk of the Court of Civil Appeals to recall the mandate sent by him to the clerk of the district court, and also directing the judge of the district court to vacate an order which he had entered upon receipt of that mandate directing the receiver to take charge of the property. At a former day of this term, on hearing the motion, this court directed the clerk of the Court of Civil Appeals to recall the mandate sent down by him to the district court, and also directed the Honorable Judge of the District Court to set aside the order made by him upon receipt of the said mandate.

After this court granted the motion to recall the mandate issued

by the Court of Civil Appeals to the District Court, the State of Texas, by her Attorney General, filed in this court a motion
103 reciting the facts before stated and added the following grounds upon which the motion rested. (1) That it was adjudged by the district court that the Waters-Pierce Oil Company was conducting its business in violation of the law, and that the said judgment cancelled the permit of the company to do business on this state. (2) That judgment had been entered in favor of the State of Texas against the said company for $1,623,000.00. (3) That the State has a lien upon all of the property of the said company within this State to secure payment of the said judgment. (4) That conducting the business of the Waters-Pierce Oil Company by that company or its agents in the State would be in violation of the penal laws of this State. (5) That in a proceeding in the United States Circuit Court, wherein Bradley W. Palmer, one of the Stockholders of the company, was the plaintiff, C. B. Dorchester was appointed receiver for the said company and took possession of the property and that upon appeal by the State, the Circuit Court of Appeals of the United States decided that the Circuit Court did not have jurisdiction and ordered the Circuit Court to discharge the receiver. (6) The motion sets out the facts of the proceeding of the Circuit Court of the United States, which are not necessary to this statement. It is alleged in the said motion that the property, while in the hands of Dorchester and under the orders of the Circuit Court of the United States, was applied to the payment of the expenses of that administration and the debts contracted by the receiver, and the other property or proceeds thereof would be hereafter so applied to the detriment of the State and the impairment of its lien. That in case the property should be returned to the possession of the Waters-Pierce Oil Company it would be liable to be wasted or removed from the State. The motion also set up that the Judge of the Circuit Court of the United States had declared that he would discharge the receiver in accordance with the mandate
104 of the Circuit Court of Appeals of the United States, and that in case he should do so there is no person to receive the property and take control of it and transact the business, as the operation of the business by the Waters-Pierce Oil Company in this State would be unlawful. The motion concludes then in the following language: "That it is necessary for the preservation of the property of the Waters-Pierce Oil Company, for the preservation of the property of the Waters-Pierce Oil Company, for the preservation of the security of the State of Texas, for the prevention of the violation of the laws of the State of Texas, for the safety of the persons in charge of the property of the Waters-Pierce Oil Company, and for the prevention of the conduct of a business in violation of the laws of the State, that the property and business of said Waters-Pierce Oil Company be taken into actual control of this court.

"Wherefore, the State of Texas prays that this court revoke the order recalling the mandate of the Court of Civil Appeals or direct that Robert J. Eckhardt take actual and physical possession of the property of the Waters-Pierce Oil Company and conduct the busi-

ness of said corporation under such orders as this court may make pending the final disposition of this cause in this court, and for general relief."

On the hearing of the motion of Waters-Pierce Oil Company to recall the mandate of the Court of Civil Appeals from the District Court it was objected by counsel for the State that if the Waters-Pierce Oil Company be correct in its contention that this was not an independent suit but only an incident of the main controversy, a writ of error could not be separately prosecuted, therefore, the case was not properly before this court. It is sometimes the case that there may be more than one appeal in the same case
105 when orders are made at different times which finally dispose of the subject matter of that particular order. A familiar instance is a case of partition wherein there may be a decree which determines the rights of the parties in the property and is a final judgment upon the merits of the case. From this an appeal may be taken leaving the case before the court for the purpose of actual division of the property among the claimants according to the decree entered. When the partition shall have been made and the decree of partition entered there is another final judgment or order from which an appeal may likewise be taken. (White *v.* Mitchell, 60 Tex., 164; Moor *v.* Moor, 63 S. W., 357.)

The order appointing the receiver, although made subsequently to the date of the judgment but at the same term, might have been reviewed in the appeal of the principal case. The parties have treated this as a separate proceeding presenting separate records to the Court of Civil Appeals and that court has passed upon it as a separate and distinct case from the main suit, but the separation of the two can not deprive appellant of the benefit of a review of the order; this court has jurisdiction of the case as it is presented.

It is also objected by the State's counsel that this court has no jurisdiction of this branch of the proceeding, because the order appointing the receiver is an interlocutory order, and this court has jurisdiction only of final judgments of the Court of Civil Appeals. If this be an interlocutory order, then the objection is well taken, for this court has no jurisdiction to review such an order of the district court and of the court of Civil Appeals. Mr. Freeman defines an interlocutory judgment in the following language: "An interlocutory decree is one made pending the cause and before the hearing on the merits." (Freeman on Judgments, Sec. 29.) This definition has been approved by this court in the case of Linn
106 *v.* Arambou[illegible] (55 Tex., 611). Mr. Freeman defines a final decree as foll[illegible]: "A final decree is one which disposes of the cause either by sending it out of the court before a hearing is had on the merits, or after a hearing on the merits, decreeing either in favor of or against the prayer of the bill." The order clearly comes within the definition of a final decree or order, for so far as the defendant was concerned, it finally disposed of the matter then before the court, which was, the appointment of a receiver to take the property into his custody as a consequence of the complete determination of the controversy. If the contention were sustained, the de-

fendant would be deprived of the right to have that order reviewed by this court. (Art. 1383, Rev. Stat.; Renn. *v.* Ramos, 42 Tex. 104; Shulte *v.* Huffman, 18 Tex., 678; Fitts *v.* Fitts, 14 Tex. 443; Watson *v.* McKinnon, 73 Tex., 215; Carter *v.* Hightower, 79 Tex., 135.) In each of the cases just cited a receiver had been appointed in the trial court and this court entertained jurisdiction of the matter and passed upon the questions raised as follows: In Fitts *v.* Fitts, the appointment was made in the final decree, and, for the purpose of enforcing it, objection was made to the appointment of the receiver, but the court affirmed that judgment. In Schulte *v.* Huffman, the appointment of a receiver was made to carry out the final judgment of the court, and, upon objection being made, the Supreme Court affirmed the judgment of the district court making the appointment. In Watson *v.* McKinnon, the trial court refused to make the appointment of a receiver and, upon appeal, complaint was made of that refusal, which action the Supreme Court reviewed and reversed. If the order of the court refusing the appointment of a receiver was subject to review by the Supreme Court, certainly an order by which a receiver was appointed would be likewise subject to review. In Carter Bros. *v.* Hightower, a receiver was ap-
107 pointed by the trial court, of which complaint was made upon appeal. This court reviewed the action of the trial court in making the appointment and affirmed the order. At the time those cases were passed upon by the Supreme Court it had no authority to review an interlocutory order of any kind, and, while the question was not made in either of the cases, the action of the Supreme Court necessarily involved the proposition that the court regarded the order as being final, else it would not have had jurisdiction to enter the orders concerning the appointment that were made in that court. We regard these cases as strongly supporting our ruling in maintaining jurisdiction of this court over the order of the district court in making the appointment of a receiver in this court.

The affirmance of that order being a final judgment of the Court of Civil Appeals, this court had jurisdiction by writ of error to review the proceedings of the courts in that matter, and, the appellant in the Court of Civil Appeals having a right to present to this court an application for writ of error, the clerk of that court had no authority to issue the mandate on the judgment of the Court of Civil Appeals until the expiration of the time allowed by law for the filing of an application for writ of error in that court. The application for writ of error having been presented in this court it was necessary that the mandate of the Court of Civil Appeals, which was prematurely issued, should be returned to that court to await the action and judgment of the Supreme Court. We therefore held that the appellant is entitled under its motion to have an order directing the clerk of the Court of Civil Appeals to recall the mandate and also directing the judge of the district court to set aside the order which he had made based upon that mandate. In passing upon that motion we have confined ourselves strictly to the question of the right of this court to entertain jurisdiction of the ap-
108 plication filed with it and the power of the court to direct the recall of the mandate. That decision in no wise interferes

with any authority that the district court or the receiver could lawfully exercise over the property of the Oil Company during the pendency of that appeal.

Upon the motion of the Attorney General requesting this court to appoint a receiver in this case it is insisted by counsel that this court has jurisdiction of the matter because the appeal which was taken from the order appointing the receiver is void, the bond not having been given in double the amount in controversy. It is also claimed that there is no bond prescribed by the statute which will apply to an appeal from this order. Article 1388, Revised Statutes, provides: "An appeal or writ of error may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases." The order in question is a final judgment of the district court from which an appeal might be taken under the provisions of the above quoted article. If the statute prescribes no bond, then we are of the opinion that the court granting an appeal under this provision of the law might fix the amount of the bond adequate for the protection of the rights of the parties, which the court here did. However, if it were held that this case must rest upon the bond given therein and that it should be for a sum double the amount of the judgment, the appeal would not be void, because the bond could have been amended upon objection made in the Court of Civil Appeals. The objection not having been made in the Court of Civil Appeals as to the amount of the bond, nor any effort made to dismiss the appeal on that account, the objection comes too late in this proceeding.

The effect of the appeal when perfected is prescribed by Article 1404, Revised Statutes, in these words: "Should the appel-
169 lant or plaintiff in error, as the case may be, desire to suspend the execution of the judgment, he may do so by giving, instead of the bond or affidavit in lieu thereof, mentioned in the four preceding articles, or in addition to such bond, a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to appellee or defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect, and in case the judgment of the Supreme Court or the court of civil appeals shall be against him, he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him." This is plain language that can not be construed, because its meaning is as definite as could be expressed to the effect that when the appellant or plaintiff in error complies with the law the judgment can not be enforced during the pendency of the appeal. It only needs to be said that the law applies to this case and the enforcement of the order appointing the receiver was suspended by the appeal. (Williams *v.* Pouns, 48 Tex., 141; Street Ry. Co. *v.* Street Ry. Co., 68 Tex., 163; G. C. & S. F. Ry. Co. *v.* Ft. W. & N. O. Ry. Co. 2 S. W. 199; Griffin *v.* Wakelee, 42 Tex., 513; Stone *v.* Spillman, 16 Tex. 432; Beach on Receivers, Sec. 117.)

This court has no power to direct or authorize Eckhardt to take

charge of the property of the defendant company when the statute expressly provides that the giving of the appeal bond shall suspend the action of the court in that regard. If the appeal did not have the effect to suspend the execution of the order, the judge had authority to limit the appointment as he did by his order in which it is thus expressed: "And now on this the 15th day of June, 1907, in open court it is ordered by the court in the above cause, that
110 $100,000.00 be and the same is hereby fixed as the amount of bond which the defendant shall be required to give in order to supersede the judgment of the court placing defendant's property in the hands of a receiver; and,

"It is further ordered that upon the approval by the court and the filing with the clerk by defendant of a good and sufficient bond conditioned as required by law for said amount, further proceedings herein be suspended pending appeal.

"But this order shall not effect or rescind the order heretofore entered prohibiting and enjoining the defendant, its servants, officers, agents and attorneys from removing any of its property or assets beyond the limits of the State of Texas, but said injunction shall remain in full force and effect pending the appeal from the order appointing a receiver herein." We do not, however, intimate a doubt upon the proposition which we have asserted, that the appeal by the filing of the bonds by the defendant in that court suspended the operation of the order appointing the receiver until the final decision of the case.

The State, by her Attorney General, moves this court to appoint a receiver to take actual possession of the property of the Waters-Pierce Oil Company. This involves an inquiry into the scope of the powers which the constitution has granted to this court, and an inquiry as to whether the act which is requested of this court would constitute the exercise of appellate or of original jurisdiction. Section 3 of Article V of the Constitution defines the powers of the Supreme Court in the following terms: "The Supreme Court shall have appellate jurisdiction only, except as herein specified, which shall be coextensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of
111 which the courts of civil appeals have appellate jurisdiction, under such restrictions and regulations as the legislature may prescribe. * * * The legislature may confer original jurisdiction on the Supreme Court to issue writs of *quo warranto* and *mandamus* in such cases as may be specified, except as against the Governor of the State." In pursuance of the authority granted by the constitution the legislature has defined the appellate jurisdiction of the Supreme Court in this language: "The Supreme Court shall have appellate jurisdiction coextensive with the limits of the State which shall extend to questions of law arising in civil cases in which the courts of civil appeals have appellate but not final jurisdiction." It is unnecessary for us to enumerate the different provisions of the statutes which limit and further define the jurisdiction of this court within the general terms hereinbefore copied. The legislature has defined the original jurisdiction of this

court as follows: "The Supreme Court or any justice thereof shall have power in term time or vacation to issue the writs of *quo warranto or mandamus* against any district judge or officer of the state government, except the governor of the state." The legislature has also specified the cases in which the Supreme Court may issue writs of *habeas corpus*, but it is unnecessary to quote or cite the statute.

In Brownsville *v.* Basse, 43 Tex., 449, this court defined appellate jurisdiction as follows: "Appellate jurisdiction, with which alone this court is invested in passing upon civil causes, is defined to be the power and authority conferred upon a superior court to rehear and determine causes which have been tried in inferior courts."

By the application of this definition of appellate jurisdiction and the statutory provisions as to the original jurisdiction of this court we must ascertain whether the act of making the requested
112 appointment is embraced in either the appellate or original jurisdiction of this court. It is manifest that the act of appointing a receiver to take charge of the property of the Waters-Pierce Oil Company would not come within the terms of the statute which confer upon this court original jurisdiction in the use of the writs of *quo warranto* and *mandamus* for by neither of these writs could the appointment be made. The conclusion is absolute that if the original jurisdiction of this court must be invoked to make the appointment sought, then the court is without power to grant the motion. It would be a waste of words and time to argue a proposition so self-evident.

Can the prayer of the motion be granted by the exercise of the appellate jurisdiction of this court? Looking to the clear definition of our powers by the constitution, by the statute law and by the decision of the court above quoted, this court has no authority over this matter, unless it be in the exercise of its revisory authority whereby some ruling made, and order or judgment entered by the trial court or by the Court of Civil Appeals in its proceedings in this case is brought under review. It is not claimed that the trial court committed any error in the appointment of a receiver for the Waters-Pierce Oil Company, nor that the Court of Civil Appeals erred in the affirmance of that judgment, and the State does not seek to revise, reverse or set aside any order, judgment or decree rendered by the district court or any action taken therein by the Court of Civil Appeals. It is therefore certain to the point of demonstration that the power to make the appointment does not come within the appellate jurisdiction and authority of this court over the case, unless it is brought within the rule which is well expressed in these terms. "Every regularly constituted court has inherent power to do all things that are reasonably neces-
113 sary for the administration of justice within the scope of its jurisdiction and to prevent any abuse of its process." (8 Am. & Eng. Ency. Law, 28.) The powers of the receiver being suspended by the appeal taken by the Waters-Pierce Oil Company we must inquire in what manner that company is interfering with the exercise by this court of its lawful powers in the revision of the pro-

ceedings in that case. If it were made to appear that a receiver in the active discharge of his duties was necessary to enable this court to exercise its authority over the case and to revise the action and ruling of the inferior courts, we do not doubt that this court would have the power to appoint a receiver in order to enable it to perform its duties of revising and correcting whatever errors might be made to appear in the proceedings of the lower courts. Nor would this court hesitate to exercise the implied or inherent power arising from its constitutional authority if the facts presented made such a case. Accepting as true the allegations of the motion made in this case that the Waters-Pierce Oil Company, if permitted to use the property, will violate the laws of the State of Texas, and that the safety of the persons in charge of the property of the Waters-Pierce Oil Company would be endangered by conducting the business in violation of the laws, we must inquire if either of those acts would in any manner interfere with this court in discharging its duty of revision as an appellate court. We are not able to see wherein the action of the Supreme Court would be affected by such conditions. If in the use of its property the Waters-Pierce Oil Company should violate the laws of the State during the pendency of its appeal it would be liable to prosecution and punishment in the same manner as for acts done before the trial of this case, and if the safety of the persons in charge of the property is endangered in any manner the courts are open to them to seek their protection where the jurisdiction
114 has been lodged by the constitution of this State for such purposes. The trial court has no less power now to prevent a violation of the laws of this State by the conducting of the business of the Waters-Pierce Oil Company than it had before the trial. As none of these things would in any way interfere with this court in the discharge of its duty, they do not fall within the scope of its appellate jurisdiction, therefore do not come within the scope of the jurisdiction of this court. It is also said that it is necessary in order to preserve the security that the State of Texas has for the collection of its judgment to have a receiver in custody of the property, but no facts are stated which show that there is any threatened invasion of the jurisdiction of this court by which that security would be impaired. The law provides for a bond as security for the State in the collection of its judgment, and we are authorized to presume that a solvent bond has been taken by the trial court, and the law having prescribed a sum double the amount of the judgment rendered, we must conclude that it would afford security to the State in the enforcement of its judgment. This court will presume that all of these things have been properly done, and, indeed, if they were not, they are not matters over which this courts has appellate jurisdiction.

In argument counsel appealed to this court to interfere, because it was asserted that in case this court or the Supreme Court of the United States should reverse the judgment which the State obtained in the district court, then the Waters-Pierce Oil Company would be enabled to dispose of its property and evade the collection of the penalties and fines which the State has a right to recover

against it. This court cannot indulge the presumption that the law will be violated or that either this court or the Supreme Court of the United States will reverse a judgment which comes to
115 this court with the presumption in favor of its correctness. Such a condition of things, if it should ever exist, must arise necessarily after the time when the jurisdiction of this court over the subject matter will have ceased. The Supreme Court is not called upon by this motion to preserve the status of the case as it existed after the proceedings in the trial court and Court of Civil Appeals, but to change that status and put the affairs of this company and this litigation in an entirely different attitude from that in which by the lawful proceedings of the courts we find it. The questions decided by the Circuit Court of Appeals of the United States are not involved in this proceeding and nothing in this opinion is intended to antagonize the conclusions reached by that court.

The purpose of this motion is to have this court create new conditions—to change the status fixed by the trial court, which this court has no power to do. (Laredo *v.* Martin, 52 Tex., 554.) In the case cited an injunction had been refused by the trial court and application was made to the Supreme Court for an injunction which the court refused, saying: "The issuance of an injunction for such a purpose would be the exercise of original, and not appellate, jurisdiction in the case. It would be doing that which, it is contended, the district court should have done before the trial. * * * It could not, then, have been contemplated to give this court power to issue an injunction, in the first instance, to prevent damage to the parties during the pendency of this suit." If the receiver had been in possession of the property when the appeal was taken, this court would have power to maintain that possession during the pendency of the case in this court. (Havermeyer *v.* Superior Court, 84 Cal., 327; G. C. & S. F. Ry. Co. *v.* Ft. W. & N. O. Ry. Co., 68 Tex., 98.)

116 Without further discussion of the question it is sufficient for us to say that this court has not been entrusted with any such unlimited authority and cannot and will not exercise authority which has not been delegated to it by the people of this State.

The motion is overruled.

T. J. BROWN,
*Associate Justice.*

(Endorsed:) Mo. No. 1774. Waters-Pierce Oil Co. *vs.* The State of Texas. Opinion. Filed in Supreme Court Dec. 23rd, 1907. F. T. Connerly, Clerk, By J. S. Myrick, Deputy. Associate Justice Brown. Overruled.

CLERK'S OFFICE, SUPREME COURT.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above and foregoing fifteen pages contain a true and correct copy of the original Opinion of the Supreme Court of Texas, in motion No. 1774, Waters Pierce Oil Company, *vs.* The State of Texas, now on file in this office. Witness my hand and the seal of

said court at the City of Austin, this the 3rd day of April, A. D. 1908.

[SEAL.] F. T. CONNERLY,
*Clerk Supreme Court of Texas.*

(Endorsed:) Mo. No. 1774. Waters Pierce Oil Company *vs.* The State of Texas. Certified copy of Opinion of Supreme Court of Texas. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas. Apr. 13 1908. R. H. Connerly, Clerk.

117 *Judgment of Supreme Court of Texas Refusing Application for Writ of Error, Rendered February 26th, 1908.*

In Supreme Court of Texas.

WATERS PIERCE OIL CO.
*vs.*
THE STATE OF TEXAS.

From Travis County, 3rd District.

FEBRUARY, 26TH, 1908.

This day came on to be heard the application of Waters Pierce Oil Co., for a writ of error to the Court of Civil Appeals for the Third District, and the same having been duly considered, it is ordered that said application be refused; that the applicant Waters Pierce Oil Company and its surety American Surety Company of New York pay all costs incurred on this application.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court on the application for writ of error in the above styled cause. Witness my hand and the seal of said court this the 26th day of March A. D. 1908.

[Seal of Supreme Court of Texas.]

F. T. CONNERLY, *Clerk*,
By J. S. MYRICK, *Deputy*.

Motion for rehearing overruled March 25th, 1908.

(Endorsed:) Application No. 5668. Waters Pierce Oil Co. *vs.* The State of Texas. Copy of Judgment in Supreme Court. Application for writ of error. Refused. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Mar. 26, 1908. R. H. Connerly, Clerk.

118 *Bill of Costs in Supreme Court of Texas.*

CLERK'S OFFICE, SUPREME COURT.

No. 5668.

WATERS PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

Certified Copy Bill of Costs, Supreme Court.

| | |
|---|---|
| Filing Application | .50 |
| Docketing petition | .50 |
| Entering appearance of counsel | .50 |
| Filing two briefs | .60 |
| Filing three papers | .90 |
| Entering orders | 1.00 |
| Entering judgment on application | 1.00 |
| Certified copy of judgment | 1.00 |
| Taxing costs of application | .50 |
| Certified copy bill of costs | 1.00 |
| Filing and entering motion | .55 |
| Total | $8.05 |

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above copy of the original bill of costs is true and correct. Witness my hand and seal of said court, at Austin, this the 26th day of March, 1908.

F. T. CONNERLY, *Clerk.*

(Endorsed:) Application No. 5668. Certified copy Bill of Costs in Supreme Court, Austin. Waters Pierce Oil Co. *vs.* The State of Texas. $8.05. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas. Mar. 26, 1908. R. H. Connerly, Clerk.

119 *Bill of Costs in Court of Civil Appeals.*

No. 4213.

WATERS PIERCE OIL COMPANY
*vs.*
THE STATE OF TEXAS.

Appeal from Travis County.

| | |
|---|---|
| Filing record | .50 |
| Docketing cause | .50 |
| Appearances | 1.00 |

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| Filing briefs | .80 |
| Filing and entering 3 motions | 1.05 |
| Orders | 4.50 |
| Filing 29 extra papers | 2.90 |
| Continuance | .20 |
| Judgment | 1.00 |
| Taxing costs | .50 |
| Issuing 2 mandates | 2.00 |
| Recording opinion | 2.00 |
| Certified copy bill of costs | .75 |
| Notices, 34, @ 50¢ | 17.00 |
| Copy of orders to Supreme Court | 2.00 |
| Certified copy of order to lower court | .75 |
| Costs of State Supreme Court | 8.05 |
| Copy of Motion | 3.50 |
| Issuing 1 precept | 1.00 |
| Sheriff's fees | 1.00 |
| Transcript fee to U. S. Sup. Court | 77.00 |
| Total | $128.00 |

120 In the Supreme Court of the United States.

Between—

THE WATERS-PIERCE OIL COMPANY (Defendant), Plaintiff in Error,
and
THE STATE OF TEXAS (Plaintiff), Defendant in Error.

*Assignment of Errors.*

The defendant the said Waters-Pierce Oil Company says that in the record and proceedings aforesaid and in giving and affirming the judgment aforesaid of the District Court and in the order appointing a receiver as a consequence of the said judgment there is manifest error in this to-wit

1. That it was decided in and by the said judgment that the defendant the Waters-Pierce Oil Company which was incorporated under the laws of Missouri on the 29th May 1900 and not before was liable to the penalties imposed by the statute of 1903 in the record mentioned for and on account of the acts of the Standard Oil Company in acquiring a majority of the shares of the Waters-Pierce Oil Company before the said statute of 1903 was passed or took effect which acts were not done in the state of Texas. And by means thereof the defendant the Waters-Pierce Oil Company is thereby deprived of its property without due process of law. And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provisions of

the said Constitution forbidding the passage of any *ex post facto* law by any state.

2. There is also manifest error in this that it was decided in and by the said judgment that the said Waters-Pierce Oil Company was liable to the penalties imposed by the statute of 1899 in the record mentioned for and on account of a supposed union or combination of its capital with the capital of the Standard Oil Company by means of acts done by the said Standard Oil Company long before the passage of the said statute and long before the incorporation of the said Waters-Pierce Oil Company in acquiring a majority of
121 the shares of another then existing company (hereinafter called the old Waters-Pierce Company) incorporated under the laws of Missouri by the same name as the said Waters-Pierce Oil Company which acts were not done in the state of Texas. And by means thereof the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law. And it was also thereby decided that the said statute was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same as far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post facto* law by any state.

There is also manifest error in this that it was decided in and by the said judgment that the defendant the Waters-Pierce Oil Company was liable to the penalties imposed by the said statutes of 1899 and 1903 respectively for and on account of certain supposed agreements or understandings entered into before the passage of either of the said statutes between the Standard Oil Company and the old Waters-Pierce Company whose property and business the defendant the Waters-Pierce Oil Company afterwards acquired without becoming in any way bound by or answerable in respect of any of the said supposed agreements or understandings and never became so bound or answerable or did any act in carrying any of them into effect which supposed agreements or understandings if they existed were entered into out of the state of Texas. And by means of the said decision the said Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution.

There is also manifest error in this that the Court upon hearing the exceptions of the defendant to the plaintiff's amended original petition before the said trial overruled among others of them the exception (No. 9) whereby the defendant excepted to all parts and paragraphs of the said petition by which it was sought to hold the defendant subject to the provisions of the said statute of 1903 and to cancel its permit to do business in Texas and to recover penalties against it on account of the alleged holding or ownership by the Standard Oil Company of New Jersey of a majority of its stock because according to the allegations in the said petition the said
122 stock was so held and owned by the said Standard Oil Company at and long prior to the passage of the said statute of 1903 and its ownership of the said stock being a vested right and not in violation of the laws of the state of Texas when the defend-

ant's permit to transact business in Texas was granted to it on May 31st 1900 it was not competent or within the constitutional power of the legislature of the state of Texas to interfere with such ownership or divest the said Standard Oil Company of its said property or to make it an offense by the defendant subjecting it to penalties and to a forfeiture of its said permit for such vested ownership to continue and that the said statute of 1903 is violative of the Constitution of the United States for that it is both *ex post facto* and retroactive in its operation and for the additional reason that if given the effect of prohibiting the continuance of such ownership of the said stock by the said Standard Oil Company and of making it an offense on the part of the defendant for such holding to continue it would deprive the defendant of its property without due process of law and deny to the defendant the equal protection of the laws and impair the obligations of a contract contrary to the provisions of the said Constitution in the said exception referred to and for these reasons the defendant therein said that it was apparent that all allegations in the said petition with respect to the alleged ownership of the defendant's stock by the Standard Oil Company should be stricken out and of this special exception the defendant prayed the judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said majority of the stock of the defendant before the passage of the said statute of 1903 and continuing afterwards to hold the same. And the defendant has thereby been denied the equal protection of the laws and is deprived of its property without due process of law. And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by
123 any state.

5. There is also manifest error in this that the Court in like manner also overruled another of the said exceptions (No. 20) to the said petition whereby if the Court should construe the plaintiff's petition as alleging that the defendant was the same corporation—the same entity as the old Waters-Pierce Company (which the said petition does plainly allege) then the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provisions of the said statute of 1899 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreement between the defendant and the said Standard Oil Company or on account of the alleged agreement between the defendant and the said Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the reason that if the petition be so construed it then affirmatively appeared from the said petition that the said alleged ownership of the stock of the defendant by the

said Standard Oil Company existed at the time of and prior to the taking effect of the said statute of 1899 and that all of the said alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character of the said alleged agreements so set forth in the said petition it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the legislature to authorize the recovery against the defendant of the penalties provided for in the said statute on account of the continuation of the said alleged ownership of its stock by the said Standard Oil Company or on account of the performance by this defendant of any of the alleged agreements so alleged to have
124 been made prior to the taking effect of *of* the said statute then such act so construed would be violative of the said Constitution in that it would be retroactive in its effect and impair the obligations of contracts and deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1899 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters-Pierce Company before the passage of the said statute of 1899 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such majority of the shares of the defendant the Waters-Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of the alleged agreements and understandings between the old Waters-Pierce Company and the said Standard Oil Company and the said other corporations and persons entered into before the passage of the said statute of 1899 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor. And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law.

6. There is also manifest error in this that the Court in like manner also overruled another of the said exceptions (No. 21) to the said petition whereby the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provisions of the said statute of 1903 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreements between the defendant and the said Standard Oil Company *or on account of the alleged agreements between the defendant and the said*

*Standard Oil Company* and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the reason that it affirmatively appeared from the said petition that the alleged ownership of the stock of the de-
125 fendant by the said Standard Oil Company existed at the time of and prior to the passage of the said statute of 1903 and that all of the alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character set forth in the said petition it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the Legislature to authorize the recovery against the defendant of the penalties provided for in the said statute on account of the continuance of the said alleged ownership of the stock by the said Standard Oil Company or on account of the performance by the defendant of any of the agreements so alleged to have been made prior to the taking effect of the said statute such statute so construed would be violative of the said Constitution in that it would be retroactive in its effect and impair the obligations of contracts and deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court. And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters-Pierce Company before the passage of the said statute of 1903 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such majority of the shares of the defendant the Waters-Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of the alleged agreements and understandings between the old Waters-Pierce Company and the said Standard Oil Company and the said other corporations and persons entered into be-
126 fore the passage of the said statute of 1903 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor. And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law.

7. There is also manifest error in this that the Court in like manner overruled another of the said exceptions (No. 25) to the said petition whereby the defendant objected that each of the said statutes of 1899 and 1903 was so indefinite, vague and uncertain in its terms that it could not be ascertained by the language used what particular acts constituted an offense subjecting the offender to punishment as

therein prescribed and for that reason a person could not know in advance of committing the act whether he was violating the law and that to subject the defendant to heavy penalties for an alleged violation thereof would result in the taking of the defendant's property without due process of law contrary to the provisions of the said Constitution. And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly.

8. There is also manifest error in this that the Court in like manner overruled others of the said exceptions (Nos. 52 and 53) to the said petition whereby the defendant objected that the said statutes of 1899 and 1903 respectively were so indefinitely framed and of such doubtful construction that they could not be understood either from the language in which they were expressed or from some other written law of the state and by reason of their failure to designate an offense by the plain import of their words the infliction of the penalties prescribed by the said statute would be the taking of property without due process of law contrary to the provisions of the said Constitution. And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly.

127 9. There is also manifest error in this that evidence having been adduced at the trial of the said cause that the Standard Oil Company from some time in the year 1882 owned a majority of the shares of the old Waters-Pierce Company down to the incorporation of the defendant the Waters-Pierce Oil Company on the 29th May 1900 and that on or about the 24th September 1900 a majority of the shares of the defendant the Waters-Pierce Oil Company which had up to that time been held by H. C. Pierce in trust for the said Standard Oil Company (the same having been so issued to him upon the formation of the defendant company on account of the interest of the said Standard Oil Company in the old Waters-Pierce Company) were transferred to the said Standard Oil Company by an indorsement of the certificates therefor in blank by the said H. C. Pierce without any evidence of the registration of any transfer of the same on the books of the defendant company until early in the year 1904 when the said Standard Oil Company caused the same to be transferred on the said books into the name of M. M. Van Beuren and evidence having been also adduced at the said trial that the old Waters-Pierce Company carried on its business throughout the whole of Texas and in certain other states and in Mexico and obtained its supplies of refined oil almost exclusively from the Standard Oil Company and that the said Standard Oil Company did not carry on such business in the said territory in which the old Waters-Pierce Company so carried on business and that the defendant the Waters-Pierce Oil Company after acquiring the business of the old Waters Pierce Company as above mentioned carried on the said business in the same territory and in the same way without extending its business into other territory and that the said Standard Oil Company

did not extend its business into the territory in which the defendant so carried on business the judge before whom the said cause was tried at the said trial although there was no other evidence of any such agreement or understanding between the defendant and the Standard Oil Company as next hereinafter mentioned or of any other act by the defendant in carrying any other such agreement or understanding into effect directed the jury (in paragraph VII of his charge) upon the said evidence that if they found that the de-
128 fendant the Waters-Pierce Oil Company entered into or became a party to an agreement or understanding with the Standard Oil Company on June 1, 1900 to fix or regulate the price in Texas of oil refined from petroleum and if they further found that the defendant remained or continued to be a party to the said agreement or understanding if any and persisted in carrying the same out in Texas on June 1, 1900 or any subsequent date or dates prior to March 31, 1903 and that the oil with reference to which the said agreement or understanding was so made and carried out was the subject of local as distinguished from interstate commerce the jury should return a verdict for the state and thereby say that they found in favor of the state upon the issues submitted for their consideration in paragraph seven (VII) of the Court's charge and further instructed the jury that each day between May 31, 1900 and March 31, 1903 during which the defendant remained a party to the agreement or understanding therein mentioned would constitute a separate and distinct violation of the anti-trust laws of Texas. And the said judge also directed the jury that the said statute of 1899 was in force on May 31, 1900 and thenceforth until March 31, 1903 and that the said statute of 1903 became effective on March 31, 1903 and has since continued in force and that if the jury should convict the defendant of any violation or violations of the said statute of 1899 they should specify in their verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas should be forfeited and the amount of money which should be adjudged against it as penalties for such violations fixing the same at not less than $200 or more than $5,000 per day for each day that they should find it had so violated the law. And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph (VII) of the judge's charge for each of the days between May 31, 1900 and March 31, 1903 stating the same in their verdict as being 1033 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do busi-
129 ness in Texas should be canceled. By means whereof the jury found that any such agreement or understanding as above mentioned entered into between the old Waters-Pierce Company and the said Standard Oil Company became an agreement or understanding on the part of the defendant the Waters-Pierce Oil Company with the said Standard Oil Company as soon as the defendant acquired the property and business of the old Waters-Pierce Company and conducted the said business in the same manner and

in the same territory as the old Waters-Pierce Company had done without extending the said business into any other territory although the defendant had not otherwise than by its said acts entered into any such agreement or understanding and also that the defendant the Waters-Pierce Oil Company having entered into such agreement or understanding as mentioned in the said paragraph of the judge's charge although not in the State of Texas and having persisted in carrying the same out in Texas on the 1st June, 1900, was guilty of a violation of the said law on every subsequent day including Sundays and holidays down to the 31st March, 1903, although it did not on any such subsequent day or did not upon some of such subsequent days do any act in Texas in or towards carrying out the said agreement or understanding but only remained a party thereto. And by the judgment upon the said verdict upon the issues submitted to the jury in the said paragraph (VII) of the judge's charge the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law.

10. There is also manifest error in this that upon the evidence mentioned in the last preceding paragraph without any other evidence or suggestion of such a combination or union as next hereafter mentioned the said judge also directed the jury (in paragraph VIII of his charge) that if they found that on June 1, 1900 or any date subsequent thereto and prior to March 31, 1903, the defendant had brought about or permitted any combination or union of its capital with the capital of the said Standard Oil Company whereby the price in Texas of such oil as mentioned in the said clause of the charge was sought to be fixed or regulated or would be
130 reasonably calculated to be fixed or regulated or whereby the trade in such oil in Texas was sought to be controlled or limited the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph eight (VIII) of the Court's charge and further directed the jury that if the defendant became a party to a pool of the character mentioned in that paragraph each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool would constitute a separate violation of the anti-trust laws of Texas. And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph of the judge's charge for each of the days between May 31, 1900, and March 31, 1903, stating the same in their verdict as being 1033 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the two paragraphs seven (VII) and eight (VIII) of the judge's charge at $1, 549,500 and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of having brought about or permitted such a combination or union of its capital with the capital of the Standard Oil Company as above mentioned by means of the acts of the said Standard Oil Company

in acquiring a majority of the shares of the old Waters-Pierce Company long before the passage of the said statute of 1899 and before the defendant came into existence and in holding the said shares until the defendant was incorporated and acquired the property and business of the old Waters-Pierce Company and then taking the beneficial interest in a corresponding majority of the shares of the defendant the Waters-Pierce Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or union or for any of the supposed purposes thereof on some
131 or any of the days for which it was so convicted. And by the judgment upon the said verdict upon the last mentioned paragraph (VIII) of the judge's charge the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1899 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any *ex post fact*- law by any state.

11. There is also manifest error in this that upon the evidence mentioned or referred to in the next preceding paragraph hereof without any other evidence or suggestion of any such combination as next hereinafter mentioned and although it was agreed by the parties at the said trial for the purposes of this case that the said Standard Oil Company had from a time long before the passage of the said statute of 1903 owned a majority of the shares of the defendant the Waters-Pierce Oil Company the said judge also directed the jury (in paragraph IX of his charge) that if they found that the defendant entered into a combination of its capital with the capital of the said Standard Oil Company for the purpose of creating in Texas or which tended to create in Texas or carry out in Texas restrictions in the free pursuit in that state of the business of selling such oil as is mentioned in the said paragraph of the charge or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination on March 31 1903 or any date subsequent thereto and prior to April 29, 1907 the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph nine (IX) of the Court's charge and further directed the jury that if the defendant became a party to a trust of the character mentioned in that paragraph of the charge each day between March 30, 1903 and April 29, 1907 that it remained a party to and acted under such trust would constitute a separate violation of the anti-trust laws of Texas and that if the jury should convict the defendant of any violations of the said
132 statute of 1903 they should specify in the verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas

should be forfeited and the sum of money that should be adjudged against it as a penalty for such violation fixing the sum at $50 per day for each day that they should convict it of having violated the said law. And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them by the said paragraph of the judge's charge for each of the days between April 1, 1903 and April 29, 1907 stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant, the Waters-Pierce Oil Company guilty of having entered into such a combination as last above mentioned by means of the acts of the said Standard Oil Company in acquiring the said majority of the shares of the said Waters-Pierce Oil Company long before the passage of the said statute of 1903 although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for any of the supposed purposes thereof on some or any of the days for which it was so convicted and although the defendant had no means of requiring or inducing the said Standard Oil Company to part with the said majority of shares or any part thereof.

12. There is also manifest error in this that the said judge also directed the jury (in paragraph X of his charge) that if they found that the direction of the affairs of the defendant corporation and the affairs of the said Standard Oil Company was under the same management and control on March 31, 1903 or any date subsequent thereto and prior to April 29, 1907 and that they were placed under such management or control by their respectively authorized officers under such circumstances that such common management or control created or tended to create or carry out restrictions in the sale in Texas of such oil as is referred to in said paragraph of the
133 charge or to fix, maintain, or increase the price in Texas of such oil or to prevent or lessen in Texas the competition in the sale of such oil the jury should return a verdict for the State and thereby say that they found for the State on the issues submitted for their consideration in paragraph ten (X) of the Court's charge and further directed the jury that if the defendant entered into a monopoly of the character mentioned in that paragraph of the charge each day between March 30, 1903 and April 29, 1907 that it remained a party to such monopoly constituted a separate violation of the anti-trust laws of Texas. And although there was no evidence that the direction of the affairs of the defendant and the said Standard Oil Company was after the passage of the said statute of 1903 brought under the same management or control or was under the same management or control on the 31st March 1903 when the said statute was passed or on the first or second or any subsequent day thereafter or that the said Standard Oil Company had any power to bring the direction of the affairs of the said two corporations under the same control or management until the said majority of the shares in the defendant corporation were transferred on its books in*to* the name of M. M. Van Beuren as hereinbefore mentioned in the year 1904 or

that the said Standard Oil Company exercised any such power by doing so either before or after the same were so transferred or that any of the things supposed to have been done, had been done in Texas except carrying on business there as hereinbefore mentioned the jury in pursuance of the said direction of the judge found for the plaintiff against the defendant on the issues submitted to them by the said paragraph ten (X) of the judge's charge for each of the days between April 1, 1903 and April 29, 1907 stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant, the Waters-Pierce Oil Company guilty of the offense of bringing the direction of its affairs under the same management and control as those of the said Standard Oil Company although it had had no part in doing so itself and although whatever was supposed to have been done to
134 bring the direction of the affairs of the said two corporations under the same management and control had not been done in Texas and had been done before the passage of the said statute of 1903 or had not been done on some of the days for which it was so convicted and was not in fact done at all.

13. There is also manifest error in this that the said judge also directed the jury (in paragraph XI of his charge) that if they found that the Standard Oil Company had on March 31st 1903 acquired a majority of the capital stock of the defendant, the Waters-Pierce Oil Company, and thereby effected a combination of the said corporations with the purpose and intention therein mentioned on the part of the managing officers and directors of the said Standard Oil Company the jury should return a verdict for the State and thereby say that they found in favor of the State upon the issues submitted for their consideration in paragraph eleven (XI) of the Court's charge and further directed the jury that each day between March 30, 1903 and April 29, 1907 that the defendant remained a party to such monopoly constituted a separate violation of the anti-trust laws of Texas. And although at the said trial no evidence was adduced that the said Standard Oil Company acquired on or after the 31st March 1903 such a majority of the said capital stock or any shares necessary to make such majority or ever acquired any such shares within the State of Texas and it was agreed by the parties at the said trial that since a time long previous to the 31st March 1903 the said Standard Oil Company had owned more than a majority of the said capital stock the jury in pursuance of the said direction found for the plaintiff against the defendant upon the issues so submitted to them for each of the days between April 1, 1903 and April 29, 1907 stating the same in their verdict as being 1488 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the three paragraphs, nine (IX), ten (X) and eleven (XI) of the judge's charge at $74,400 and further found that the permit of the defendant to do business in Texas should be cancelled. By means whereof the jury found the defendant, the Waters-Pierce Oil Com-

pany guilty of having effected a combination of itself and
135 the said Standard Oil Company solely by reason of the acts of the said Standard Oil Company done long before the passage of the said statute of 1903 in acquiring the said majority of the shares of the said Waters-Pierce Oil Company although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for giving effect to the supposed purpose or intention of the managing officers of the said Standard Oil Company on some or any of the days for which the defendant was so convicted. And by the judgment upon the said verdict upon the issues submitted to the jury in the three last mentioned paragraphs of the judge's charge respectively the said Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1903 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by any state.

14. There is also manifest error in this that the said judge also declared his opinion to the jury (in paragraph XI of his charge) that if the said Standard Oil Company acquired a majority of the capital stock of the defendant the Waters-Pierce Oil Company a combination of the said two corporations would be thereby effected and with that direction he left the said issues to the jury whereas a combination of the said two corporations would not be thereby effected. And the jury in pursuance of the said direction found for the plaintiff against the defendant upon each of the issues submitted to them respectively in the four paragraphs (eight (VIII), nine (IX), ten (X) and eleven (XI) of the judge's charge and thereby found the defendant guilty of having effected such combination solely by reason of the acts of the said Standard Oil Company in acquiring the said majority of shares although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for giving
effect to any supposed purpose or intention thereof on some
136 or any of the days for which the defendant was so convicted. And by the judgment upon the said verdict upon the issues submitted to the jury in the four last mentioned paragraphs of the judge's charge respectively the defendant the said Waters-Pierce Oil Company is punished for an act which it could not control and an offense that it could not commit and is thereby deprived of its property without due process of law contrary to the provision of the said Constitution.

15. There is also manifest error in this that the said judge upon the trial of the said cause arbitrarily and without any regard to the rules of law admitted evidence of (1) the incorporation of the Standard Oil Company of Ohio on or about the 10th January 1870, (2) the incorporation of the old Waters-Pierce Company in Missouri on the 1st May 1878 and the increase of its capital on the 13th June

1882, (3) the agreement of the 2nd January 1882 by which the Standard Oil Trust was formed and to which the old Waters-Pierce Company or the defendant, the Waters-Pierce Oil Company or H. C. Pierce, who owned about two-fifths of the shares in these two companies never became a party (4) the incorporation of the Standard Oil Company of New Jersey herein referred to as the Standard Oil Company on the 1st August 1882, (5) the ownership by the Standard Oil Company of the majority of the shares of several other companies as stated in the agreement of counsel designated Stipulation No. 1 (6) the judgment in favor of the State of Texas against the old Waters-Pierce Company on the 15th June 1897 for the forfeiture of its permit to do business in Texas which judgment was affirmed by this Court on or about the 19th March 1900 (177 U. S. 28) and also (7) the testimony of several witnesses relating to the doings and agreements of the agents of corporations other than the defendant and of the agents of the old Waters-Pierce Company prior to the incorporation of the defendant, the Waters-Pierce Oil Company, and prior to the 1st June 1900 and to the doings and agreements of the defendant's agents and the agents of other corporations outside the State of Texas and to the doings and agreements of individuals both prior and subsequent to the 1st June 1900 and both outside and within the State of Texas (to all of which evidence and testimony respectively counsel for the defendant duly
137 objected at the trial as appears by the record) And although there was not any other evidence whatever of an agreement at any time between the defendant or the governing officers of the defendant and any other persons whatever relating to the management of the defendant's business, yet the said judge arbitrarily and without any regard to the rules of law and intending that the jury should identify the defendant with the old Waters-Pierce Company as charged in the petition of the State and should convict the defendant of violations of the said anti-trust laws upon the issues submitted to them in the five paragraphs last above mentioned of the judge's charge without any legal evidence of any such violation and should for that purpose consider irrelevant evidence under color of first finding a conspiracy of which there was no evidence whatever overruled all the objections of the defendant to the admission of the said evidence and directed the jury (in the division V of his charge) that if they found from the other evidence in the case independent of all declarations or statements made by any person or persons except their evidence given as witnesses personally or by deposition that on June 1, 1900 there was formed or existed an agreement between the governing officers of the defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with the defendant relating to the management of the defendant's business or between the governing officers of the defendant and any of the individuals alleged in the State's petition to be co-conspirators with the defendant relating to the management of the defendant's business then the jury might consider for what, if anything, they thought it worth such acts or declarations of all the parties to the said agreement and such acts and decla-

rations of their authorized agents if any as were done or made during the existence of such agreement and in furtherance of its execution for the purpose of determining the character of such agreement and whether or not it contemplated a violation by the defendant of the anti-trust laws of Texas, but that none of the said evidence could be considered by the jury for any other purpose whatever and none of it could be so considered by the jury against the defendant for the said purposes except such of it, if any, as they should think proper to be considered when tested by the rules so stated relating to its competency. And also directed the jury (in division XIII of
138 his charge) that they might consider so far as it tended to establish some one or more of the issues submitted for their consideration in the said five paragraphs (VII to XI) of his charge the evidence introduced before them that the defendant had given rebates and discounts in the course of its dealings and that the defendant had made contracts and entered into understandings other than those submitted for their consideration in the said five paragraphs of the charge and also the evidence introduced before them of the general course of dealings of the defendant in Texas and elsewhere including some of its business methods in meeting competition although he directed them that none of the evidence showed or tended to show any violation of the anti-trust laws of Texas unless it tended to establish some one or more of the said issues so submitted for their consideration. And the verdict was accordingly given for the State upon the said issues submitted to the jury whereas according to due process of law it ought to have been given for the defendant. And upon the appeal of the defendant the Court of Civil Appeals in affirming the said judgment unreasonably and wilfully disregarded the question thereby raised under the said Constitution as well as the rules of evidence according to the usage and practice prevailing in Texas. And the defendant is thereby deprived of its property without due process of law contrary to the provisions of the said Constitution.

16. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 5) as follows:

"You are instructed that inasmuch as the defendant is a corporation incorporated and existing under the laws of the State of Missouri the question of the legality of the ownership of a majority of its stock by the Standard Oil Company is not an issue in this case and in this connection you are further instructed that the anti-trust laws of Texas being designated merely to prohibit unlawful combinations or agreements having the purpose of fixing and regulating prices and other forbidden purposes denounced by such laws could not be violated by the mere ownership by the Standard Oil Company of a majority of the stock of the defendant."

139 Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in owning in another state a majority of the stock of the defendant. And the verdict having been given for the State,

the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law, contrary to the provisions of the said Constitution.

17. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 7) as follows:

"You are instructed that it is admitted by the defendant that the Standard Oil Company of New Jersey acquired a majority of the shares of stock of the defendant company on or about the 4th day of September 1900 and thereafter continued to own the same. Therefore the Court further instructs the jury that the acquiring and owning of said shares of stock by said Standard Oil Company did not constitute a violation of the act approved March 31st 1903 even though the jury may believe that the said Standard Oil Company voted said shares of stock at the meeting of the stockholders of the defendant company for the election of director of said defendant company."

And there is also manifest error in this that the said judge also refused to direct the jury as requested by the defendant (Special Charge refused No. 24).

"You are instructed that since the Standard Oil Company acquired a majority of the stock of the defendant prior to the enactment of the anti-trust act of 1903 and since the defendant company being a corporation created by the laws of Missouri the acquisition of such stock by the Standard Oil Company cannot be inquired into by the courts of Texas but must be in all things treated as legal and valid the inhibition of the anti-trust act of 1903 against any corporation's acquiring the shares of stock of any other corporation for the purpose of preventing or lessening competition or tending to affect or lessen competition can have no application to this case."

140 Whereas the said directions ought respectively to have been given so that the jury might not convict the defendant of violation of the said statute of 1903 upon any of the three issues submitted to them as aforesaid in the paragraphs nine (IX), ten (X) and eleven (XI) of the judge's charge on account of the acts of the Standard Oil Company in acquiring the said majority of shares before the passage of the said statute of 1903. And the verdict having been given for the State, the defendant is by reason of the said refusals deprived of its property by the said judgment without due process of law and subjected to the said penalties by virtue of an *ex post facto* law passed by the state of Texas contrary to the provisions of the said Constitution.

18. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 9) as follows:

"You are instructed that it is not a violation of the laws of the State of Texas and has not been a violation of such laws or any laws at any time since May 31st, 1900 for the Standard Oil Company of New Jersey or any other person or corporation to own a part of the stock of the defendant Waters-Pierce Oil Company, and you will

therefore disregard any evidence that has been introduced before you upon this subject."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in owning in another state a majority of the stock of the defendant. And the verdict having been given for the State, the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law, contrary to the provisions of the said Constitution.

19. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges No. 13) as follows:

"You are instructed that in view of the fact that the Standard Oil Trust Agreement of Jánuary 2nd 1882 and the supplemental
141 agreement thereto of January 4th 1882 were executed long prior to the creation of the defendant, and there is no evidence showing that the defendant ever adopted said agreement you will not consider the execution of said agreement or the contents of the same as in any wise effecting this defendant."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas on account of this agreement between other persons made long before the defendant came into existence and long before the passage of the said anti-trust laws. And the verdict having been given for the State, the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law, contrary to the provisions of the said Constitution.

20. There is also manifest error in this that the penalties of $1,549,500 and $74,400 assessed by the jury are respectively so plainly excessive that the defendant is thereby deprived of its property without due process of law.

21. There is also manifest error in this that the Court upon hearing the said exceptions of the defendant to the said petition in manner aforesaid overruled others of the said exceptions (Nos. 28 and 38) whereby the defendant objected that the recovery of penalties under the said statutes respectively for acts done more than two years before the commencement of the said action was barred by article 219 of the Code of Criminal Procedure of Texas. And in this that the Court also overruled in like manner others of the said exceptions (Nos. 30, 31, 40, 41) whereby the defendant objected respectively that if the said limitation was not available to it the defendant would be denied the equal protection of the laws contrary to the provisions of the said Constitution and that the said statutes of 1899 and 1903 would respectively be invalid by reason thereof. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 32 and 42) whereby the defendant objected that the recovery of the said penalties for acts done more than two years before the commencement of the said action was barred by article 3354 of the Revised Statutes of Texas. And in this
142 that the Court also in like manner overruled others of the said exceptions (Nos. 34 and 44) whereby the defendant ob-

jected that if the said limitation was not available to it the defendant was denied the equal protection of the laws, contrary to the provisions of the said Constitution and that the said statutes of 1899 and 1903 were invalid respectively by reason thereof. And in this that the Court also in like manner overruled others of the said exceptions (Nos. 35 and 37) whereby the defendant objected respectively that the recovery of penalties under the said statute of 1899 for acts done more than four years before the commencement of the said action was barred by article 3358 of the said Revised Statutes and that if the said limitation was not available to it the defendant was denied the equal protection of the laws contrary to the provisions of the said Constitution. And in this that the judge also refused with like effect and consequences to direct the jury as requested by the defendant in the Special Charges refused Nos. 1, 2, and 3 respectively as regards the said limitations which were duly pleaded in the defendant's answer.

22. There is also a manifest error in this that the Court in like manner overruled another of the said exceptions (No. 10) to the said petition whereby the defendant objected that the parts thereof which seek to hold the defendant liable to penalties and a forfeiture of its said permit because of the alleged agreement or understanding whereby in consideration of the defendant purchasing all of its supplies from the said Standard Oil Company, the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company because it appears from the petition that the said Standard Oil Company was and is a citizen of New Jersey and never obtained a permit to do business in Texas and it is not alleged that it ever contemplated entering Texas to do business therein or could have obtained a permit so to do and therefore an agreement such as alleged if made could not be construed as violating any laws of Texas without giving to such laws an extra-territorial effect and operation binding upon citizens of other states and with respect to inter-state commerce and in violation of the said Constitution and the defendant moved the Court to strike
143 out the *the* said allegations with respect to the said alleged agreement and understanding. And the said exception being overruled, the defendant is by the said judgment made liable to the penalties imposed by the said laws on account of the said alleged agreement or understanding contrary to the provisions of the said Constitution relating to commerce among the several states and is so deprived of its property without due process of law.

23. There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 23) as follows:

"You are instructed that if you believe from the evidence that the defendant has entered into any agreement by which it has bound itself to transact business within a certain territory in the United States, including the State of Texas, and that in pursuance of such agreement the defendant has been and is transacting business in the State of Texas, the making of such agreement and the transaction

of business thereunder by the defendant cannot be considered as in violation of the Anti-Trust Laws of Texas, and in this connection you are instructed that the defendant always had and now has the right to confine its business operations to any territory desired by it and that the fact that the defendant has not extended its operations to a broader field would not render the defendant guilty of violating the Anti-Trust Laws of Texas."

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the said laws by reason of any such agreement or understanding as alleged as aforesaid by which the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company in consideration of the defendant purchasing all its supplies from the said Standard Oil Company, and which agreement or understanding related to commerce among the several states. And the verdict having been given for the State the defendant is by the said judgment deprived of its property without due process on account of statutes passed by the State of Texas regulating commerce
144 among the several states contrary to the provisions of the said Constitution in that behalf.

24. There was also manifest error in this that the said judge at the said trial arbitrarily and without any regard to the rules of law and for the purpose of exciting and inflaming the prejudices of the jury against the defendant admitted in evidence against the objection of the defendant proof of the Standard Oil Trust agreement of 1882 in the plaintiff's petition set out which was made many years before the incorporation of the defendant and to which it was admitted that the defendant never became a party. And in this that the said judge in like manner admitted in evidence the paragraphs (3rd, 4th, 5th, 6th, 7th, and 8th) of the agreement of counsel called Stipulation No. 1 setting out subject to all legal objections that the Standard Oil Company of New Jersey owned a majority of the shares of the companies therein mentioned by the names of the Standard Oil Company of Indiana, New York and Kentucky respectively and of the Continental Oil Company and the Republic Oil Company at the times and in the manner therein mentioned and that the said companies did not transact any business in Texas, all of which were matters in which the defendant was in no way concerned and had no possible relation to any of the questions involved in this case. And also in this that the said judge in like manner admitted in evidence that the defendant had given rebates and discounts to certain dealers and had sold oil at different prices in different localities in Texas, which evidence was irrelevant to all the issues in the case. And also in this that the said judge in like manner admitted in evidence the testimony of the witness C. W. Cahoon to the effect that at points in Texas where there was competition the defendant sometimes sold oils at less than at points where there was no competition, which testimony had no tendency to show any violation of the laws of Texas and could have no effect except to prejudice the jury. And also in this that the said judge in like manner admitted

in evidence the testimony of the said C. W. Cahoon to the effect that for about 60 days in 1906 certain brands of oil of grades inferior to that known as Eupion Oil had been sold by the defendant
145 as Eupion oil, which evidence was frivolous and irrelevant.

And also in this that the said judge in like manner admitted in evidence the testimony of the witness, A. W. Clem to the effect that the old Waters-Pierce Company in 1891 cut the prices of oil at Seymour and other places in Texas and also that the old Waters-Pierce Company in 1894 after it bought out the business of the same witness advanced the selling price of oil from 9½ cents to 22 cents per gallon, which testimony did not relate in any way to the defendant or its doings or to any issue involved in this case. And in this that the said judge in like manner admitted in evidence the testimony of the witness Royer Campbell to the effect that in 1894 when he quit buying from the old Waters-Pierce Company and bought from other persons in San Antonio, the old Waters-Pierce Company immediately cut the price of oil from 16 or 17 cents to 8 and 10 cents per gallon and also his testimony as to the character of warfare and competition that the old Waters-Pierce Company carried on with him in 1894, which evidence did not relate in any way to the defendant or anything in question in this case. And the said judge permitted the jury to consider all the said evidence so admitted so far as it might seem to establish any of the said issues submitted for their consideration. And by the admission of the said several pieces of evidence respectively, the prejudices of the jury were excited and inflamed against the defendant and their attention was diverted from the true issues in the case and the defendant was prevented from having a trial of the said issues according to the due course of law. And by the judgment upon the verdict upon the issues submitted to the jury as aforesaid, the defendant is deprived of its property without due process of law contrary to the provisions of the said Constitution.

25. There is also manifest error in this that the Court appointed a receiver of the property and assets of the defendant and the bond of such receiver was received and approved as appears by the said record after the judgment given upon the said verdict was suspended by the proceedings by way of appeal on the part of the defendant from the said judgment although the Court had no authority to appoint such receiver otherwise than as a consequence of the
146 said judgment and for the purpose of carrying the same into effect. And the defendant was thereby deprived of its property without due process of law contrary to the provisions of the said Constitution.

26. There is also manifest error in this that after the judgment given upon the said verdict and after notice of appeal therefrom by the defendant according to law the Court acting under color of the Texas statute of 1907 c. 87 but arbitrarily and wilfully disregarding its provisions and purposes appointed the said receiver for the purpose of depriving the defendant of its property and business and not for any purpose for which the appointment of a receiver was authorized by the said statute and on the alleged ground that the

said judgment had been rendered against the defendant for violation of the said anti-trust laws and that newspaper interviews with the counsel for the defendant had been brought to the attention of the Court in which the said counsel had declared the purpose of the defendant to appeal from the said judgment and to continue to carry on its business in the same manner as theretofore and without any evidence being submitted to the Court in connection with the application for the appointment of such receiver. And the Court disregarding the provisions of the said statute and the due course of law made the said appointment of a receiver not because any interest of the state seemed to require such action, but for the pretended purpose of preventing the defendant from a continued violation of the law, although the Court knew that the defendant had appealed from the said judgment and denied any violation on its part of the said anti-trust laws and although the Court assumed, as declared by the Court at the time of such appointment, that the defendant would file its proper supersedeas bond upon the said appeal and had a right to do so within the time provided by law all of which appears by the bill of exceptions of the defendant as matters connected with the appointment of the receiver, which bill of exceptions was signed and allowed by the judge who held the said Court at the time of the said proceedings. And the defendant by the appointment of the said receiver for such purpose and in such circumstances is deprived of its property without due process of law contrary to the provisions of the said Constitution.

147 27. There is also manifest error in this that the Court decided that the said statute of 1907 under color of which the said receiver was so appointed was valid and not repugnant to the said Constitution although the statute was passed after the commencement of the said action and provided that when any law of the said state including any of the said Anti-Trust Laws for the violation of which fines or penalties or forfeitures were provided had been theretofore violated or should be violated before the taking effect of the said statute by any corporation the said state should have a lien to secure the payment of such fine penalties and costs from the time when the said statute took effect on all property of such corporation within the said state or which should thereafter become or be brought within the said state and also provided for the appointment of a receiver for such corporation in the cases therein mentioned but did not provide for any lien or authorize the appointment of a receiver in the case of a violation of any of the said laws by any person other than a corporation. Whereas it ought to have been decided that the said statute was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any *ex post facto* law by any state and was also invalid because the defendant was thereby denied the equal protection of the laws and deprived of its property without due process of law contrary to the provisions of the said Constitution.

28. There is also manifest error in this that after judgment was improperly given upon the said verdict as aforesaid for the plaintiff the court appointed a receiver of the property and assets of the defendant, the Waters-Pierce Oil Company as specified in the orders

appointing a receiver whereas the Court ought not to have appointed such receiver. And by the appointment of such receiver, the defendant is deprived of its property without due process of law contrary to the provisions of the said Constitution.

And the said Waters-Pierce Oil Company prays that the said judgment and order and the judgment affirming the same respectively for the errors aforesaid and others in the record and proceedings aforesaid may be reversed, annulled and altogether held
148 for nothing and that it may be restored to all things which it hath lost by occasion of the said judgment and order and the affirmance thereof as aforesaid.

MONFIELD STOREY,
J. L. THORNDIKE,
J. D. JOHNSON,
*Counsel for the Plaintiff-in-Error.*

Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908.

R. H. CONNERLY, *Clerk.*

149 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Waters-Pierce Oil Company incorporated under the laws of Missouri, Appellant and the State of Texas Appellee which judgment affirmed a judgment of the District Court of Travis County appointing a receiver after a judgment upon a verdict against the Appellant being cause No. 4213 (Receivership Proceeding) in the said Court of Civil Appeals wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Waters-Pierce Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you,

if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid,
150 with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

To operate as a supersedeas or giving bond conditioned according to law for one thousand (1000) dollars.

Allowed by
EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

Copy of Writ of Error lodged for the defendant in error. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908.

R. H. CONNERLY, *Clerk.*

151 Know all men by these presents, That we, the Waters-Pierce Oil Company, incorporated under the laws of Missouri, as principal, and the American Surety Company of New York incorporated under the laws of New York, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of one thousand dollars, to be paid to the said State of Texas or its certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Court of Civil Appeals for the Third Judicial District of Texas in a suit pending in said Court, between the said Waters-Pierce Oil Company Appellant and the State of Texas Appellee being cause No. 4213 (Receivership Proceeding) in the said Court a judgment was rendered against the said Waters-Pierce Oil Company affirming a judgment of the District Court of Travis County appointing a receiver after a judgment upon a verdict against the said Appellant. And the said Waters-Pierce Oil Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Texas citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Waters-Pierce Oil Company shall prosecute the said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal Waters-Pierce Oil Co., St. Louis, Mo.]

WATERS-PIERCE OIL COMPANY,
By J. D. JOHNSON, *Attorney.*
AMERICAN SURETY COMPANY OF NEW YORK,
By A. J. ADAMS, *Resident Vice-President.*

Attest:
CLAUDE B. BROWN,
*Resident Assistant Secretary.*

Sealed and delivered in presence of—
R. B. LENNON,
E. K. COSTELLO,
As to all parties.

Approved by—
EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

March 29, 1908.

(Endorsed:) Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Mar. 30, 1908. R. H. Connerly, Clerk.

152 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals for the Third Judicial District of Texas in cause No. 4213 (Receivership Proceeding) in the last mentioned Court wherein the Waters-Pierce Oil Company incorporated under the laws of Missouri is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

On this 30th day of March, in the year of our Lord one thousand nine hundred and eight, personally appeared Coley White before me, the subscriber, a Notary Public within and for Travis County, State of Texas, said White being an adult person and being duly sworn by me makes oath that he delivered a true copy of the within citation to Thomas M. Campbell the Governor of the State of Texas on said day and also delivered a true copy of the within citation to Robert Vance Davidson the Attorney General of said State of Texas on said day and that he the said White is a duly appointed, qualified and acting Deputy under Eugene Nolte the United States Marshal
153 for the Western District of Texas and as such Deputy served said copies.

EUGENE NOLTE,
*U. S. Marshal, Western District of Texas,*
By COLEY WHITE, *Deputy.*

Sworn to and subscribed the 31st day of March, A. D. 1908.
[SEAL.] ROSALIE DORSER,
*Notary Public, Travis Co., Texas.*

Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Apr. 8, 1908.

R. H. CONNERLY, *Clerk.*

154 *Clerk's Final Certificate.*

I, R. H. Connerly, Clerk of the Court of Civil Appeals of the Third Supreme Judicial District of Texas do hereby certify that the foregoing 152 pages contain true and correct copies of the transcript from the District Court of Travis County, twenty-sixth Judicial District, Opinions of the Court of Civil Appeals and separate opinions of Justices Fisher and Key, Orders and judgment of said court, its opinion, and the motion for a rehearing filed in said court and its order overruling same and application of Attorney General to Supreme Court for receiver to take charge of property and amended application for appointment of receiver, Supreme Court's Opinion thereon; Judgment of Supreme Court refusing writ of error, its bill of costs and bill of costs in Court of Civil Appeals, assignments of error in Supreme Court of the United States and the copy of writ of error lodged for defendant in error, together with the appeal bond to Supreme Court of United States and citation therefrom, as the same appear of record and on file in my office in the cause entitled—Waters Pierce Oil Company, Appellant *vs.* The State of Texas, Appellee, No. 4213, Receivership Proceeding, in said Court. Witness my hand and the seal of said court at office, at Austin, Texas, this the 17th day of April, A. D. 1908.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY, *Clerk.*

Writ of error and Citation in error, originals, attached to transcript, after this certificate.

R. H. CONNERLY, *Clerk.*

155 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Third Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Waters-Pierce Oil Company incorporated under the laws of Missouri Appellant and the State of Texas Appellee which judgment affirmed a judgment of the District Court of Travis County appointing a receiver after a judgment upon a verdict against the Appellant being cause No. 4213 (Receivership Proceeding) in the said Court of Civil Appeals wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or
156 of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Waters-Pierce Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

To operate as a supersedeas on giving bond conditioned according to law for one thousand (1,000) Dollars.

Allowed by

EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

157 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin Texas, Mar. 30 1908. R. H. Connerly, Clerk.

158 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals for the Third Judicial District of Texas in cause No. 4213 (Receivership Proceeding) in the last-mentioned Court wherein the Waters-Pierce Oil Company incorporated under the laws of Missouri is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
*Associate Justice of the Supreme Court of the United States.*

159 [Endorsed:] Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin Texas, Apr. 8 1908. R. H. Connerly, Clerk.

On this 30th day of March, in the year of our Lord one thousand nine hundred and eight, personally appeared Coley White before me, the subscriber, a Notary Public within and for Travis County, State of Texas, said White being an adult person and being duly sworn by me makes oath that he delivered a true copy of the within citation to Thomas M. Campbell the Governor of the State of Texas on said day and also delivered a true copy of the within citation to Robert Vance Davidson the Attorney General of said State of Texas on said day and that he the said White is a duly appointed, qualified and acting Deputy under Eugene Nolte the United States Marshal for the Western District of Texas and as such Deputy served said copies.

EUGENE NOLTE,
*U. S. Marshal, Western District of Texas,*
By COLEY WHITE, *Deputy.*

Sworn to and subscribed the 31st day of March, A. D. 1908.

[Seal Notary Public, County of Travis, Texas.]

ROSALIE DORSER,
*Notary Public, Travis Co., Texas.*

Endorsed on cover: File No. 21,131. Texas court of civil appeals, third supreme judicial district. Term No. 728. The Waters-Pierce Oil Company, plaintiff in error, *vs.* The State of Texas. Filed April 23d, 1908. File No. 21,131.

# MAIN CASE.

WATERS-PIERCE OIL COMPANY,
Plaintiff in Error,
vs.
THE STATE OF TEXAS,
Defendant in Error.

SUIT PENDING IN THE SUPREME COURT OF THE UNITED STATES.

And now comes the State of Texas and moves the court to advance this cause and set the same down for submission at as early a date as is possible at the October term, 1908, and shows:

First. That this was a suit brought in the State court of Texas by the State of Texas against the Waters-Pierce Oil Company for alleged violation of two separate statutes of the State of Texas known as the Anti-trust Acts of 1899 and 1903, the purpose of the suit being to recover penalties and forfeit the permit of the Waters-Pierce Oil Company to do business in Texas, that company being a Missouri corporation. A trial before the court and jury resulted in a verdict and judgment in favor of the State, adjudging that the defendant, Waters-Pierce Oil Company, had been guilty of a violation of the law of the State of Texas for each and every day for seven years, and assessing as penalties an aggregate sum of $1,623,900, and a judgment prohibiting the Waters-Pierce Oil Company from doing business in the State of Texas, except an interstate business.

This judgment was affirmed by the Court of Civil Appeals of the State of Texas upon regular hearing, and a writ of error denied by the Supreme Court of the State, thus making the judgment of the Court of Civil Appeals final, and writ of error was sued out to the Court of Civil Appeals from this court, and it is now here for revision and correction.

Second. The State of Texas would show that the plaintiff in error is attacking the constitutionality of both of the above mentioned anti-trust acts, and, as there are a great many suits now pending in the State courts involving the same question, it is of the utmost importance to the State of Texas and the public at large, as well as to the persons doing business in the State of Texas, to know whether or not these statutes are unconstitutional because of their alleged repugnance to the Constitution of the United States.

Third. The State of Texas is also entitled to have as speedy a determination of the matter as the convenience of this court will permit, because of the matters and things involved in the controversy.

Wherefore, the defendant in error respectfully requests this court to advance this cause and set the same for submission at as early a date as is convenient and practicable to the court at its October term, 1908.

R. V. DAVIDSON,
Attorney General.
JEWEL P. LIGHTFOOT,
Assistant Attorney General.
T. W. GREGORY,
G. W. ALLEN,
Attorneys for Defendant in Error, The State of Texas.

# RECEIVERSHIP CASE.

WATERS-PIERCE OIL COMPANY,
Plaintiff in Error,
vs.
THE STATE OF TEXAS,
Defendant in Error.

SUIT PENDING IN THE SUPREME COURT OF THE UNITED STATES.

And now comes the defendant in error, the State of Texas, and moves the court, in the event that the court should overrule the motion to dismiss the writ of error made in this case by the defendant in error, to advance this cause and set the same for submission at as early a date as is practicable, and thereupon shows:

First. That a suit was brought by the State of Texas against the Waters-Pierce Oil Company, a Missouri corporation, for alleged violation of the anti-trust laws of the State of Texas, known as the Act of 1899 and the Act of 1903, the purpose of the suit being to recover penalties and to forfeit the permit of the Waters-Pierce Oil Company to do business in the State. A trial and judgment before a jury resulted in a finding that the Waters-Pierce Oil Company had violated several sections of each of said acts, and had violated the law therein for each and every day for seven years, being the whole period of time since its admission to the State, and resulting in penalties aggregating the sum of $1,623,900. Immediately upon the rendition of this judgment, the State filed an application for a receiver for all the property of the corporation situated within the State of Texas, and the court granted said application and appointed a receiver and directed him to take charge of all of the property, but permitted the defendant to supersede said judgment by giving a bond in the sum of $100,000. The judgment of the trial court was affirmed by the Court of Civil Appeals of the State of Texas, to which an appeal was taken by the Waters-Pierce Oil Company, and a writ of er[illegible] refused by the Supreme Court of the State, thus making final the [illegible]ment that had been rendered appointing a receiver, and the case was brought here on a writ of error sued out by the Waters-Pierce Oil Company to the Court of Civil Appeals of Texas.

Second. The plaintiff in error questions the validity of several of the statutes of the State of Texas, and says the same are repugnant to the Constitution of the United States, and as these statutes were upheld

by the courts of the State of Texas and are laws now in force under which the State of Texas and its citizens and inhabitants are doing business, it is of the utmost importance for the question to be finally determined whether or not they are valid laws, so that the State of Texas and the public generally may know whether or not such laws should be respected and obeyed.

Wherefore, defendant in error prays that this cause may be advanced and set for submission at as early a date as is practicable and convenient for this court.

R. V. DAVIDSON,
Attorney General.
JEWEL P. LIGHTFOOT,
Assistant Attorney General.
T. W. GREGORY,
G. W. ALLEN,
Attorneys for Defendant in Error, The State of Texas.

# Supreme Court of the United States,

**OCTOBER TERM, 1908.**

**No. 359.**

WATERS-PIERCE OIL COMPANY, PLAINTIFF IN ERROR,

vs.

STATE OF TEXAS, DEFENDANT IN ERROR.

MOTION TO DISMISS OR TO AFFIRM.

And now comes the State of Texas, defendant in error in the above entitled and numbered cause, and moves this court to dismiss the writ of error sued out from this court to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, for the reason that there is no substantial Federal question involved in this controversy as is apparent from the record and proceedings in this case.

Second.—In the event said motion to dismiss is overruled, then the State of Texas, defendant in error, respectfully moves this court to affirm the decision of the Court of Civil Appeals of the Third Supreme Judicial District of Texas, because it is apparent from the record that if there is the color of a Federal question in the case it is wholly frivolous and without merit.

## BRIEF OF ARGUMENT.

As is apparent from the record in this cause, the plaintiff in error was prosecuted by the State of Texas for violations of the anti-trust laws of the State of Texas, there being two separate and distinct acts of the Legislature upon which such prosecution was based, one being known as the Act of 1899 and the other the Act of 1903. The plaintiff in error is a Missouri corporation and received a permit to do business in the State of Texas for a period of ten years from the 31st day of May, 1900, to the 31st day of May, 1910.

Such portions of the Acts of 1899 and 1903 as are necessary to be considered are as follows:

Sections 1, 2, 5 and 7 of the Act of 1899:

"Section 1. Any corporation organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this State, or any partnership, or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act.

"Sec. 2. A 'monopoly' is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill, or acts, or of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a 'monopoly,' as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation or an incor-

porated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stock or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a 'monopoly,' as defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or associations of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

"Sec. 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the panalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney General or the district or county attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.

"Sec. 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other State or country, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to

have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, to the Commissioner of Insurance, Statistics and History of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation."

Sections 1, 2, 3, 8, 11 and 17 of the Act of 1903:

"Section 1. That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any, or all of the following purposes:

"1. To create or which may tend to create or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

"2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for maket or transportation.

"3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

"4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

"5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for

transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

"6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

"7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof.

"Sec. 2. That a monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

"1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first section of this act.

"2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

"Sec. 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade:

"1. Where any two or more persons, firms, corporations, or associations of persons who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation, or association of persons any article of merchandise, produce or commodity.

"2. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

"Sec. 8. Every foreign corporation violating any of the provisions of this act is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision by injunction or other proceedings in the district court of Travis county, in the name of the State of Texas.

"Sec. 11. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the Attorney General, or the district or county attorney under the direction of the Attorney General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this act shall be over and above the fees allowed him under the general fee bill.

"Sec. 17. That all laws and parts of laws in conflict with this act, be and the same are hereby repealed, and that Title CVIII of the Revised Civil Statutes of the State of Texas of 1895, and Articles 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321 and 5321a, thereof, be and the same are hereby expressly repealed; and that Articles 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 988a, 988b, 988c, 988d of Chapter 7, in Title XVIII, of the Penal Code of the State of Texas of 1895, be and the same are hereby expressly repealed; and that an act entitled 'An Act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and promote free competition in the State of Texas,

and to repeal all laws and parts of laws in conflict with this act,' approved April 30, 1895, and known and published as Chapter 83 of the General Laws of the Twenty-fourth Legislature, be and the same is hereby expressly repealed; and that an act entitled 'An Act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violate the terms of this act and to authorize the institution and prosecution of suits therefor,' approved May 25, 1899, and published and known as Chapter CXLVI of the General Laws of the Twenty-sixth Legislature, be and the same are hereby expressly repealed; and that an act entitled 'An Act to amend Article 5318, Title 108, of the Revised Civil Statutes, of the State of Texas, prescribing penalties against trusts and conspiracies against trade,' approved June 5, 1899, and known as Chapter CLXXII of the General Laws of the Twenty-sixth Legislature, be and the same is hereby expressly repealed; provided nothing in this act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this act takes effect."

As is apparent from the opinion of the Court of Civil Appeals, which sets out in full the charge of the trial court, the issues involved in the State court were whether or not the Waters-Pierce Oil Company had violated the first and second sections of the Act of 1899, and the first; second and third sections of the Act of 1903. In other words, the questions submitted to the jury were:

First.—Whether or not the Waters-Pierce Oil Company entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined from petroleum, and whether or not said company remained or continued to be a party to said agreement or understanding, if there was any such agreement or understanding, during any portion of the time from June 1, 1900, to March 31, 1903.

Second.—Whether or not the Waters-Pierce Oil Company had brought about or permitted any combination or union of its capital with that of the Standard Oil Company of New Jersey whereby the price in Texas of oil refined from petroleum other than oil which was the subject of interstate as distinguished from local

commerce was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or regulated.

Third.—Whether or not the Waters-Pierce Oil Company entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in said State of the business of selling oil refined from petroleum other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas or to prevent or lessen competition in Texas in the sale of such oil, and that the plaintiff in error remained or was a party to and acted under such combination, if any such there was, on any date subsequent to March 31, 1903, and prior to April 29, 1907.

Fourth.—Whether or not the direction of the affairs of the Waters-Pierce Oil Company and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or any date subsequent thereto and prior to April 29, 1907, and whether or not they were placed under such common management and control, if any such there was, by their respectively authorized officers under such circumstances that such common management and control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil refined from petroleum other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas competition in the sale of such oil.

Fifth.—Whether or not the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations; if said stock was acquired and combination effected, if any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil mentioned in the other paragraphs, or if the effect of said combination, if such there were, tended to affect or lessen the competition

in the sale in Texas of said oil, and whether or not the Waters-Pierce Oil Company, if it entered into a monopoly of this character, remained a party to such monopoly for any period of time between March 30, 1903, and April 29, 1907.

The opinion of the Court of Civil Appeals which embraces the entire charge of the trial court is as follows (R., pp. 1141 to 1161):

No. 4212.

THE WATERS-PIERCE OIL COMPANY, APPELLANT,

vs.

THE STATE OF TEXAS, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF TRAVIS COUNTY.

This case involves alleged violations of the anti-trust laws of this State, and as the charge of the able judge who tried the case sufficiently states the nature of the suit as it was submitted to the jury, and correctly defines the provisions of the anti-trust statutes applicable to the case, and states the issues that were decided by the jury, it is deemed proper to set out the charge in full, which is as follows:

*"Gentlemen of the Jury:*

"In this case the State of Texas, as plaintiff, has sued the Waters-Pierce Oil Company, a private corporation chartered under the laws of the State of Missouri and doing business in Texas by virtue of a permit issued to it by the State of Texas on May 31, 1900, as defendant, to cancel said permit and to recover penalties for violations of the anti-trust laws of Texas which the State alleges the defendant has committed on each and every day from May 31, 1900, to April 29, 1907.

"The State alleges that on or about January 1st, 1870, John D. Rockefeller, John P. Archbold, H. H. Rogers, Henry M. Flagler, and a number of other persons conceived the scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas, and that said persons to that end and for that purpose entered into a conspiracy among themselves and with other individuals and corporations, including the defendant corporation, which conspiracy the State alleges continued in force and effect from the date of its formation until the date of the filing of the State's second amended petition in this

case, and the State further alleges that in pursuance of said alleged conspiracy the defendant has done various acts and entered into various agreements which constitute violations of the anti-trust laws of Texas.

"The State further alleges that the defendant's predecessor, the Waters-Pierce Oil Company, incorporated in 1878, on or about the 5th day of October, 1894, entered into a contract with the Eagle Refining Company, A. W. Clem and certain other individuals named in its petition, by the terms of which defendant acquired the property of said Eagle Refining Company, situated in the city of Dallas, Texas, and the right to operate its business under the name of the said Eagle Refining Company. It further alleges that the defendant did, subsequent to May 31, 1900, operate said Eagle Refining Company and maintain the plant thereof at Dallas, as an apparently competing concern for various purposes prohibited by the anti-trust laws.

"The State further alleges that, in the year 1896, the defendant's said predecessor bought out the business of the Texas Oil and Gasoline Company and of one Roy Campbell, who were at that time doing business in the city of San Antonio, Texas, and elsewhere, and entered into contracts and agreements with the said Texas Oil and Gasoline Company and Roy Campbell, whereby said Texas Oil and Gasoline Company was thereafter to be operated under said name by defendant as an apparently competing concern with defendant at San Antonio, in the sale of the products of petroleum. It further alleges that said Texas Oil and Gasoline Company was operated by defendant as a concern apparently competing with it at San Antonio subsequent to May 31st, 1900, for various purposes in violation of the anti-trust laws of the State. For full particulars of the State's allegations you are referred to its second amended original petition.

"The defendant denies all and singular the allegations of the State, and in addition to various of her special defenses, pleads specially that, if it has entered into any of the agreements or committed any of the acts alleged by the State, none of same constitute violations of the anti-trust laws of Texas, because said agreements were made and said acts done (if at all) solely with reference to subjects of interstate commerce. For full particulars of defendant's allegations, you are referred to its third amended original answer.

"As the law of the case you are instructed as follows, viz.:

"I. The burden of proof rests upon the State to establish the affirmative of the issues which will hereafter be submitted in this charge for your consideration by a preponderance of the evidence, and you will find in favor of the defendant on each issue so submitted for your consideration, except such issue or issues, if any, as you find that the State has established by a preponderance of the evidence, and you will return a general verdict for the defendant, unless you find that the State has established by a preponderance of the evidence some combination or combinations of facts which will entitle it to recover under the law as it is given you in charge by the court.

"II. The statute known as the Anti-trust Law of 1899 was in force on May 31, 1900, and thereafter remained continuously in force until March 31st, 1903.

"For the purposes of this charge you are instructed that this act made it unlawful for any corporation transacting or conducting any kind of business in this State to enter into, or become a party to, any agreement or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

"You are further instructed that said statute also made it unlawful for any corporation transacting or conducting any kind of business in this State to bring about or permit any union or combination of its capital, property, trade or acts with the capital, property, trade or acts of any other person or corporation, whereby the price in Texas of any article of manufacture or merchandise would be fixed or sought to be fixed, regulated or sought to be regulated; or whereby the price in Texas of any article of manufacture or merchandise would be reasonably calculated to be fixed or regulated, or whereby the trade in such article of manufacture or merchandise in Texas would be sought to be controlled or limited, or would be reasonably calculated to be controlled or limited.

"The statute known as the Anti-trust Law of 1903 became effective on March 31st, 1903, and has since continued in force. For the purposes of this charge you are instructed that this statute defines a trust to be a combination of capital, skill or acts, by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes, viz.:

"1. To create or which may tend to create or carry out re-

strictions in trade or commerce in Texas, or to create or carry out restrictions in the free pursuit in Texas of any business authorized or permitted by the laws of this State.

"2. To fix, maintain or increase the price of merchandise in Texas.

"3. To prevent or lessen competition in Texas in the sale of merchandise.

"4. To abstain from engaging in business or in the sale of merchandise in Texas, or any portion thereof.

"Said statute of 1903 further defines a monopoly to be a combination or consolidation of two or more corporations when effected in any of the following methods, viz.:

"1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create, a trust as above defined.

"2. When any corporation acquires the shares or certificates of stock, franchise or other rights, or the physical properties or any part thereof of any other corporation for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

"III. Oil, all other products of petroleum, and goods, wares or merchandise of any character which the defendant or its agents may have purchased or acquired in any manner outside of the State of Texas and caused to be transported to its agents or others within the State, are the subjects of interstate commerce when they enter this State, and so remain until such commodities are removed from the original tanks, vessels or other packages in which they are imported into the State and become mixed with the common mass of property of similar character in this State. The anti-trust laws of Texas have no reference to agreements or pools or arrangements of any character concerning subjects of interstate commerce, and no agreement, pool or other arrangement, if any, which the defendant may have entered into with reference to the sale of any subject of interstate commerce can be considered by you as violating any anti-trust law of Texas. But neither oil purchased by the defendant from the Corsicana Refinery or elsewhere in Texas, nor other merchandise purchased by defendant at points in Texas, nor such oil or other merchandise purchased by defend-

ant at points outside the State and transported into the State and removed from the original packages or vessels in which it was brought into the State and mingled with other property of similar character in the State, is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any agreement or pool or arrangement entered into by defendant with reference to such property or the sale thereof, if any such sale there were, would be unlawful, if in violation of the anti-trust laws of this State.

"IV. A corporation such as defendant can only act through its agents and servants, but such a corporation is not liable for all of the acts of its agents or servants. It is liable, however, for the acts done in the scope of their employment and agency, and is also liable for the acts of its agents which it has authorized such agents to perform, and it is also liable for the unauthorized acts of its agents, if any, which have been knowingly acquiesced in or ratified by the governing body of said corporation.

"V. Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor's agents prior to June 1st, 1900, and to the doings and agreements of defendant's agents, and the agents of other corporations, outside the State of Texas, and to the doings and agreements of individuals both prior and subsequent to June 1st, 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant, except within the limitations and for the purposes hereinafter stated, viz.:

"If you find from a preponderance of the other evidence in the case, independent of all declarations or statements made by any person or persons, except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June 1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it worth, such acts or declarations of all the

parties to said agreement, if any, and such acts and declarations of their authorized agents, if any, as were done or made, as the case may be, during the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the character of said agreement, and whether or not it contemplated a violation by defendant of the anti-trust laws of Texas.

"You may further consider for what, if anything, you think it worth as tending to show or explain the course of defendant's dealing in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside the State.

"None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency.

"VI. No agreement made by the defendant outside the State of Texas, to violate the anti-trust laws of Texas, if any such there were, can be made the basis for forfeiting its permit to do business in Texas, or for imposing penalties upon it, unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of defendant; but inasmuch as the undisputed evidence in the case shows that the defendant has continuously maintained its agents in this State and prosecuted its business therein since May 31, 1900, you will be authorized to convict it of violating the anti-trust laws of Texas, if you find from a preponderance of the evidence in favor of the State on the issues submitted for your consideration in paragraphs VII, VIII, IX, X or XI of this charge.

"VII. If you find from a preponderance of the evidence that the defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey, on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, and if you further find from a preponderance of the evidence that the oil with reference to which said agreement or understand-

ing, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph seven of the court's charge. You are instructed in this connection that if you find in favor of the State on the issue above submitted for your consideration in this paragraph of the charge, each day embraced between May 31, 1900, and March 31, 1903, during which the defendant remained a party to the agreement or understanding herein mentioned, if there were any such agreement or understanding, and if it remained a party to same on any of said days, would constitute a separate and distinct violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the defendant was on June 1st, 1900, or on some date subsequent thereto and prior to March 31, 1903, through the action of its duly appointed and authorized agents, a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined from petroleum, and if you do not further find from a preponderance of the evidence that the oil with reference to which defendant entered into said agreement or understanding, if any such there were, was the subject of local, as distinguished from interstate commerce, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph seven of the court's charge.

"VIII. If you find from a preponderance of the evidence that on June 1st, 1900, or on any date subsequent thereto, and prior to March 31st, 1903, the defendant acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital of the Standard Oil Company of New Jersey, whereby the price in Texas oil refined from petroleum, other than oil which was the subject of interstate, as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eight of the court's charge. In this connection you are instructed that if the defendant became a party to a pool of the char-

acter mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas. If you do not find from a preponderance of the evidence that on June 1, 1900, or that on some date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents had brought about or permitted a combination or union of its capital with the capital of the Standard Oil Company of New Jersey, and if you do not further find from a preponderance of the evidence that by said combination or union, if such there were, the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or that thereby the price in Texas of such oil was reasonably calculated to be fixed or regulated, or that thereby the trade in such oil in Texas was sought to be controlled or limited, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph eight of the court's charge.

"IX. If you find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were on March 31st, 1903, or any date subsequent thereto and prior to April 29th, 1907, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph nine of the court's charge. In this connection you are instructed that if the defendant became a party to a trust of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29th, 1907, that it remained a party to and acted under such trust, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey, for the purpose of creating in Texas, or which tended to create or carry out in Texas restrictions in the free pursuit in this State of the business of selling said character and kind of oil, or to fix, maintain, or increase the price of such oil in Texas, or to prevent or lessen competition in Texas, in the sale of such oil, and that the defendant remained or was a party to, and acted under such combination, if such there were subsequent to March 30, 1903, and prior to April 30, 1907, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph nine of the court's charge.

"X. If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29th, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances, that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph ten of the court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29th, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, and that they were brought under such a common management or control,

if any, by their respectively authorized officers under such circumstances that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of such oil, or fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph ten of the court's charge.

"XI. If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29th, 1907, acquired a majority of the captial stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eleven of the court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29th, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation, and if you do not further find from a preponderance of the evidence that said stock was acquired and combination effected, if it were at all, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of said character and kind of oil, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will say by

your verdict, we the jury find in defendant's favor on the issues submitted for our consideration in paragraph eleven of the court's charge.

"XII. The evidence introduced before you does not show with sufficient definiteness that the defendant has, since May 31st, 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil and Gasoline Company, in such a manner as to violate the Anti-trust Laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts.

"XIII. Evidence has been introduced before you tending to show that the defendant has given rebates and discounts in the course of its dealings; evidence has also been introduced before you tending to show that defendant has made contracts and entered into understandings other than those which have been submitted for your consideration in paragraphs seven to eleven, inclusive, of this charge. Evidence has also been introduced before you tending to show the general course of dealings of defendant in Texas and elsewhere, including some of its business methods in meeting competition. You are instructed that none of this evidence shows or tends to show any violation of the anti-trust laws of Texas, unless it tends in some degree to establish some one or more of the issues submitted for your consideration in the last above mentioned paragraph of this charge; and you are therefore instructed to acquit the defendant and return a general verdict for it—notwithstanding any and all of said evidence, unless you find in favor of the State on the issues submitted for your consideration in some one or more of said paragraphs of the charge.

"XIV. If you convict the defendant under the foregoing instruction of any violation or violations of the Anti-trust Law of 1899, you will specify in your verdict the date or days for which it is convicted of having violated said law, and will further specify in your verdict that for said violation or violations, if any you find, that its permit to do business in Texas shall be forfeited, and the amount of money which shall be adjudged against it as penalties for said violations, if any. In fixing the penalties, if any, which you assess against the defendant for any violations of which you may convict it, of the Anti-trust Law of 1899, you will fix same at not less than two hundred dollars, or more than five hundred dollars per day for each day you find it has so violated

the law. If you convict the defendant of any violations of the Anti-trust Law of 1903, you will specify in your verdict the date or days for which it is so convicted and further specify therein that as a result of said conviction, its permit to do busines in Texas shall be forfeited, and the sum of money that shall be adjudged against it as a penalty for such violation, fixing said sum at fifty dollars per day for each and every day that you convict it of having violated said law.

"XV. In order to aid you in preparing your verdict in proper form, when you have reached same, the following forms of verdicts are submitted for your consideration:

"1. If you find in favor of the State on all of the issues submitted to you and for the entire time for which penalties are claimed by the State against the defendant in its petition, you will say: 'We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for the penalties at.....dollars; and we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty-eight days and fix the penalties at seventy-four thousand four hundred dollars. We further find that the permit of the defendant to do business in the State of Texas should be canceled. We find for the defendant upon all the issues made by the pleadings and not submitted in the charge of the court.'

"2. If you find in favor of the State on some of the issues submitted for your consideration, relating to the alleged violation of the Anti-trust Law of 1899, and in favor of the State with reference to some of the alleged violations of the Anti-trust Law of 1903, you may use the following form of verdict:

"'We the jury find in favor of the State on the issues submitted for our consideration in the following paragraphs of the court's charge:

"'We further find that the defendant violated the anti-trust laws of Texas on the following days embraced between May 31, 1900, and March 31, 1903.

"'We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of .....dollars. We further find that the defendant violated the

Anti-trust Laws of 1903, on the following days embraced between the 30th day of March, 1903, and the 29th day of April, 1907.

"'We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of .....dollars. On all other issues raised by the pleadings, we find in favor of the defendant.'

"3. If you find in favor of the State with reference to some or all of the alleged violations of the Anti-trust Law of 1899, submitted for your consideration, and if you find in favor of the defendant on other of said alleged violations, and if you find in favor of the defendant on the issue of all of the alleged violations of the Anti-trust Law of 1903, you may use the following form of verdict:

"'We the jury find in favor of the State on the issues submitted for our consideration in the following paragraph of the court's charge..... We further find that the defendant has violated the anti-trust laws of Texas on each of the following days embraced between May 31, 1900, and March 31, 1903, .....; we further find that because of said violations the permit of the defendant to do business in Texas should be forfeited and penalties should be imposed upon it in the amount of..... dollars. We further find in defendant's favor on all alleged violations of the Anti-trust Laws of 1903, and on all other issues made by the pleading.'

"4. If you find in defendant's favor on all issues submitted for your consideration relating to its alleged violation of the Anti-trust Laws of 1899, but find in favor of the State on all or some of the issues relating to defendant's alleged violation of the Anti-trust Law of 1903, you may use the following form of verdict: 'We the jury find in defendant's favor on all issues submitted for our consideration relating to its alleged violation of the Anti-trust Laws of 1899, but find in favor of the State under the following paragraphs of the court's charge, ....., for alleged violations of the Anti-trust Laws of 1903. We further find that the defendant has violated said anti-trust laws on each of the following days embraced between March 30, 1903, and April 29, 1907, ..... We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the sum of.....dollars.'

"5. If you desire to return a general verdict for defendant you may use the following form of verdict: 'We the jury find for the defendant.'

"XVI. You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to take the law as it is given you in charge by the court and to be governed thereby in arriving at your verdict."

All requested instructions were refused. The verdict of the jury reads as follows:

"We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties, 1,549,500.00 dollars.

"And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty-eight days, and fix the penalties at seventy-four thousand four hundred dollars.

"We further find that the permit of the defendant to do business in the State of Texas should be canceled.

"We find for the defendant upon all issues made by the pleadings and not submitted in the charge of the court."

The court rendered judgment for the State in accordance with the verdict for $1,623,900, and a cancellation of the defendant's permit to do business in this State. The defendant has appealed and presents the case in this court on one hunded and twenty-nine assignments of error.

There is evidence in the record which supports the findings of the jury, and we find the facts to be as found by the verdict.

OPINION.

"1. Assisted by elaborate briefs and arguments submitted by able counsel on both sides, this court has given to this important case earnest and careful consideration. The volume of business on our docket and the great number of questions presented preclude extended consideration in this opinion of many of the questions raised in appellant's brief. We therefore announce, in general terms, our conclusion to the effect, that it is *not* shown that error was committed in overruling appellant's application for a change of venue, in various rulings upon exceptions to pleadings, and as to admissibility of testimony.

"A majority of the court also hold that no positive error has been assigned upon the charge of the court. The writer of this opinion is of a different view concerning the eleventh section of the charge, and concurs with counsel for appellant in their contention that it was calculated to mislead the jury into the belief that they could find against the defendant upon the issues therein submitted, regardless of whether it had any knowledge of, participated with, or aided or abetted the Standard Oil Company in the wrongful conduct therein referred to. The provision of the Anti-trust Statute of March 31, 1903, upon which the charge in question was evidently founded, seems to be addressed, in the main, against the corporation which acquires stock or other property of another corporation with the intention of using it for the purpose specified in the statute and it can not properly be construed to include the corporation whose stock or property has been acquired, and subject it to the penalties prescribed by the statute, unless that corporation is, in some manner, responsible for the unlawful acts of the acquiring corporation.

"These are my individual views, and the other members of the court do not concur in the construction placed by me upon the charge. However, we are all agreed that, if the charge in question be erroneous, it affords no ground for reversal, because the jury found that appellant had violated other provisions of the Anti-trust Act of 1903, and awarded only one penalty for each day's violation. Having found for the State on these other issues, if the verdict had been in appellant's favor on the issues submitted by the charge under consideration, the judgment should have been the same; and, therefore, if that section of the charge was erroneous, such error is now harmless and immaterial.

"In reference to the assignment of error complaining of the order of the court appointing a receiver, it is sufficient to say that appellant has exercised its right to prosecute a separate appeal from that order, and this court, in considering that appeal, has decided against appellant. It is not entitled to have the order appointing a receiver reviewed by this court twice or in two distinct proceedings.

"2. The constitutionality and validity of the Anti-trust Acts of May 25th, 1899, and March 31st, 1903, have been vigorously assailed in numerous respects. We overrule these objections and hold that these statutes authorize and sustain this suit. (State

vs. Laredo Ice Company, 96 Texas, 467; Waters-Pierce Oil Co. vs. The State, 44 S. W., 936.)

"The contention that these statutes are too indefinite and uncertain in the particulars involved in this case is not regarded as tenable. The Sherman Anti-trust Law enacted by Congress is not more definite and specific than these statutes, and that law has stood the test against similar objections in the Supreme Court of the United States. (United States vs. Knight Company, 156 U. S., 1; United States vs. Trans-Missouri Freight Association, 166 U. S., 291; United States vs. Joint Traffic Association, 171 U. S., 505; Hopkins vs. United States, 171 U. S., 578; Anderson vs. United States, 171 U. S., 604; Addyston Pipe & Steel Co. vs. United States, 175 U. S., 211; Montague & Co. vs. Lowry, 193 U. S., 38; Northern Securities Company vs. United States, 193 U. S., 196.)

"3. This suit was instituted on September 22, 1906, and the defendant interposed a special exception to the petition in so far as it sought to recover penalties for alleged violation of the anti-trust laws of this State prior to the 22d day of September, 1904, for the reason that it appeared from the face of the plaintiff's petition that the right to recover such penalties accrued more than two years before the suit was filed; and was, therefore, barred by the statute of limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure of this State. That exception was overruled, and the court refused to give the jury a special instruction, requested by appellant, announcing and applying the same proposition of law. These rulings of the trial court are assigned as error, and present one of the most important questions in the case. Chapter 1 of Title 4 of the Code of Criminal Procedure is headed thus: 'The time within which criminal actions may be commenced.' Article 219 reads as follows: 'For all misdemeanors an indictment or information may be presented within two years from the commission of the offense and not afterward.'

"By the Penal Code offenses which are punishable by pecuniary fine only are designated misdemeanors; and appellant's contention seems to be that the things condemned by the Act of May 25th, 1899, upon which this suit in part is based, constitute misdemeanors; and that, although civil in form, the suit is criminal in nature and barred by Article 219 of the Code of Criminal Procedure. It is also contended that the pecuniary penalties imposed by the Act of March 31, 1903, constitutes part of the punishment

prescribed by that act, and that the suit for the penalties accruing thereunder constitutes a criminal case, and is barred by Article 218 of the Code of Criminal Procedure, which bars prosecutions for felonies.

"The second, third, fourth and sixth sections of the Act of May 25, 1899, declare that all persons, firms, corporations or associations of persons who violate those sections 'shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.' The eleventh section states that all who do the things therein condemned shall be 'adjudged a monopoly and be subject to all the pains and penalties provided in this act.' The seventh section provides for the forfeiture of the charter of any domestic corporation and permit to do business granted to any foreign corporation for violations of the statute. The fifth section reads as follows: 'Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act, shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State at the relation of the Attorney General or the district or county attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.'

"The pertinent part of the ninth section is expressed in these words: 'It shall be the duty of the Attorney General and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The Attorney General and the prosecuting attorney shall institute and conduct all suits begun in the district courts, and upon appeal the Attorney General shall prosecute said suits in the Courts of Civil Appeals and Supreme Court.'

"The first section of the Anti-trust Act of March 31st, 1903, defines a trust. The second section defines a monopoly, and the third section prescribes what act shall constitute a conspiracy in restraint of trade. The fourth section declares all trusts, monopolies and conspiracies in restraint of trade to be illegal. The fifth, sixth and seventh sections make provision for the forfeiture of charters of domestic corporations violating that act, and the eighth

section makes a similar provision in reference to the permit of foreign corporations to do business in this State. The seventh and tenth sections use the word 'convicted,' but the seventh relates to the subject of the forfeiture of charter rights, and the tenth to the subject of forfeiture of a foreign corporation's right to do business in the State, which shows that the Legislature did not have in mind a proceeding by indictment or criminal information. The eleventh section reads as follows:

" 'Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the Attorney General, or the district or county attorney, under the direction of the Attorney General, to prosecute for recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this act shall be over and above the fees allowed him under the general fee bill.'

"The thirteenth section of that act reads as follows: 'And in addition to the penalties and forfeitures herein provided for every person violating this act may further be punished by imprisonment in the penitentiary not less than one nor more than ten years.'

"We agree with counsel for appellant that these statutes are penal. They were enacted for the purpose of suppressing and preventing certain things regarded by the Legislature as detrimental to the public interest. The penalties prescribed were intended as punishment, but it does not follow that this is a criminal case within the purview of Article 219 of the Code of Criminal Procedure. After a careful consideration of all their terms, we have reached the conclusion that it was the intention of the Legislature in enacting the two statutes under consideration to create a cause of action in behalf of the State for the pecuniary penalties therein prescribed, to be recovered in a civil suit. We reach this conclusion mainly from the language of the fifth section of the Act of 1899, and the eleventh section of the Act of 1903. These sections declare that those who violate any of the provisions of those acts shall forfeit and pay, in the one instance not less than $200 nor more than $5000, and in the other instance $50, to be

recovered in an action in the name of the State. It is true that in some places in these laws the procedure is designated 'prosecutions,' but in others they are spoken of as 'actions' and 'suits.' In the ninth section of the Act of 1899 it is declared to be the duty of the Attorney General and district and county attorneys 'to institute and conduct all *suits* begun in the district courts, and upon appeal the Attorney General shall prosecute said *suits* in the Courts of Civil Appeals and Supreme Court.'

"Section 5 of that act, construed in connection with Section 9, indicates with absolute certainty a legislative purpose to authorize civil suits for the recovery of the pecuniary penalties prescribed. The two sections together indicate that it was not intended that such penalties should be enforced by a criminal proceeding, because if that act creates a criminal offense such offense would be a misdemeanor, of which the district court would have no jurisdiction. The Constitution confers upon that court exclusive jurisdiction of suits by the State for forfeitures and penalties; and it must be presumed that in enacting that statute the Legislature intended to provide for such suits as were authorized by that provision of the Constitution, and not to create criminal offenses of which the county court alone would have original jurisdiction, otherwise the Legislature would not have used the language, 'shall institute and conduct all suits begun in the district courts.'

"It is true that both of these statutes contain some expressions common to criminal procedure, such as 'offense,' 'guilty,' and 'convicted.' The word 'guilty,' however, is frequently used in civil cases, as 'guilty of fraud,' 'guilty of negligence.' And the word 'offense,' as used in these statutes, has reference to violations of their provisions, and is not equivalent to the words 'felony,' or 'misdemeanor.' However, we do not hold that it is necessary to use either of the latter terms to create a criminal offense; nor, on the other hand, do we think that the words 'offense,' 'guilty' and 'convicted' necessarily determine that these are criminal statutes to be enforced exclusively by indictment or information. The word 'suit' is very generally used to designate a civil case, and seldom, if ever, applies to criminal cases.

"As these statutes do not, in terms, require a resort to criminal procedure for their enforcement, then, even if they do not direct any method of enforcement, we are of the opinion that the State had the right to proceed in a civil action for a recovery of the

pecuniary penalties. In such cases it is a well established rule that an action of debt will lie for the recovery of statutory penalties. (5th Ency. Plead and Prac., 907, and authorities there cited.) It has been so decided in this State in Davidson vs. Missouri Pacific Ry. Co., 3 Texas Court App., 173, where it was held that a suit to recover a statutory penalty was an action of debt, and barred by our statute of limitation, which requires actions for debt, where the indebtedness is not evidenced by a contract in writing, to be commenced within two years. That the State may also bring an action for debt for the recovery of statutory penalties seems to be equally well settled. It was so held by the Supreme Court of the United States in Stockwell vs. United States, 13 Wall., 531. That was an action by the government to recover double the value of certain shingles, alleged to have been illegally imported into the United States. The act of Congress upon which the suit was founded reads as follows: 'That if any person or persons shall receive, conceal or buy any goods, wares or merchandise, knowing them to have been illegally imported into the United States, and liable to seizure by virtue of any act in relation to the revenue, such person or persons shall, on conviction thereof, forfeit and pay a sum double the amount of value of the goods, wares or merchandise so received, concealed or purchased.' In that case, among other things, the court said:

"'A verdict and judgment having been recovered against the defendants in the court below, the record has been removed into this court and four errors have been assigned.

"'The first is that a civil action of debt will not lie, at the suit of the United States, to recover the forfeitures or penalties incurred under this act of Congress, and that the court below erred in holding that such an action might be maintained. It is not contended that an action of debt will not lie to recover duties, if the defendant be the owner or importer of the goods imported, for it is conceded that, by the act of importing, an obligation to pay the duties is incurred. The obligation springs out of the statutes which impose duties. Nor is it doubted that when a statute gives a private person a right to recover a penalty for a violation of law he may maintain an action of debt, but it is insisted that when the government proceeds for a penalty based on an offense against law it must be by indictment or by information. No authority has been adduced in support of this position, and it is believed that none exists. It can not be that whether an action

of debt is maintainable or not depends upon the question who is the plaintiff. Debt lies whenever a sum certain is due to the plaintiff, or a sum which can readily be reduced to a certainty—a sum requiring no future valuation to settle its amount. It is not necessarily founded upon contract. It is immaterial in what manner the obligation was incurred, or by what it is evidenced, if the sum owing is capable of being definitely ascertained. The A ' of 1823 (3 Stat. at L., 781) fixes the amount of the liability at double the value of the goods received, concealed or purchased, and the only party injured by the illegal acts, which subject the perpetrators to the liability, is the United States. It would seem, therefore, that whether the liability incurred is to be regarded as a penalty or as liquidated damages for an injury done to the United States, it is a debt, and as such it must be recoverable in a civil action.

"'But all doubts respecting the matter are set at rest by the fourth section of the act, which enacted that all penalties and forfeitures incurred by force thereof shall be sued for, recovered, distributed and accounted for in the manner prescribed by the Act of March 2, 1799 (1 Stat. at L., 627), entitled "An Act to regulate the collection of duties on imports and tonnage." By referring to the eighty-ninth section of that act, it will be seen that it directs all penalties accruing by any breach of the act, to be sued for and recovered, with costs of suit, in the name of the United States of America, in any court competent to try the same; and the collector within whose district a forfeiture shall have been incurred is enjoined to cause suits for the same to be commenced without delay. This manifestly contemplates civil actions, as does the proviso to the same section, which declares that no action or prosecution shall be maintained in any case under the act unless the same shall have been commenced within three years after the penalty or forfeiture was incurred. Accordingly, it has been frequently ruled that debt will lie at the suit of the United States to recover the penalties and forfeitures imposed by statutes. U. S. vs. Colt Pet. (C. C.), 145; Jacob vs. U. S., 1 Brock, 520; U. S. vs. Bougher, 6 McLean, 277; Walsh vs. U. S., 3 Wood. & M., 342; U. S. vs. Lyman, 1 Mas., 482; U. S. vs. Allen, 4 Day, 474. It is true that the statute of 1823 imposes the forfeiture and liability to pay double the value of the goods received, concealed or purchased with knowledge that they had been illegally imported, "on conviction thereof." It may be, therefore, that an indictment or infor-

mation might be sustained. But the question now is whether a civil action can be brought and, in view of the provision that all penalties and forfeitures incurred by force of the act shall "be sued for and recovered" as prescribed by the Act of 1799, we are of the opinion that debt is maintainable. The expression "sued for and recovered" is primarily applicable to civil actions, and not to those of a criminal nature.'

"As to the point made in reference to the penaties being indefinite under the Act of 1899, in addition to the case just cited, we refer to Rockwell vs. The State, 11 Ohio, 130, where the law fixed the penalty at not less than $5 nor more than $50, and the objection referred to was overruled, and it was held that an action of debt would lie. Other courts have held that statutes somewhat similar to those under consideration confer upon the State a cause of action to be maintained in a civil suit (Burgh vs. The State, 118 Ind., 133; Davis Admr. vs. State, 119 Ind, 555; State vs. Grove, 77 Wis., 448; Territory of New Mexico vs. Baca, 2 New Mex., 183). Interesting discussions of the terms 'fines,' 'forfeitures' and 'penalties' will also be found in People vs. Nedrow, 122 Ill., 363; Gosselink vs. Campbell, 4 Iowa, 300.

"Our conclusion is that the statutes under consideration vest in the State a civil right of action for the pecuniary penalties prescribed for violations of the provisions of those statutes. This being true, and as our statute of limitations applicable to civil cases does not include and bar the State, we hold that limitation is not available as a defense in this case. We do not rest this ruling upon the ground that the statutes under consideration do not create criminal offenses. If it be conceded that they create such offenses, criminal prosecutions for which would be barred within two years, it does not follow that the penalties which might have been recovered by such prosecutions can not, when authorized, be recovered in a civil action. Our Penal Code and Code of Criminal Procedure deal exclusively with criminal cases, and that portion of the latter which deals with the subject of limitation only purports to fix the time within which criminal actions may be commenced; and Article 219, relied on by appellant, merely forbids prosecutions by indictment or information after two years from the commission of the offense.

"It is argued on behalf of appellant that, even though a statute creating an offense may confer upon the State the right to maintain a civil action to recover a pecuniary penalty for violating the

statute, still that right would be barred by Article 219, which would bar the right to enforce the penalty by indictment or information. If Article 219, or any other statute, declared that no right of action should exist or no sort of proceeding be instituted for the collection of a penalty after two years, appellant's contention would be correct; but that article is much narrower in its scope and merely prohibits prosecutions in the manner and by the means prescribed for the prosecution of criminal cases. It may be true that the same general result would be sought in the one case as in the other, viz., recovery of the penalty, and, if that were the only thing to be considered, there would be force in the argument that in prohibiting criminal prosecutions after a specified time the Legislature intended thereby to prevent any other character of procedure which had for its purpose the accomplishment of the same general result. If the two proceedings, civil and criminal, were not so essentially different the contention urged might be sustained; but the statutes under consideration apply to natural persons as well as corporations, and as to such person, civil and criminal proceedings are widely different. In a civil action against an individual to recover a penalty, he is notified of the suit by delivering to him a citation. When the case is tried, if he loses, the only result is a personal judgment against him for a specified sum of money to be collected by execution and not otherwise. But if he is proceeded against criminally for the enforcement of a penalty he is arrested and required to give bond or stay in jail until after the case is tried. Upon trial, if he is convicted, the judgment not only goes against him for the penalty, but, unless he pays it, he is again incarcerated in jail. Thus it will be seen that in a criminal proceeding to enforce the penalty the defendant would necessarily be subjected to the ignominy of an arrest by a public officer; and, upon contingencies which often occur, would be incarcerated in jail. Now when the Legislature prescribed a time which would prevent a prosecution fraught with these serious consequences, does it necessarily follow that it intended to cut off any right the State might have to obtain a personal judgment for a pecuniary penalty, without resorting to a procedure that would bring about any such harsh results? We think not. In prescribing limitation for criminal proceedings we believe the Legislature had in mind cases criminal, both in substance and form, and had no intention of affecting any right the State might assert in a civil action.

"Chief Justice Marshall, in Adams vs. Woods, 2 Cranch., 337, announced that if a law should merely declare that no indictment or information should be presented after a specified time, such law would be pleadable only in bar of indictments or informations, and would not bar a civil action for a recovery of the penalty prescribed for violating a statute.

"An offense which is punishable by imprisonment in the penitentiary, absolutely or in the alternative, is a felony; and as the Anti-trust Act of 1903 fixes confinement in the penitentiary as an alternative punishment, appellant pleaded Article 218 of the Code of Criminal Procedure in bar of the State's right to recover part of the penalties sued for under that act. Article 218 is framed like Article 219, and would apply to a criminal prosecution based upon the Act of 1903 and bar such prosecution after three years. As we hold that it was the intention of the Legislature to confer upon the State the right to maintain a civil action for the pecuniary penalties therein prescribed, we hold that such right of action is not barred by Article 218. In other words, while the penalties referred to were intended, in a certain sense, as punishment, they were not imposed as punishment to be inflicted through the onerous instrumentalities of a criminal prosecution.

"Appellant also pleaded the statute of limitation of two and four years embodied in the Revised Statutes and applicable to civil cases. It is contended that the two years' statute has application upon the theory that if the State's suit is an action of debt, and not instituted for the preservation of the public rights, revenues or property, then the State should not be exempt from limitation, but should be treated as any other litigant. It is the rule of the common law of England that, unless so expressly enacted, limitation does not run against the sovereign, and that is the rule in the American States. We are not prepared to place upon that rule the restriction urged, but if we should do so it would not be proper to apply it to this case. In seeking to recover the penalties here involved, the State is endeavoring to enforce statutes enacted for the protection of the public interest. One of the main objects of the suit is to protect and preserve public rights and promote a well established public policy.

"In view of what we have already said, it is hardly necessary to add that we regard the four years' statute of limitation as equally unavailing. In Brown vs. Sneed, 77 Texas, 471, which holds that limitation does not apply to the State unless so expressly provided,

the authorities are collated and reviewed. We also hold that no error was committed in refusing a charge to the effect that the State must prove its case beyond reasonable doubt. Being a civil case, that rule does not apply.

"4. It is contended on behalf of appellant that the Anti-trust Act of May 25th, 1899, was rendered unconstitutional by the passage of another statute at the same session of the Legislature entitled 'An Act to protect workingmen in the right of organization and the purposes thereof,' approved May 27th, 1899, wherein it was provided that from and after its passage it should be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor and personal service in their respective pursuits and employments. By the third section it is declared that that act shall not apply to combinations or associations of capital or capital and persons, natural or artificial, formed for the purposes of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade, and that nothing therein contained shall be held to interfere with the terms and conditions of private contracts with regard to the time of service or other stipulations between employers and employes, and 'that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies.' In view of these limitations placed upon that act, we are of the opinion that it was not the intention of the Legislature to authorize anything to be done that was prohibited by the Act of May 25th, 1899. Hence we hold that this statute engrafts no exemptions upon the anti-trust statute referred to.

"5. The Anti-trust statute of May 25th, 1899, having been superseded and repealed by the Act of March 31st, 1903, which diminished the pecuniary penalties, appellant sought to have the latter statute applied to the time before as well as after it went into effect. This was refused, and we think properly so, on account of this proviso in the latter act: 'Provided nothing in this act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this act took effect.' We

are of opinion that this proviso preserved whatever rights the State had under the former law, including the right to enforce the penalties prescribed by that act. We are unable to concur in the proposition that it was merely intended to preserve the right to, but not the amount of, the penalties. Nor can we sanction the proposition that because of the location of a comma in the proviso quoted it was the intention of the Legislature to protect and preserve the rights of the State to recover penalties from domestic corporations and not preserve such right as against foreign corporations. No reason existing for making such a marked discrimination, we are not willing to hold that it was the intention of the Legislature to do so, merely because a comma was so used as to render that construction plausible. In construing written laws, courts are not bound by rules of grammar, and may disregard them in order to give effect to manifest legislative intention.

"6. It is claimed that the trial court should have granted appellant's motion for a new trial based upon the ground that the judgment imposes excessive fines, and operates as a deprivation of property without due process of law. It is also contended that the Act of 1899 should be declared void, because it authorizes excessive fines and forfeitures. That question has already been decided against appellant's contention in State vs. Laredo Ice Co., 96 Texas, 467. The verdict, while large, is much under the maximum permitted by the law. Its magnitude is mainly attributable to appellant's repeated and long-continued violations of the law, covering a period of six years. Hence we have reached the conclusion that the verdict is not so large as to render it manifest that the jury were actuated by prejudice or other improper motives.

"7. In appellant's motion for a new trial in the court below, and in its presentation of the case here, the verdict of the jury has been challenged, the contention being that the testimony fails to show that appellant has violated any of the anti-trust laws of this State. The evidence is very voluminous, and it is not necessary that it be set out or epitomized in this opinion. It is sufficient, we think, to show that from the date of its permit to do business in this State, May 31, 1900, appellant has been a party to an agreement or understanding with the Standard Oil Company of New Jersey, one object of which was to create a monopoly and control the price of petroleum oil and prevent competi-

tion in its sale in a large and specified territory, including the State of Texas; and that, to a large extent, such object has been accomplished. In so far as that agreement related to this State, appellant, acting by its agents, performed it within this State; and such performance within the limits of the State constitutes violations of Texas laws and renders appellant amenable to such laws, although the agreement between it and the Standard Oil Company may not have been made in this State. To a large extent the case rests upon circumstantial evidence; but we can not say that the jury were not warranted in the conclusions drawn from it. Hence we hold that the verdict is supported by testimony, and no error was committed in overruling the motion for a new trial.

"Upon the whole case our conclusion is that reversible error has not been shown, and, therefore, the judgment will be affirmed.

"Affirmed.

"W. M. KEY,
"Associate Justice.

"Filed December 11, 1907."

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In this connection we desire to call the court's attention to an evident misprint of Section 8 of the charge of the court as it appears in the opinion copied in the record, because upon examination of said Section 8 appearing on page 289 of the record it is apparent that there is a misprint or clerical omission in such section as copied in the opinion of the Court of Civil Appeals.

The verdict of the jury was that the Waters-Pierce Oil Company had violated each and every section of the Act of 1899 and of the Act of 1903 submitted for their consideration in the charge of the court for each and every day charged. The Court of Civil Appeals held that there was evidence in the record which supported such findings of the jury and that court found the facts to be as found by the verdict, viz., that the Waters-Pierce Oil Company had violated each of the provisions of each of the acts for the number of days charged in so far as such issues were submitted to the jury.

The questions then for determination are, whether or not there is a Federal question involved in this case, and, second, whether or not such Federal question is a real question as distinguished from a colorable or fictitious one.

There are various assignments of error made by the plaintiff in

error upon which it asks this court to revise the decision of the Court of Civil Appeals.

The first, second, fourth, fifth, sixth, ninth, tenth, eleventh, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth assignments of error all complain of the action of the court and the holdings of the court based upon provisions of the Acts of 1899 and 1903 which, it is asserted, are invalid because of their repugnance to various provisions of the Federal Constitution. As will be noticed, all of these matters involve purely the question of the ownership of a majority of the stock by the Standard Oil Company of New Jersey of the Waters-Pierce Oil Company. It will be sufficient to say that as the Waters-Pierce Oil Company was only tried and convicted for remaining a party to the unlawful combination after the acquisition of the stock for the illegal purpose by the Standard Oil Company of New Jersey, there can possibly be no Federal question in the case under any phase of the matter, but it is not necessary for this court to investigate to ascertain whether or not such Federal question could be raised for the reason that the Waters-Pierce Oil Company was found by the jury to have been guilty of violations of other provisions of the anti-trust laws, both of 1899 and 1903, without regard to the question of stock ownership, and there is no rule better settled by this court than the one that the Federal question must have been the controlling question in the decision of the case in the State court, and there must not have been any other independent question upon which the State court predicated its opinion or could have predicated its opinion without involving the decision of the Federal question.

See M., K. & T. R. R. Co. vs. Ferris, 179 U. S., 602.
Hammond vs. Johnson, 142 U. S., 73.
Harrison vs. Morton, 171 U. S., 38.
Klinger vs. Missouri, 13 Wall., 257.

The Court of Civil Appeals held and decided that irrespective of the question of stock ownership, irrespective of any error that might have been committed by the trial court in charging on this question, the charge did not affect the case, because they say, in discussing whether or not the court correctly charged on the stock ownership proposition:

"However, we are all agreed that if the charge in question be erroneous it affords no ground for reversal, because the jury found

that appellant had violated other provisions of the Anti-trust Act of 1903, and awarded only one penalty for each day's violation. Having found for the State on these other issues, if the verdict had been in appellant's favor on the issues submitted by the charge under consideration, the judgment should have been the same, and, therefore, if that section of the charge was erroneous, such error is now harmless and immaterial."

As shown by the record, and as stated by the Court of Civil Appeals, the jury found the Waters-Pierce Oil Company guilty of violating provisions of the Anti-trust Laws of 1899 and 1903, other than sections which made it an offense for one corporation to acquire the capital stock of another corporation for the purpose of affecting competition. They were charged with and found guilty of violating the provisions of both the Act of 1899 and 1903 prohibiting agreements or understandings between two or more persons, firms or corporations fixing or regulating prices in Texas of oil refined from pertoleum.

There can not then possibly be a Federal question predicated upon the holding of the State court giving validity to so much of the anti-trust laws of the State of Texas which prohibited the acquisition of the stock of one corporation by another corporation for the purpose of affecting competition or controlling or regulating the prices and output of oil.

As stated, this court has too often held that where the State court, although it may pass upon a Federal question and decide the validity of a State statute that is claimed contravenes the Federal Constitution, yet, if there is another independent ground upon which the State court rests its decision or could have rested its decision, then this court will not review the decision of the State court in deciding such Federal question because this court does not pass on moot cases.

Assignments 3 and 15 challenge the action of the court in allowing a recovery for acts that it was claimed were committed prior to the passage of the Acts of 1899 and 1903, respectively, and the introduction of testimony concerning such acts, and thus undertakes to raise a Federal question, but an examination of the charge of the court shows that this attempt is but "the not infrequent one of an attempt to clutch at the jurisdiction of this court as an afterthought when all other resources of litigation have been exhausted."

See Chicago I. & L. R. Co. vs. McGuire, 196 U. S., 127.

The lower court expressly charged "no agreement made by the defendant outside the State of Texas to violate the anti-trust laws of Texas, if any such there were, can be made the basis for forfeiting its permit to do business in Texas or for imposing penalties upon it unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of defendant." (R., p. 1145.)

And, again, the court charged the jury as follows:

"V. Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor's agents prior to June 1, 1900, and to the doings and agreements of defendant's agents, and the agents of other corporations, outside the State of Texas, and to the doings and agreements of individuals both prior and subsequent to June 1, 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant, except within the limitations and for the purposes hereafter stated, viz.:

"If you find from a preponderance of the other evidence in the case, independent of all declarations or statements made by any person or persons, except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June 1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it worth, such acts or declarations of all the parties to said agreement, if any, and such acts and declarations of their authorized agents, if any, as were done or made, as the case may be, during the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the character of said agreement, and whether or not it contemplated a violation by defendant of the anti-trust laws of Texas.

"You may further consider for what, if anything, you think it worth, as tending to show or explain the course of defendant's

dealing in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside the State.

"None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency."

Again, assignments 7 and 8 undertake to raise a Federal question because the statutes of 1899 and 1903 were so indefinite, vague and uncertain, and so indefinitely framed and of such doubtful construction that it could not be ascertained by the language used that particular acts constituted an offense and that they could not be understood either from the language in which they were expressed or from some other written law of the State, and that therefore the defendant was deprived of its property without due process of law because of the infliction of penalties thereunder. This is but another attempt to clutch at the jurisdiction of this court when all other litigation has proved ineffectual.

As was stated in the case of Simon vs. Craft, 183 U. S., 427, the essential elements of due process of law are notice and an opportunity to defend.

In this case the record shows that notice was issued and that the plaintiff in error not only had an opportunity to defend but did defend and had a trial in the court before a jury, took their appeals in the regular course, had the matters passed on by the appellate courts of the State. In other words, they have had their day in court, and it makes no difference whether the trial court erroneously administered the law or whether it correctly administered the law, the plaintiff in error can not complain of the want of due process of law for the reason that it has had every chance to be heard, was heard, and had all these matters passed on in a court of competent jurisdiction.

See Remington Paper Co. vs. Watson, 173 U. S., 443.
New Orleans Waterworks vs. Louisiana, 185 U. S., 336.
Kennard vs. Louisiana, 92 U. S., 480.
Lent vs. Tillson, 140 U. S., 316.
C., B. & Q. R. R. Co. vs. Chicago, 166 U. S., 226.

In the case of the Remington Paper Co. vs. Watson, supra, this court says:

"The appointment of a receiver to take possession of the prop-

erty of an insolvent corporation upon the petition of a creditor is certainly due process. This, of course, is not denied, but the invalidity of the order of appointment is asserted because it was made ex parte and because Watson had not fully qualified. It is hence argued that the appointment was a nullity and constituted no legal obstacle to the proceedings in the United States Circuit Court. * * * The action was regularly proceeded with and was determined against plaintiff in error on grounds that it did not involve Federal questions, and, therefore, it is not within our power to review the judgment of the Supreme Court of the State. The plaintiff in error then sought in the State court, and was given an opportunity to litigate the rights claimed by it, and it can not complain that the guarantees of the Constitution of the United States were denied because the litigation did not result successfully."

As was held further in the case of Simon against Craft, supra, "the due process clause of the Fourteenth Amendment does not necessitate that the proceedings in a State court should be by particular mode but only that there shall be a regular course of proceeding in which notice is given of the claim asserted and an opportunity afforded to defend against it. * * * If the essential requisites of full notice and opportunity to defend were present, this court will accept the interpretation given by the State court as to the regularity under the State statute of the practice pursued in the particular case."

Again, an examination of these statutes will disclose that they are not vague, indefinite and uncertain, and not only has the State court of Texas repeatedly held that they were not vague and indefinite, but the Supreme Court of the United States, in the case of National Cotton Oil Co. vs. Texas, 197 U. S., 115, upheld the provisions of both of said laws.

So far as the acts done and committed by the Waters-Pierce Oil Company were concerned for which it was convicted and penalties assessed, the acts themselves would have all been unlawful at common law, and Texas is a common law State, and the infliction of penalties was all that was necessary for the statute to do, because the acts, as stated, that were committed would have been illegal if there had been no statute denouncing the commission of such acts.

If a Federal question could be made by the mere statement in an assignment of error that a statute is so vague, indefinite and

uncertain in its provisions that a defendant is not put on notice of what acts are charged to be a violation of the law, then every case in every State court that is prosecuted for violations of a State statute could be brought to this court on a writ of error by simply alleging that the provisions of the act were vague, indefinite and charged no offense. This court will require more than such bare assertions. If upon an inspection by this court of the law itself it should determine that such criticism was without merit, then it will hold that there is no Federal question, although it may be necessary to examine the statute to do so, and we respectfully say that if the court does examine the two statutes it will find that not only is there no merit in the claim of plaintiff in error that the statutes are vague, indefinite and uncertain in their terms, but that the State court was right in holding that they defined an offense.

In so far as the question of whether or not particular acts shown to have been done constituted an offense under those statutes, this court will not concern itself for the reason that it is bound by the holding of the State court on those points, whether there was much or little evidence to support the finding of that court. The only thing this court will or can concern itself with is, does the legislation, not the act of the court under it, but does the legislation complained of violate the Constitution of the United States or the laws made under it?

Assignments 12 and 19 complain of the refusal of the trial court because it is said that it did not properly charge the law or that it failed to give proper charges.

These are matters of practice, mere irregularities, and can not be considered by this court, even if there were merit in the contentions.

Kennard vs. Louisiana, 92 U. S., 480.
Lent vs. Tillson, 140 U. S., 316.
C., B. & Q. R. R. Co. vs. Chicago, 166 U. S., 226.

The twentieth assignment of error is as follows:

"There is also manifest error in this, that the penalties of $1,549,500 and $74,400 assessed by the jury are, respectively, so plainly excessive that the defendant is thereby deprived of its property without due process of law."

The statement of this assignment is a refutation of the claim that it raises a Federal question, because as has repeatedly been

held by this court the provision in the Federal Constitution against excessive fines and penalties only applies to acts of Congress and not to State legislation. There is identically the same provision in the Constitution of the State of Texas against excessive bail, fines and cruel and unusual punishment being required or inflicted as is contained in the Constitution of the United States, and whether or not the Acts of 1899 and 1903 impose such fines and penalties is a matter for the State courts to decide and not this court, and the contention of the plaintiff in error was not only decided adversely to it in this case, but the Supreme Court of the State had already held in the case of State vs. Laredo Ice Company, 96 Texas, 461, that the Act of 1899 did not impose excessive fines or penalties or cruel and unusual punishment. But, in any event, if a Federal question could be predicated upon the excessiveness of the fines and penalties, certainly no such Federal question is here presented or was presented in the State court, because it is claimed that the excessive penalties deprive plaintiff in error of its property without due process of law, not that it was denied the equal protection of the law, or any other question that might have been raised in connection therewith, but simply that it is deprived of its property without due process of law, although it had a full and complete hearing in the State court and tried this and every other issue involved in the case.

As stated, the mere statement of the assignment of error refutes the assignment itself, because every element of due process of law is found not only in the act itself, but in the conduct of the case all the way through the State court, because the act provides for the infliction of penalties only upon conviction in the ordinary course, and the penalties were inflicted only upon a conviction in the ordinary course, and, therefore, due process of law has been meted out to the defendant. The trouble is that due process has been administered to the plaintiff in error and that is the basis of its complaint.

The twenty-first assignment of error relates purely to the refusal of the court to sustain the contention of the plaintiff in error that the cause of action of the State was barred by limitation.

The construction of the State courts upon its statutes of limitation is binding upon the Federal courts, and as no right is guaranteed or denied by limitation statutes of any kind, there can be no Federal question predicated upon any construction of a limitation statute of a legal character.

Pim vs. St. Louis, 164 U. S., 273.

The twenty-second and twenty-third assignments of error complain of the action of the trial State court in refusing to sustain exceptions to portions of defendant in error's petition and refusal to give special charges asked by the plaintiff in error covering the phase of the case made by the pleadings of the defendant in error, charging agreements about divisions of territory between the plaintiff in error and the Standard Oil Company of New Jersey. It is sufficient to say that the court did not authorize a conviction of the plaintiff in error for any such agreement, no such question was passed on in the State court of appeal, and, therefore, there is nothing upon which to base this assignment of error. On the contrary, the State trial court instructed the jury to find for the plaintiff in error upon all issues made by the pleadings and not submitted to the jury in paragraphs VII to XI, inclusive, in the charge of the court, and we submit that an examination of the charge will disclose that not the shadow of a cause of action or offense is submitted in either of these charges of the court growing out of any such division of territory.

The twenty-fourth assignment of error challenges the trial court's action in admitting certain testimony. It is absurd to say that irregularities or mistakes of the trial court in admitting testimony could be made the basis of a Federal question.

Assignments of error Nos. 25, 26, 27 and 28 undertake to call in question the action of the trial court in appointing a receiver for the property and assets of the plaintiff in error.

It is sufficient to say that in this case the Court of Civil Appeals expressly declined to pass upon the questions here raised in this cause, and said:

"In reference to the assignments of error, complaining of the order of the court appointing a receiver, it is sufficient to say that the appellant has exercised its right to prosecute a separate appeal from that order, and this court in considering that appeal has decided against appellant. It is not entitled to have the order appointing a receiver reviewed by this court twice or in two distinct proceedings."

It is respectfully submitted that the writ of error should be dismissed, because there is not the shadow of a Federal question made in the record, and if it should not be dismissed that then the case

should be affirmed because the alleged Federal questions are not real but frivolous and without merit.

Robert V. Davidson
Attorney General.

Jewel Pilgrim
Assistant Attorney General.

John W. Brady

Geo. Allen

Counsel for the Defendant in Error, The State of Texas.

In the [illegible]

[illegible]

No. 350

WATERS-PIERCE OIL COMPANY . . . . . PLAINTIFF IN ERROR

AND

STATE OF TEXAS . . . . . DEFENDANT IN ERROR

# ANSWER OF THE PLAINTIFF IN ERROR

## TO THE MOTION OF THE DEFENDANT IN ERROR TO DISMISS THIS CAUSE

[illegible] STOREY
J. L. THORNDIKE
*Counsel for the Plaintiff in Error*

(21,130)

# In the Supreme Court of the United States

OCTOBER TERM 1908

No. 359

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WATERS-PIERCE OIL COMPANY . . . PLAINTIFF IN ERROR

AND

STATE OF TEXAS . . . . . DEFENDANT IN ERROR

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ANSWER of the Plaintiff in error to the Motion of the Defendant in error to dismiss.

1. This cause was advanced by an order of this Court made on the 4th May last upon the motion of the Defendant in error and was thereby assigned for argument on last Tuesday, the 13th October, after the cases already set down for that day.

2. At the same time the cause No. 360 of this term, between the same parties and having the same title as this cause, was advanced by a like order and assigned for argument on the same day, and a motion previously made by the Defendant in error to dismiss the writ of error in that cause was postponed to the hearing of the case on its merits.

3. Both of the said causes now stand on the list of causes for argument on the said 13th October and have not yet been reached, and a motion has been made by the Plaintiff in error to consolidate the cause No. 360 with this cause.

4. The questions raised by the motion of the Defendant in error to dismiss the writ of error in this cause involve the merits of the case and are discussed in the brief which is about to be filed on behalf of the Plaintiff in error, and they cannot be dealt with separately from the merits of the whole case. It is submitted that these questions can be best discussed and considered at the hearing of the case on its merits, which will probably be had within a very short time, but if the Court prefers to consider them previously, reference is hereby made to the said brief which is about to be filed and in which they are fully discussed.

5. The Plaintiff in error prays that the said motion may be postponed, as in the case of the like motion in No. 360, to the hearing of the case on its merits.

MOORFIELD STOREY.
J. L. THORNDIKE.

19TH OCTOBER 1908.

IN THE

# Supreme Court of the United States.

*OCTOBER TERM, 1908.*

NO. 359 AND NO. 360.

WATERS-PIERCE OIL COMPANY,
Plaintiff-in-Error,
vs.
STATE OF TEXAS,
Defendant-in-Error.

## STATEMENT.

In 1899, the Legislature of Texas enacted a law in fifteen sections against pools, trusts and monopolies in trade which took effect January 31, 1900, the substantial provisions of which, so far as this cause is concerned, are comprised in Sections 1 to 8, which are as follows:

> "Section 1. Any corporation organized under the laws of this or any other state or country, and transacting or conducting any kind of business in this State, or any partnership, or individual or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or the pre-

mium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to the penalties as provided by this act.

Section 2. A 'monopoly' is any union or combination or consolidation or affiliation of capital, credit, property assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a 'monopoly,' as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificases of stock or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the

meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a 'monopoly,' as defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

Section 3. If any person, persons, company, partnership, association or corporation, engaged in the manufacture of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction shall be subject to the penalties of this act.

Section 4. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this State or elsewhere, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State, their products for the purpose of driving out competition or financially injuring competitors engaged in similar business, said person, persons, company, partnership, association, corporation or agent resorting to this method of securing a monopoly within this State in such business, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subject to the penalties of this act.

Section 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation

or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney-General or the district or county attorney; the moneys thus collected to go into the state treasury, and to become a part of the general fund, except as hereinafter provided.

Section 6. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

Section 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other state or country, which shall violate any of the provisions of the preceding sections of this act shall there-

by forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as *prima facie* proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, to the Commissioner of Insurance, Statistics and History of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation."

This act was repealed by an act which became effective March 31, 1903, the provisions of which substantially affecting this case are comprised in the first thirteen sections, which are as follows:

"Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any, or all of the following purposes: 1. To create or which may tend to create or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State. 2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any produce for market or transportation. 3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation. 4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise,

produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established. 5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected. 6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation. 7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof.

Section 2. That a monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods: 1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first

section of this Act. 2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

Section 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade: 1. Where any two or more persons, firms, corporations, or associations of persons who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation, or association of persons any article of merchandise, produce or commodity. 2. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

Section 4. Any and all trusts, monopolies and conspiracies in restraint of trade as herein defined, are hereby prohibited and declared to be illegal.

Section 5. Any corporation holding a charter under the laws of the State of Texas, which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

Section 6. For a violation of any of the provisions of this act by any corporation mentioned herein, it shall be the duty of the Attorney-General, upon his own motion, and without leave or order of any judge or court, to institute suit or **quo warranto** proceedings in Travis County, at Austin, or at the county seat of any county in the State, where such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

Section 7. When a corporation organized under the laws of this State shall have been convicted of a violation of any of the provisions of this Act, and its charter and franchise has been forfeited, as provided in section 5, no

other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

Section 8. Every foreign corporation violating any of the provisions of this Act is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney-General to enforce this provision by injunction or other proceedings in the district court of Travis County, in the name of the State of Texas.

Section 9. The provisions of Chapter 92 of the Revised Statutes of this State of 1895, to prescribe the remedy and regulate the proceedings by **quo warranto**, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this Act.

Section 10. When any foreign corporation has been convicted of a violation of any of the provisions of this Act, and its right to do business in this State has been forfeited, as provided in Section 8 of this Act, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations shall be permitted to incorporate or do business in Texas.

Section 11. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this Act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis County, and it shall be the duty of the Attorney-General, or the district or county attorney under the direction of the Attorney-General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this Act shall be over and above the fees allowed him under the general fee bill.

Section 12. Any contract or agreement in violation of the provisions of this Act shall be absolutely void and not enforcible either in law or equity.

Section 13. And in addition to the penalties and forfeitures herein provided for, every person violating this

Act may further (be) punished by imprisonment in the penitentiary not less than one nor more than ten years.

Under the provisions of these two acts, the Attorney-General of Texas and the County Attorney of Travis County of that State, on the 22nd of September, 1906, instituted a suit against the Waters-Pierce Oil Company to recover penalties under the Act of 1899, from the 29th day of May, 1900, until the 31st day of March, 1903, at the rate of five thousand dollars per day and under the Act of 1903 from the 31st day of March, 1903, until April 29, 1907, the date at which the last amended petition was filed, at the rate of fifty dollars per day.

**The facts are:** That in 1878 a Waters-Pierce Oil Company was organized to succeed the partnership of Waters, Pierce & Company, oil merchants of St. Louis. Its capital was one hundred thousand dollars, divided into one thousand shares of the par value of one hundred dollars each and was subscribed and owned, 40 per cent by Waters, Pierce & Company; 20 per cent by Chess Carley & Company; and 40 per cent by Hutchings & Thompson. In June, 1882, its capital was increased to four hundred thousand dollars and at that time its stock ownership stood: Hutchings & Thompson and Chess Carley & Company, 2,750 shares; H. C. Pierce, 1,250 shares. Subsequent to this time Hutchings & Thompson and Chess Carley & Company transferred their 2,750 shares to the trustees under what is generally known as the Standard Oil Trust Agreement of January 2, 1882, which we will later refer to. Mr. Pierce continued to own his shares up to the date of the dissolution of the company in May, 1900, and from the date of the organization of the company down to the date of its dissolution, managed and controlled its affairs.

When this company was first organized, it was distinctly agreed that its management should be conducted by Mr. H. C. Pierce who was then an experienced oil merchant, familiar with the trade and territory to which its business was to be confined, and this agreement was complied with until the dissolution of the company at the time above stated. The territory which this company was organized to develop and serve was a small

part of Illinois, a part of Louisiana, and practically all that part of Missouri south of the Missouri River, Arkansas, Texas the Indian Territory and the Republic of Mexico. The oil business was then comparatively new and insignificant and the territory allotted to this company practically undeveloped in the oil trade. The business, in the opinion of the management of the company required great detail in facility for merchandising and watchfulness in upbuilding the business. To encourage the purchase of oil and popularize it and make its merchandise convenient and easy and to economize in the cost, the company, under Mr. Pierce's management, acquired tank cars for transporting the oil in bulk from the refineries to distributing stations where large local tanks were built to receive it in bulk; provided tank wagons in which to locally distribute oil in large or small quantities to dealers within a radius of ten to fifteen miles; and contrived iron barrels to ship to longer distances that could not be reached by wagon wherein the evaporation of oil would not take place and thereby occasion loss to the merchant—in short, every convenience that would administer in the economy of handling the oil, both to the consumer and its customers, and cheapen its use was instituted and enlarged upon as the business grew in proportions and the population of the territory in which its plant was constructed increased. By reason of these facilities and the increase in the population of this territory, the company's business grew from the sale of a few hundred thousand barrels at the date of its organization into millions of barrels before its dissolution.

This company was never a manufacturing or refining company in the United States. The only sources from which it could get in quantity and quality with promptness the oil necessary to supply its customers was the Standard Oil Company of Ohio and its successors in the refining business. From 1892 until the dissolution of the company its directorate consisted of Mr. Pierce, Mr. Findley, Mr. Pierce's brother-in-law, Mr. C. M. Adams, who had been with the company nearly all of its corporate life as an employee, Mr. Gruet, who had been employed by Mr. Pierce, and Mr. H. M. Tilford who resided in

New York. The home office of the company was at all times located at St. Louis and its business managed and ordered from there.

In 1900 a suit, which had been brought against this company by the State of Texas for the cancellation of its license to do business there because of a violation of some provision of the Anti-Trust Law of that State, culminated in a final judgment against it. This proceeding was based upon the acts of some of the agents of the company in making so-called exclusive contracts with local dealers which were held to be forbidden by the laws of Texas.

The Waters-Pierce Oil Co. v. Tex., 177 U. S., 28.

Thereupon, on the 28th day of May, 1900, this company was dissolved and a new company with the same name was, on the 29th day of May, 1900, organized under and pursuant to the laws of the State of Missouri. It was organized with a capital of four hundred thousand dollars by Mr. Pierce who subscribed and paid for the entire issue of stock. It took over all the property of the old company and gave notes in payment therefor which were subsequently honored at maturity.

At the time of the dissolution of the old Waters-Pierce Oil Company, the Standard Oil Company of New Jersey had acquired the 2,750 shares which had previously been owned by Hutchings & Thompson and Chess Carley & Company and their successors, the trustees under the Standard Oil Trust Agreement of January 2, 1882. It is not pretended that Mr. Pierce did not consult the owner of the majority of stock in disposing of the property of the old company and its acquisition by the new. Counsel reported to Mr. Pierce, after a consultation with counsel representing the larger interests, that it had been understood that if the Standard Oil Company should retain the same interest in the new company it had in the old, it could do so, and accordingly, in the following September, Mr. Pierce transferred to it in blank the same number of shares in the new company that it had held in the old with the understanding that the shares should remain in his name on the stock book so as to give him the technical as well as the actual control of the company.

After the new company was organized its affairs and policies were managed by an executive committee at St. Louis, composed of Mr. Pierce, Mr. Findley, Mr. Pierce's brother-in-law, Mr. Adams, who had been employed by Mr. Pierce in the old company, Mr. Gruet, who had also been employed by Mr. Pierce in the old company, Mr. Johnson, general counsel, who had been Mr. Pierce's personal attorney, Mr. Johnson, Mr. Pierce's brother-in-law, and Mr. Ackert, a relative of Mr. Pierce. Neither the old nor the new Waters-Pierce Oil Company was ever a producer or refiner of oils in the United States, but acted as merchant for the brands of oil which had been established by the old company, and were manufactured for it and the new company by the refineries of the Standard Oil Company; both of them refined in Mexico oils which were sold there from crude oils which were purchased from the Standard Oil Company.

Mr. Pierce owned no stock or other interest in any oil producing or merchandising company other than the Waters-Pierce Oil Company. His business life had been devoted to developing and building up the business and trade of the Waters Pierce Oil Company, and during all of the time of its existence he was the principal manager and director of its affairs and controlled its policies. Because of the large volume of business between the Standard Oil Company and the Waters-Pierce Oil Company, there was of necessity a great volume of correspondence between the St. Louis officers of the Waters-Pierce Oil Company and those of the Standard Oil Company at 26 Broadway, New York. This correspondence related to business dealings between the two companies of such character as would usually take place between persons engaged in constant trade as manufacturer and merchant. The Standard Oil Company of New Jersey was an owner of a little more than a two-third interest in the Waters-Pierce Oil Company, and had a just and legal right to be informed from the offices of the latter, or through appointed agents, of the financial and business condition of the Waters-Pierce Oil Company. The testimony is clear, conclusive and positive that, as to the purchasing of

oil and the sale of oil in its territory, the Waters-Pierce Oil Company's management was entirely independent of any control or agreement between it and the officers of the Standard Oil Company or any other company whatsoever. It was neither claimed nor proven that the Waters-Pierce Oil Company of 1900, since its organiztion, had combined or confederated with any person or corporation, either in Texas or elsewhere, to fix or maintain the prices of any commodities in which it dealt or became a member of any trust or pool through which it shared in the earnings of any competitor, or that in any manner or form it sought to limit or control the output of any commodities in which it dealt.

**The most important claim of infraction of either the Acts of 1899 or 1903, is that the Standard Oil Company of New Jersey owned about 60 per cent. of the shares of its capital stock.**

This plainly will appear from the charge of the court to the jury and the evidence. During the course of the trial, against the defendant's objections, the State offered in evidence an agreement commonly called the Standard Oil Trust Agreement, dated the second day of January, 1882, made "Exhibit A" to the bill and an agreement supplemental thereto, marked "Exhibit B." It was agreed that the Waters-Pierce Oil Company did not sign this agreement, neither did Mr. Pierce nor was Mr. Pierce's stock ever deposited under the agreement.

The Standard Oil Company could not do business in Texas without a permit. It never did any business in Texas and never applied for a permit to engage in business there. It was always a refining company from which the Waters-Pierce Oil Company purchased its supplies.

The petition of the State of Texas charged that the Waters-Pierce Oil Company had conspired with John D. Rockefeller, John D. Archbold, Henry M. Flagler and a number of other persons and corporations on, or about January 1st, 1870, for the purpose of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States and in the State of Texas; that the predecessor of this plaintiff-in-error, the (old) Waters-

Pierce Oil Company, incorporated in 1878, had become a party to said conspiracy, and had entered into contracts with certain corporations and individuals engaged in the business of selling petroleum and the products thereof in the State of Texas by the terms of which said plaintiff-in-error acquired the properties of said individuals and corporations, all for the purpose of monopolizing the business of selling petroleum and the products thereof within said State and suppressing competition therein. Said petition further alleged that the said Waters-Pierce Oil Company, plaintiff-in-error, had entered into an agreement with the Standard Oil Company, a corporation organized under the laws of New Jersey, for the further purpose of monopolizing the trade in petroleum and the products thereof in the State of Texas; and, for the further purpose of carrying out said contract and conspiracies, had permitted the said Standard Oil Company to acquire a majority of the shares of stock of the said Waters-Pierce Oil Company and had thereby transferred the management and control of the said Waters-Pierce Oil Company to the said Standard Oil Company of New Jersey; that the Waters-Pierce Oil Company, plaintiff-in-error, not only succeeded to all the property of its predecessor, the Waters-Pierce Oil Company, which voluntarily dissolved May 29, 1900, but also assumed all the contracts and agreements of said predecessor, especially those above referred to, with the Standard Oil Company of New Jersey and other corporations and individuals; and that said plaintiff-in-error had effected a mere nominal reorganization for the purpose of perpetrating a fraud upon the State of Texas, and to enable the company to maintain its business in said State, and that the permit of said plaintiff-in-error to do business in Texas was fraudulently obtained. Said petition further charged that the said Waters-Pierce Oil Company was dominated and controlled in its business by the Standard Oil Company of New Jersey; that through the contracts and conspiracies aforesaid a large number of individuals and corporations doing business in the sale of oil and petroleum products were excluded from doing business within said State, whereby competition was

suppressed and destroyed and a substantially complete monopoly in petroleum products established. Said petition further alleged that said acts, conspiracies and agreements were done, continued and performed by plaintiff-in-error upon each and every day from the 31st day of May, 1900, to the 31st day of March, 1903, in violation of the Anti-Trust Act of 1899, and from the 31st day of March, 1903, up to the time of bringing this suit upon each and every day within said period in violation of the Anti-Trust Act of 1903. (Transcript, pp. 1 to 39.)

To the petition of the State of Texas, plaintiff-in-error made answer by general and special exceptions, general denial and certain special pleas wherein plaintiff-in-error denied the constitutionality of said Acts of 1899 and 1903 in so far as it was sought thereunder to hold plaintiff-in-error liable for the acts and things alleged and charged in said petition, and further defended that if the petition of the State of Texas and the prayer therein should be granted, this plaintiff-in-error would be denied the equal protection of the laws, be subjected to **ex post facto** laws, deprived of its property without due process of law, and have the obligation of its contracts impaired, all contrary to the express provisions of the United States Constitution. (Transcript, pp. 43 to 95.)

Trial was had at the May Term, 1907, of the District Court of Travis County, Texas, resulting, on June 1st, 1907, in a verdict in favor of said State of Texas and against this plaintiff-in-error for the sum of $1,623,900.00, and cancelling said permit of plaintiff-in-error to do business in the State of Texas, whereupon said District Court of Travis County, Texas, entered judgment in accordance with said verdict, that the State of Texas have and recover from plaintiff-in-error herein the sum set forth in said verdict, with interest and cost of suit and did order and decree that the permit of the said Waters-Pierce Oil Company, plaintiff-in-error, to do business in the State of Texas be cancelled and that the said Waters-Pierce Oil Company be perpetually enjoined and prohibited from doing any and all business, except interstate business, within the State of Texas. (Transcript, pp. 334 and 335.)

In due time, plaintiff-in-error filed its motion for a new trial, which motion was overruled by said District Court, whereupon plaintiff-in-error excepted and gave notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas. (Transcript, pp. 315 to 320.)

Subsequent to overruling the above motion for a new trial and before plaintiff-in-error had given its **supersedeas** appeal bond from said judgment against it, said District Court, upon motion of the State of Texas, filed in the main case, appointed a receiver of the property, assets and business of said Waters-Pierce Oil Company, situate in the State of Texas, to which action of said court this plaintiff-in-error duly excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Transcript, pp. 327 to 328.) The Court of Civil Appeals affirmed the judgment, decree and orders of the court below. (Transcript. p. 1162.)

In due time plaintiff-in-error filed with the Supreme Court of Texas its application for a writ of error to said Court of Civil Appeals, which said application was on February 26, 1908, refused by said Supreme Court of Texas. (Transcript, p. 1187.)

Whereupon, said Waters-Pierce Oil Company, plaintiff-in-error herein, applied for and obtained from this court a writ of error to said Court of Civil Appeals to review its judgment upon assignments of error which are substantially in part epitomized under the title of Points and Authorities.

## POINTS AND AUTHORITIES.

1. **The Waters-Pierce Oil Company cannot be held liable and punished for the acts or engagements of the Standard Oil Company which it was under no legal duty to examine and could neither order, forbid nor control.**

Capitol Traction Company v. Offutt, 17 App. D. C. 292; 53 L. R. A. 390;
Durkin v. Kingston Coal Company, 171 Penn. 193; 29 L. R. A. 808;
U. S. Const., Sec. 10, Article I.
U. S. Const., Sec. 1, 14 Adm.

(*a*) **The capacity of the Standard Oil Company to acquire and hold the stock of the Waters-Pierce Oil Company must be determined by its charter, and the conditions of subscription and the nature of certificates of stock according to the law of the State wherein said Waters-Pierce Oil Company was created, to-wit: the State of Missouri, and not the State of Texas.**

Black v. Zacharie, 3 Howard, 483;
Meramec Mining Co. v. Levy, 54 Penn. State, 227; 93 Am. Dec. 697;
Ireland v. Globe Milling & Reduction Co. (R. I. 1895); 32 Atl. 921;
Greenwood v. Curtis, 6 Mass. 358;
Boatmen's Bank v. Gillespie, 209 Mo. 217, l. c. 256;
Trust & Savings Co. v. Home Lumber Co., 118 Mo. 459;
Bank v. Durfee, 118 Mo. 442;
Watson v. Woody Printing Co., 56 Mo. App. 151;
O'Brien v. Cummings, 13 Mo. App. 197;
Carroll v. Savings Bank, 8 Mo. App. 249;
U. S. Const., Sec. 1, 14 Amd.

(*b*) **If the holding of stock by the Standard Oil Company of New Jersey in the Waters-Pierce Oil Company was unlawful,**

**it was an offense on the part of the holding company, and not of the company whose stock was so held, the acquisition of which it could neither lawfully forbid nor prevent.**

Texas Anti-Trust Act, 1903, Sec. 2;
Northern Securities Co. v. U. S., 193 U. S. 197;
U. S. Const., Sec. 1, 14 Amd.

(*c*) **In declaring it unlawful for the Standard Oil Company to own stock in the Waters-Pierce Oil Company, the latter is not only deprived of its property without due process of law, and denied the equal protection of the laws, but such directly impairs the obligation of a contract, in that it denies a stockholder of the Waters-Pierce Oil Company the right to transfer his stock to whom he pleases.**

Trisconti v. Winship, 43 La. An. 45; 26 Am. St. Rep. 175.
McNulte v. Corn Belt Bank, 164 Ill. 427; 56 Am. St. Rep. 203;
Weston's Case, L. R. 4 Ch. App. 20;
Farmers' Loan & Trust Co. v. C. P. & S. Ry. Co., 163 U. S. 31;
Rice v. Rockefeller, 134 N. Y. 174; 30 Am. St. Rep. 658.

2. **To punish the Waters-Pierce Oil Company because part of its stock was held by the Standard Oil Company, the same having been acquired long before the passage of the Texas Anti-Trust Acts of 1903 and 1899, and when such acquisition was wholly lawful, is to subject the Waters-Pierce Oil Company to an *ex post facto* law and deprive it of its property without due process of law.**

U. S. Const. Sec. 10, Article 1;
U. S. Const. Sec. 1, 14th Amd;
Calder v. Bull, 3 Dallas, 386;
Fletcher v. Peck, 6 Cranch, 87;
Watson v. Mercer, 8 Peters, 88;
Coffin v. Rich, 45 Maine, 507;
American Building & Loan Assn. v. Rainboat, 48 Neb. 434;

Stevens v. Southern Pacific Co. 109 Calif. 86; 41 Pacific 783; 29 L. R. A. 751.

(*a.*) **The *ex post facto* effect of a law cannot be evaded by giving a civil form to that which is essentially criminal.**

Huntington v. Attrill, 146 U. S. 657;
Wisconsin v. Pelican Ins. Co., 127 U. S. 265;
Boyd v. U. S., 116 U. S. 616;
Lees v. U. S., 150 U. S. 476;
U. S. v. Shapleigh, 54 Fed. Rep. 126;
Burgess v. Salmon, 97 U. S. 381;
U. S. v. Hughes, Fed. Cases No. 15,416;
Wilson v. Ohio Railroad Co., 64 Ill. 542;
Cooley, Const. Lim. (7th Ed.) p. 375. ff.

3. **The State of Texas cannot constitutionally enact a law which denounces as an offense an act committed in another state, and punish this plaintiff-in-error for an alleged offense, committed wholly outside of the jurisdiction of the State of Texas.**

The Appollon, 9 Wheaton, 362;
State v. Knight, (N. C., 1799) Taylor, 65;
In re Grice, 79 Fed. Rep. 627;
State v. Cutshall, 110 N. C. 538; 16 L. R. A. 130;
Allgeyer v. La. 165 U. S. 578;
Southerland, Stat. Const. (Lewis' edition) Vol. 1, Sec. 13;
Cooley, Const. Lim. (7th Edition) Page 176;
Story, Conflict of Laws, (1834) Sec. 620.

4. **The Waters-Pierce Oil Company cannot be held liable because of any alleged agreement between its predecessor, the old Waters-Pierce Oil Company, and the Standard Oil Company of New Jersey, solely on account of the purchase by the present Waters-Pierce Oil Company of its predecessor's business, property and good-will.**

Capitol Traction Co. v. Offutt, 17 App. D. C. 292; 53 L. R. A. 390;

Austin v. Tecumseh Nat'l. Bank, 49 Neb. 416; 68 N. Western, 628; 35 L. R. A. 444;
Wyman v. Hallowell, 14 Mass. 57; 17 Am. Dec. 194;
Bellows v. Hallowell & Augusta Bank, 2 Mason 31; Fed. Cases, 1279;
Gulf, Colo. & S. S. Railroad Co. v. Newell, 73 Texas, 334; 15 Am. State Rep. 788;
Houston Ice & Brewing Co. v. Stratton, 13 Tex. Cr. Rep. 887; 89 Southwestern 1111;
U. S. Const. Sec. 1, 14th Amd.

5. **Admitting the ownership of a portion of the stock of the Waters-Pierce Oil Company by the Standard Oil Company of New Jersey, this fact is not enough to establish the existence of a "combination" between the two corporations, within the meaning of that term as used in the Texas Anti-Trust Acts of 1899 and 1903, and to hold the Waters-Pierce Oil Company because of such ownership of stock by the Standard Oil Company guilty of entering into a combination with the Standard Oil Company, and punishing it therefor, is to deprive the Waters-Pierce Oil Company of its property without due process of law, deny it the equal protection of the laws, and hold it liable under *ex post facto* and retrospective laws.**

Commonwealth *ex rel.* v. Ponxsutawney Waterworks Co., 197 Pa. Stat. 569; 47 Atlantic, 843;
Gates v. Hooper, 90 Texas, 563; 39 Southwestern, 1079;
State v. Continental Tobacco Co., 177 Mo., 1; 75 Southwestern, 737;
U. S. Const. Sec. 1, Article 4;
U. S. Const. Sec. 10, Art. 1;
U. S. Const. Sec. 1, 14th Amd.

(*a*) **Nor does the fact of such ownership of a portion of the stock of the Waters-Pierce Oil Company by the Standard Oil Company of New Jersey warrant the conclusion that the Waters-Pierce Oil Company had brought its management and control under the management and control of the Standard Oil Company.**

6. **In the admission of incompetent, frivolous and immaterial evidence wholly foreign to any issues to the cause, arbitrarily admitted and without regard for the rules of law and constitutional rights of plaintiff-in-error to a fair and impartial trial of the issues raised, said evidence being calculated to excite, inflame and prejudice the minds of the jury against said plaintiff-in-error, the constitutional right of plaintiff-in-error to a fair and impartial trial was denied, and by the judgment upon the verdict in said cause plaintiff-in-error was deprived of its property without due process of law.**

Robinson, Am. Jurisprudence, Pages 238 to 57 to 59;
*In re* Ziebold, 23 Fed. Rep. 791;
*Ex parte* Va. 100 U. S. 346;
Bank of Columbia v. Oakly, 4 Wheaton, 235;
Cooley, Const. Lim. (7th Edition) Page 506;
Utah v. Bates, 14 Utah, 293; 47 Pacific 78; 43 L. R. A. 33;
San Jose Ranch Co. v. San Jose Land & Water Co., 126 Calif. 322; 58 Pacific, 824;
Pennoyer v. Neff, 95 U. S. 714;
U. S. Const. Sec. 1, 14th Am.

7. **The fine imposed is so grossly excessive as to deprive plaintiff-in-error of its property without due process of law.**

Cooley, Const. Lim. (7th Edition) Page 471;
Cutting v. Goddard, 183 U. S., l. c. 101;
Gates v. Hooper, 90 Texas, 563;
State v. Compress Co. 95 Texas, 603;
Ft. Worth & D. C. R. R. Co. v. State (Texas) 87 Southwestern, 336;
State v. Bates, 14 Utah, 293, 47 Pacific, 78, 43 L. R A. 33;
Texas Const. Sec. 13, Article 1;
U. S .Const. Sec. 1, 14th Amd.

(*a*) **In including penalties for Sundays, in the absence of proof showing the doing of business on such days, plaintiff-in-error is denied due process of law.**

**8. The Texas Anti-Trust Acts of 1899 and 1903 are so vague, indefinite, ambiguous and uncertain in terms as to fail to designate any offense with such certainty as to inform the public in advance of the constituents of the offense sought to be defined and punished, and the punishment of this plaintiff-in-error under said statutes deprives it of its property without due process of law.**

Augustine v. State (Texas), 52 Southwestern, 77;
Queen Ins. Co. v. State, 86 Texas, 250;
M. K. & T. Ry. Co. v. State (Texas), 100 Southwestern, 766;
Tozier v. U. S., 52 Fed. Rep. 917;
L. & N. Railroad Co. v. Commonwealth (Ky.), 35 Southwestern, 129;
Hughes Criminal Law, Sec. 2429;
Commonwealth v. Bradford, 9 Metcalf, 268;
Cutter v. State, 36 New Jersey Law, 125;
C. B. & Q. Railway Co. v. Chicago, 166 U. S. 226;
Hagar v. Reclamation District, 111 U. S. 701;
Niagara Fire Ins. Co. v. Cornell, 110 Fed. Rep. 816;
U. S. Const. Sec. 1, 14th Amd.

**9. The denial of any period of limitation in bar of a suit against plaintiff-in-error to recover fines or penalties or forfeit its permit is a denial of the equal protection of the laws, and deprives plaintiff-in-error of its property without due process of law.**

G. C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150;
Cutting v. Goddard, 183 U. S. 79;
*Ex parte* Converse, 137 U. S. 624;

Under Article 219, Texas Code of Criminal Procedure;
Klepper v. State, 4 Texas, 242;
Cyc. Vol. 22, Page 186;
Stucksbury v. Swan, 85 Texas, 563;
M. K. & T. Ry. Co. v. State (Texas), 100 Southwestern, 766;

Commonwealth v. Equitable Life Assurance Co. (Ky.); 38 Southwestern, 491;
U. S. v. Shapleigh, 54 Fed. Rep. 134;
*Ex parte* Lange, 18 Wallace, 163.

Under Article 3354 Revised Civil Statutes of Texas;
Stockwell v. U. S. 13 Wallace, 531;
Davidson v. Mo. Pac. Ry. Co. (Texas), 3 Willson's Cases, 216;
Lockwell v. Ohio, 11 Ohio, 130;
Buswell on Limitation. Sec. 97.

Under Article 3358, Revised Civil Statutes of Texas;
Boswell v. Robinson, 33 New Jersey Law, 273;
Cooper v. Lee, 75 Texas, 114; 12 Southwestern, 483;
Tevis v. Armstrong, 71 Texas, 59;
Railway v. Titterington, 84 Texas, 218;
Blount v. Bleker, (Texas), 35 Southwestern, 863.

10. **The appointment of a receiver and transfer to him of the property of plaintiff-in-error pending proceedings by way of appeal was wholly without authority and an arbitrary exercise of judicial power, and deprived plaintiff-in-error of its property without due process of law, and denied it the equal protection of the laws.**

Pomeroy, Equity Jurisprudence, Sec. 1330 and Equitable Remedies, Sections 62, 118, and 71;
Ry. Co. v. Jackson, 85 Texas, 605;
Havemeyer v. Superior Court, 84 Calif. 327; 24 Pacific, 121, l. c., 134, 135;
Revised Statutes of Texas, Articles 1177, 1181, 1191 and 1337;
Hall v. Jackson, 3 Texas, 305;
Nye v. Gribbell, 70 Texas, 458;
May v. Taylor, 22 Texas, 348;
Mann v. Falcom, 25 Texas, 276;
Bledsoe v. Wills, 22 Texas, 650;
U. S. Const. Sec. 1, 14th Amd.

**(a) The appointment of a receiver of plaintiff-in-error's property for the purpose of depriving it of the capacity for further or continued violation of the anti-trust laws of Texas without evidence of any such intended violation, and without evidence that it could not use its said property in compliance with law, constitutes a deprivation of said property of plaintiff-in-error without due process of law.**

Windsor v. McVeigh, 93 U. S. 274;
*Ex parte* Lange, 18 Wallace, 163;
Bigelow v. Forrest, 9 Wallace, 351;
Hovey v. Elliott, 167 U. S. 409.

**11. The Texas Act of April 11th, 1907, is null and void.**

**(1.) In so far as it attempts to create a lien upon the property of plaintiff-in-error for acts committed before said Act took effect.**

**(2.) In so far as under it, the right to appoint a receiver is limited to suits against corporations only.**

**(3.) In so far as it attempts to create a lien upon the property of plaintiff-in-error, in that the lien is not created by the terms of the act, based alone upon the commission of the offense, but is left to be created by the action of the prosecuting officer in filing suit to recover the prescribed penalties.**

Calder v. Bull, 3 Dallas, 388;
Cummings v. Missouri, 71 U. S. 277;
Fletcher v. Peck, 6 Cranch, 137;
Wilson v. O. & M. Railroad Co., 64 Ill. 542; 16 Am. Rep. 565;
Havemeyer v. Superior Court, 84 Calif. 347; 24 Pacific, 121;
Jackson v. Trunk Railroad Co., 85 Texas, 605;
G. C. & S. F. Railroad Co. v. Ellis, 165 U. S. 150;
Mayor of Baltimore v. Radecke, 49 Maryland, 217; 33 Am. Rep. 239;
Yick Wo v. Hopkins, 118 U. S. 266;
Barbier v. Connelly, 113 U. S. 27.

## ARGUMENT.

### I.

### THE WATERS-PIERCE OIL COMPANY CANNOT BE HELD LIABLE AND PUNISHED FOR THE ACTS OR ENGAGEMENT OF THE STANDARD OIL COMPANY, WHICH IT COULD NEITHER ORDER, FORBID OR CONTROL.

As self-evident and incontrovertible as the above proposition would seem to be, the record in this case clearly shows that the foundation upon which the State of Texas built its prosecution of the Waters-Pierce Oil Company in this suit, consists wholly in an absolute negation of this proposition. Everything alleged to have been done by plaintiff-in-error in violation of the Anti-Trust Laws of Texas, every act alleged to have been committed, and for which plaintiff-in-error stands convicted, is referred back in every instance to the one fact insistently alleged by the State (and freely admitted by plaintiff-in-error), that the Standard Oil Company had acquired and owned a majority of the stock of the Waters-Pierce Oil Company; and for this grievious sin an enormous fine is imposed and its valuable business in the State of Texas destroyed at one blow, by the cancellation of its permit.

In the 11th paragraph of the trial court's charge to the jury, this language is employed (Record p. 1148):

> "If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 30, 1903, or any date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and **thereby effected a combination of said two corporations,** and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in

Texas of the character and kind of oil above mentioned or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State and say by your verdict: We, the jury, find for the State on the issues submitted for our consideration in paragraph 11 of the court's charge. In this connection, you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the Anti-Trust Laws of Texas.

If you do not find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation, and if you do not further find from a preponderance of the evidence that said stock was acquired and combination effected, if it were at all, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of said character and kind of oil or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will say by your verdict, we, the jury, find in defendant's favor on the issues submitted for our consideration in paragraph 11 of the court's charge."

The above is a fair sample of the attitude assumed both by the State of Texas in its petition and by the trial court in the trial of said cause. The underlying idea, as exhibited by the record, is clearly that in the mind of the court the simple fact that the Standard Oil Company had at some time in the past acquired and at the dates above mentioned owned a portion of the stock of the Waters-Pierce Oil Company, was in and of itself enough to convict the Waters-Pierce Oil Company of a violation of the Anti-Trust Laws of the State. Not one single shred of evidence can be found in the voluminous record herein to indicate, even remotely, that the acquisition of said stock by the Standard Oil Company was with the knowledge or con-

sent of the Waters-Pierce Oil Company or that such acquisition could in any manner have been prevented by it. On the contrary, the uncontradicted evidence shows that the stock in the old Waters-Pierce Company, the predecessor of this plaintiff-in-error, was originally acquired, many years before the filing of this suit, by purchase from some of the stockholders of the old Waters-Pierce Company, and that upon the dissolution of that company in 1900, and the distribution of its assets, among its then existing stockholders, the present Waters-Pierce Oil Company, which succeeded to the property and good-will of its predecessor, purchased the same from the owners thereof, and the stock of the new company in that transaction given to the Standard Oil Company was naught but the legitimate exchange of one valuable property for the other, to-wit: the stock of the new company for the interest of one stockholder as tenant-in-common with the other stockholders of the property of the old Waters-Pierce Company which had been dissolved.

There is absolutely nothing in the record to show that this plaintiff-in-error was in a position to forbid or prevent the Standard Oil Company acquiring a portion of its stock. There is nothing to show that that acquisition was unlawful, but, on the contrary, the charter of the Standard Oil Company, as the record shows, distinctly gave it the right to acquire, own and hold stock in other corporations. Whether the exercise of this power was lawful or unlawful in the State of Texas is outside the question, for that power never was exercised in the State of Texas. The stock of the Waters-Pierce Oil Company was acquired by the Standard Oil Company in the State of Missouri, where the former corporation was domiciled.

But, admitting even, for the sake of argument, that the acquisition of stock of one corporation by another corporation is unlawful, it surely cannot be urged that this will furnish ground for criminal charges against the corporation whose stock is so acquired.

There are some things so deeply written in the natural spirit of justice in the human race that we need not seek for them in

written law or constitution, and no principle would seem to be more deeply founded in justice and right than this, that no man shall be called upon to answer for any but his own acts, or at most, for those of others which he could either legally control or prevent. The most despotic monarch has never dared to assert a contrary principle. And surely, in this land of ours, in a government erected by the people, for the protection of their rights and their liberties, this principle must be recognized to its fullest extent.

It is not to be wondered, therefore, that few cases can be found either in the English or American courts in which this point has ever been directly raised. The question involved here is perhaps rather one dealing with the philosophy of government than with the science of law as interpreted by the courts, and yet, every great constitutional question which has come before the courts of this land, especially those which have been the subject of such careful investigation by this court and in which the question of "due process of law" has been presented, has almost invariably given rise to some expression on the part of the eminent expounders of the constitution emphasizing the fact that the "law of the land," secured to the Anglo-Saxon race even before the days of Magna Charta, seeks to hold no man liable save for his own acts or omissions, or those which he was under legal duty to control or prevent and where the means and opportunity to exercise the duty was given.

The question here involved has been presented to the courts in one way on numerous occasions, namely: in the matter of the succession of one corporation to the property or business of another; and the rule of law established in those cases that there is no liability on the part of the successor corporation, which in good faith and for value has purchased the property of its predecessor, for the latter's torts or contracts has become so firmly established and so universally recognized that comment upon it would seem superfluous.

In the **Capitol Traction Company v. Offutt** (17 App. D. C. 292; 53 L. R. A. 390), in discussing the question of the liability

of such successor corporation, the court, speaking through Morris, J., uses this language:

> "The assignments of error are exceedingly numerous, amounting to seventy-seven in all, but we do not deem it necessary to consider all of these or, indeed, more than one of them, for we are of the opinion that this suit cannot be sustained against the Capitol Traction Company for the alleged delinquency of the Washington & Georgetown Railroad Company. **We know of no rule or principle of the common law that would authorize suit to be maintained against one person who is *sui juris* for the default of another person who is equally *sui juris* whether the persons be natural persons or corporations, for one corporation can no more be held for the default of another corporation than can one natural person for the default of another natural person.**"

In **Durkin v. Kingston Coal Co.,** (171 Penn. 193; 29 L. R. A. 808), the question was presented to the Pennsylvania Supreme Court of the liability of the Coal Company for injuries received by plaintiff, caused by the negligence of a mine boss whom the mine owner, by statute, was compelled to employ, and with whose acts he could not interfere, his duties being prescribed by the Act. In holding the imposition of liability upon the mine owner for the negligence of such foreman unconstitutional and void the court, speaking through Williams, J., uses the following language:

> "Incredible as it may seem, obedience on the part of the mine owner does not protect him, but if the mine foreman fails to do properly what the statute directs him to do, the mine owner is declared to be responsible for all of the consequences of the incompetency of the representative of the State. **This is a strong case of binding the consequences of the faut or folly of one man upon the shoulders of another. This is worse than taxation without representation. It is civl responsibility without blame for the fault of another.**"

In **Commonwealth *ex rel.* v. Pouxentawney Water Works** (197 Pa. St. 569; 47 At. 843), it was sought to forfeit the charter of defendant because it had transferred its property and franchises to the Lindsey Water Company and thereby rested in

the latter company the management and control of the defendant. Proof offered to sustain the allegations consisted of evidence of the fact that by purchase from the stockholders of the defendant company, the Lindsey Water Company had acquired a majority of the stock of the defendant. In refusing to hold defendant liable, the Supreme Court of Pennsylvania, speaking through Brown, J., says:

> "What the majority of the stockholders did was to sell their stock, as was their right, and through the purchasers it passed into the control of the Lindsey Water Co. * * Though such sales may give to the Lindsey Water Co. subquently acquiring the stock, a controlling interest in the Pouxentawney Water Works, the **latter could not have prevented the sales, and not having been a party to them, is not accountable for them or for their effect.** * * * * No misconduct of the Lindsey Water Co., and nothing that one or more of the majority of the stockholders of the defendant water company may have done in disposing of their stock, **can be charged to it. If it is to be punished, it must be for its own sins and not for those of another."**

From the above it will be seen that the courts admit, without discussion almost, the truth of the proposition that the right to be held responsible only for one's own acts or omissions or for those of others over whom one has some legally recognized control is fundamental. This is not a right born of any particular system of law, but is imbedded and inherent in human nature itself. Nor can it be conceived that the consent of the individual, upon which government alone is based, could ever be construed to yield or surrender this right to any government. If there ever was a "natural law," surely this is one and the fact that the books reveal so few cases in which this proposition has ever been squarely presented to the courts is a strong argument in favor of its axiomatic nature. As well raise the question whether a man is entitled to defend his own life. It is a "self-evident truth," included in the "right to life, liberty and the pursuit of happiness," the foundation stone upon which our constitution and government rests. No man ever surrendered to any government authority for the imposition of vicarious punishment. No despotism ever claimed its surrender.

The section of the law in regard to which the instruction of the court above noted was given to the jury, is section 2 of the Act of March 31, 1903, which provides:

> "That a monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:
> (1.) * * * * * * * * * *
> (2.) Where any corporation acquires the shares of certificates of stock or bonds, franchises or other rights or the physical properties or any part thereof of any other corporation or corporations for the purpose of preventing or lessening competition or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise."

Examining the charge of the court in the light of the above, it is evident that the court gave to this act an *ex post facto* operation in that it made the question of defendant's guilt or innocence under said Act of March 31, 1903, depend upon the purpose and intention on the part of the managing officers and directors of the Standard Oil Company of New Jersey in doing an act, to-wit: purchasing the stock of this plaintiff-in-error long prior to the taking effect of said Act of March 31, 1903, contrary to the provisions of paragraph 1, section 10, article 1 of the Constitution of the United States. It was not only shown by the evidence introduced at the trial of said cause but was plainly alleged in the petition on the part of the State of Texas that the Standard Oil Company of New Jersey on May 29, 1900, acquired and since that date had continuously owned a majority of the capital stock of the Waters-Pierce Oil Company. Notwithstanding this, however, it is attempted to assert a liability under the Act of 1903, for acts done and intentions formed at least three years prior to the passage thereof.

(*a.*) THE CAPACITY OF THE STANDARD OIL CO. TO ACQUIRE AND HOLD THE STOCK OF THE WATERS-PIERCE OIL COMPANY MUST BE DETERMINED BY ITS CHARTER AND THE CONDITIONS OF SUBSCRIPTION AND NATURE OF THE STOCK CERTIFICATES

UNDER THE LAW OF THE STATE WHEREIN THE WATERS-PIERCE OIL CO. WAS CREATED, TO-WIT: THE STATE OF MISSOURI, AND NOT THE STATE OF TEXAS.

It is a rule well-recognized in corporation law that the law of the corporation's domicile governs exclusively in all matters affecting its creation, organization and internal management. "The validity and effect of a transfer of shares are governed by the laws of the state or country in which the corporation was created, although the transfer may be made in another state or country and both of the parties may reside there." (Marshall on Corporations, p. 805.)

In **Black v. Zacharie** (3 Howard, 483), Mr. Justice Story lays down the following rule:

> "From the nature of the stock of a corporation, which is created by and under the authority of a state, it is necessarily like every other attribute of a corporation to be governed by the local law of that state and not by the local law of any foreign state."

In **Meramec Mining Company v. Levy,** (54 Penn. St. 227; 93 Am. Dec. 697), the plaintff, a Michigan corporation, brought suit to recover from an original subscriber the instalments on the stock called since he became a stockholder, and, in deciding the question involved, the Pennsylvania Court clearly recognized the above doctrine by declaring that in determining the duties and obligations of stockholders in the Michigan Company, the court would be guided by the ruling of the Michigan Court.

In **Ireland v. Globe Milling & Reduction Co.** (R. I. 1895), 32 Atl. 921, the Supreme Court of Rhode Island, in passing upon the question as to the situs of stock for the purpose of attachment, uses the following language:

> "The situs of the stock for the purpose of attachment and execution is the domicile of the corporation and that place only." (Citing Cook S. & S., 3rd ed. paragraph 485, and cases cited, and Plimpton v. Bigelow, 93 N. Y. 592, 23 Am. & Eng. Enc. of Law, 632, and cases cited. Win-

slow v. Fletcher, 53 Conn. 394.) "And a corporation can have but one legal residence and that must be within the state or sovereignty creating it, although by comity it may be allowed to do business through its officers and agents in other jurisdictions."

Judge Lowell, in his able treatise on the Law of Stocks, paragraph 50, declares that:

"Whatever the general principles of international law in relation to assignment of personal claims may be, the validity of a transfer of stock is governed by the law of the place where the corporation is created."

And this principle is distinctly recognized in Masury v. Ark. National Bank (87 Fed. Rep. 381), in which it is distinctly held that unless the transfer of the stock in question is valid under the laws of Arkansas, (the state which created the corporation) the laws of the state where the transfer was itself actually made cannot control.

From the above authorities, the conclusion would seem to be inevitable that it is beyond the constitutional powers of a state to declare who shall or shall not be qualified to own and hold stock in a corporation chartered in a foreign state, and especially, as in this case, to attempt to regulate or prohibit such stock ownership on the part of persons wholly outside the jurisdiction of the state.

No question is raised here as to the right of a state to declare as a condition precedent to admission of a foreign corporation who shall or shall not be stockholders therein, or even to make the continued right of the foreign corporation to do business within the state dependent upon such conditions subsequently enacted and declared, but it is contended that no power is given a state to determine the qualifications of stockholders in a corporation organized in a foreign state.

In this connection, the case of **Greenwood v. Curtis,** 6 Mass., 358, is not without considerable weight. The action was one of assumpsit on a promissory note for the delivery of slaves and the payment of "bars," an African currency. The note was made at Rio Pongos on the coast of Africa for the delivery of

slaves there on demand. The action on the note was brought in Massachusetts, where contracts of this sort were wholly and and entirely unlawful. In answer to the argument urging the invalidity of such a contract in Massachusetts, Judge Story uses the following language:

> "By the common law upon principles of national comity, a contract made in a foreign place and to be there executed, if valid by the laws of that place, may be a legitimate ground of action in the courts of this state; although such contract may not be valid by our laws or even may be prohibited to our citizens."

The above case is referred to primarily for the purpose of showing how deeply rooted in our system of jurisprudence is the rule that contracts, if valid where made, are valid everywhere. As bearing upon the case at bar, if the acquisition of the stock of the Waters-Pierce Oil Company by the Standard Oil Company is looked upon solely from its contractual side then it is obvious that the law of the State of Missouri alone can govern.

There is nothing whatever in the law of the State of Missouri which in any manner forbids, prevents or limits the right of the owner of stock in a corporation selling such stock to whomsoever he pleases; while it is true that the right of such purchaser to exercise the privileges and rights of the stockholder in such corporation may be questioned under circumstances, this nevertheless remains as an established principle of law in the state, that such limitations or restrictions can and do affect only the vendee and not the vendor of the stock.

Section 965 of the Revised Statutes of the State of Missouri, 1899, reads as follows:

> "The stock of every company formed under this article, providing or the organization and general powers, duties and liabilities of corporations with incidental matters of practice, shall be deemed **personal estate** and shall be transferable in the manner prescribed by the by-laws of the company; but no shares shall be transferred until all previous calls thereon shall have been fully paid in."

Such has been the law in Missouri with respect to the status of stock in a corporation ever since the organization of the state, and time and again the courts of the state have denied the right to limit, obstruct or forbid the free transfer of stock upon the ground that this would constitute an unlawful restraint in the freedom of alienation of property. To all intents and purposes, corporation stock has been practically treated as negotiable paper. Says the Missouri Court of Appeals, in **Watson v. Woody Printing Co.**(56 Missouri Appeals, 151).

> "Stock in a corporation is personal property and the certificate is only evidence of the title thereto. The stock certificates are the declarations in writing by the company's officers as to who are entitled to participate in its benefits—its profits or losses, the latter being limited by the extent of stock owned. They are not negotiable paper in the sense in which the term is applied to commercial notes, bonds and the like, but the stock is considered transferred when a certificate is assigned, thus differing from other muniments of title."

In **Bank v. Durfee,** (118 Mo. 442), the Supreme Court of Missouri, again declaring corporation stock to be personal property and the right of alienation to be incident thereof, held that the by-law which provided that no transfer of stock should be allowed or valid as long as the holder was in arrears to the corporation, and whereby a lien was reserved on the stock to secure any debt of the stockholder, was in restraint of trade, against public policy, and therefore void.

In the leading case of **Trust & Savings Company v. Home Lumber Company** (118 Mo. 459), the Supreme Court had occasion to re-examine the freedom of alienation of stock, and after re-affirming all that had been heretofore said by the courts of the state, as shown in the above citations, further declared that unless some restriction was placed upon the transfer of stock, by the public law of the state, or the owner of the stock was bound by some valid restrictive contract of which the purchaser had notice, the latter who bought in good faith and for consideration could not be held bound by any restriction or lien of which he did not have notice.

The most recent discussion of this question appears in the **Boatmens Bank v. Gillespie,** (209 Mo. 217), decided in 1907. Questions very similar to the questions at bar were raised in the Missouri case. The legal existence of the corporation was attacked, among other grounds upon this, that the persons who signed the articles of incorporation, or at least a majority of them, were residents of Kansas, and not of Missouri, and that the charter was procured in Missouri for the purpose of evading the liability of stockholders under the Kansas law. In commenting upon this proposition, the Supreme Court of Missouri, speaking through Burgess, J. says:

> "The evidence shows that the corporation did but a small portion of its business in Kansas City. Besides we understand it to be a universal doctrine that where citizens of one state desire to do business under a charter obtained in another state whose corporation laws seem to them more favorable than the laws of the state in which they resided, they have the right to do so upon compliance with the laws of such other state. **There is nothing in our laws which forbids citizens of this state who have incorporated here to sell all their stock to non-residents."**

From the above, it would seem clearly apparent that there was nothing in the law of the State of Missouri, in which said plaintiff-in-error was organized, forbidding or preventing it from selling any portion of its stock to the Standard Oil Company of New Jersey, if it had chosen to do so. With respect to this point, however, the record clearly shows that this stock was originally acquired by the Standard Oil Company, not from the Waters-Pierce Company, but by the purchase and assignment from some of the stockholders of the latter company.

The record further shows that the Standard Oil Company of New Jersey possessed complete and adequate authority under its charter to purchase the stock or any portion thereof of the Waters-Pierce Oil Co. although it is submitted that the use or abuse of its powers by the Standard Oil Company can hardly be drawn into question here.

(*b.*) IF THE HOLDING OF STOCK BY THE STANDARD OIL COMPANY OF NEW JERSEY IN THE WATERS-PIERCE OIL COMPANY OF MISSOURI WAS UNLAWFUL, IT WAS AN OFFENSE ON THE PART OF THE **HOLDING COMPANY,** AND NOT OF THE COMPANY WHOSE STOCK WAS SO HELD, THE ACQUISITION OF WHICH IT COULD NEITHER FORBID NOR PREVENT.

Paragraph 2 of section 2 of the Act of March 31, 1903, above quoted, defines a monopoly as a combination or consolidation of two or more corporations when effected (among other methods) by the acquisition of the shares or certificates of stock, etc., of another corporation, for the purpose of preventing or lessening competition, etc.

The plain language of this provision of the statute can be susceptible of no other construction than that, if it defines any offense at all, it makes the offense consist of **acquiring** the shares or certificates of stock of another corporation—an offense by the corporation so acquiring such shares or certificates of stock, and not an offense by the corporation whose shares of stock are so acquired. The combination or consolidation is therefore under the terms of the Act effected only by the act of the acquiring corporation.

It is apparent that all the evils sought to be prevented in the above act could be accomplished without the knowledge or consent of the corporation whose shares or certificates of stock were thus acquired, and without the knowledge or consent of the other stockholders. Under the instructions of the trial court and in the interpretation of the law by the Court of Appeals, the corporation whose shares of stock were thus acquired without its knowledge and without the knowledge of the other stockholders is subjected to the penalties provided by the Act, and innocent stockholders made to suffer with the guilty corporation whose **act and purpose** in acquiring the stock alone constitutes the gravamen of the offense.

To illustrate this contention, it being admitted as true, that a corporation cannot prevent its individual stockholders from transferring their certificates of stock to such persons or cor-

porations as they may see fit, if the corporation desiring to acquire a majority of the stock of another corporation for the purpose of affecting or lessening, or even destroying, competition should constitute certain persons its agents for the purpose of buying such stock, go into the open market and buy the same or by separate private contracts and for valuable consideration purchase the holdings of respective stockholders, taking the transfers in the names of such agents as trustees for the acquiring corporation and keeping the fact of the beneficial ownership of the acquiring corporation in such stock absolutely concealed from every stockholder of the other corporation and from all its officers and directors—if the ruling of the court below be correct, the corporation whose stock is so acquired is guilty of an offense, although it did not commit the offense and did not even know that it had been committed, contrary to the fundamental and well-recognized principle of justice and right which declares that no one shall be punished for the commission of an act for which he is in no wise responsible. It is certainly something new in criminal jurisprudence for a court to hold that A can be punished for an act committed by B, when A. was wholly ignorant of the commission of the act and in no way knowingly contributed to its commission. If the law as interpreted by the court below is correct and if it be true that the question as to whether or not the corporation whose stock is acquired by another corporation is guilty of an offense can be made to depend solely and alone upon the purpose had by such other corporation then so acquiring such stock, then, the corporation whose stock is so acquired can be made to suffer the penalties imposed by the act by the other corporation acquiring even less than a majority of the stock with the purpose and intention of forming a combination with other individual stockholders so as to obtain control of the corporation and affect or lessen competition. Now, in such a case, even if the managing officers and directors of the corporation whose stock is thus acquired are cognizant of the fact that the other corporation has acquired a majority of its stock, can it be held under any principle of law or justice that the

corporation whose stock has been so acquired would be guilty of an offense without anything done by it to contribute to such acquisition, without even knowing the purpose and intent of such acquisition by such other corporation?

In answer to the above argument, it may be contended on behalf of the State of Texas, that the acquisition by the Standard Oil Company of New Jersey of a majority of the stock of the Waters-Pierce Oil Company was made with the knowledge and consent of all the stockholders of the latter corporation. Admitting this, for the sake of the argument, to be true, we nevertheless contend that whether or not the Waters-Pierce Oil Company thereby became guilty of an offense cannot be made to depend upon the purpose and intention of the managing officers and directors of the Standard Oil Company, as the trial court instructed the jury and the appellate court interpreted the law. Admitting that the Waters-Pierce Oil Company and its stockholders actually knew of such acquisition, they could very easily have been wholly ignorant of the purpose and intention of the Standard Oil Company to affect or lessen competition by such acquisition of stock, if such was its intention. Mr. Pierce, tendered as a witness for the State of Texas, was the only witness who testified with reference to this question and he testified that when this plaintiff-in-error was formed and organized, the officers composing the Standard Oil Company of New Jersey agreed that he, Mr. Pierce, should manage the Waters-Pierce Oil Company without any interference, dictation or control by the Standard Oil Company. No evidence appears in the record to contradict this; on the contrary, all the officers of the company, whose testimony was offered in evidence by the State, confirmed Mr. Pierce's statement in every particular in declaring that at no time—with the exception of the brief period mentioned by Mr. Pierce—was the company managed or controlled by any one but Mr. Pierce and his chosen officers and agents. Now, taking this statement as true, if the secret purpose of the officers and agents of the Standard Oil Company of New Jersey was to violate the agreement made with Mr. Pierce and to

utilize the acquisition of stock in the Waters-Pierce Oil Company to prevent or lessen competition in the sale of oil in Texas, the Waters-Pierce Oil Company, under the charge of the trial court and the interpretation of the law in the appellate court, would be held guilty under the Act, however ignorant Mr. Pierce and the other officers of plaintiff-in-error may actually have been with respect to the real purpose and intent of the Standard Oil Company, and however much they may have trusted in the good faith of the officers of that company in promising and agreeing that no attempt would be made on the part of the Standard Oil Company to interfere with Mr. Pierce's management and control of plaintiff-in-error. The agreement to which Mr. Pierce testified was by no means an unusual one. Under the facts as shown by the record, the Waters-Pierce Oil Company was doing a large and profitable business, a business built up by years of painstaking effort by Mr. Pierce, and Mr. Pierce could very easily have believed that the Standard Oil Company would be satisfied with the dividends which would accrue to it as a stockholder and that they would not attempt to do what they had promised not to do—interfere with his management or control. Under all the facts and circumstances, the agreement was a perfectly natural and reasonable one.

There is nothing in the record to show that the acquisition of the stock of the Waters-Pierce Oil Company by the Standard Oil Company of New Jersey, was effected by anything in the nature of a voluntary sale of said stock to the Standard Oil Company, by the Waters-Pierce Oil Co., but on the contrary, the uncontradicted evidence conclusively shows that the entrance of the Standard Oil Company into the affairs of the old Waters-Pierce Oil Company was brought about entirely by the action of certain stockholders of the latter company in selling their stock to the Standard Oil Company or transferring it to the trustees under the Standard Oil Trust Agreement, a thing which, so far as the law of the State of Missouri (wherein the old company was organized), is concerned, was wholly lawful. As hereinafter more clearly pointed out, upon the

dissolution of the old company, the various stockholders thereof became tenants-in-common of its property, both tangible and intangible, and were as legally qualified to dispose thereof in such manner and form as they saw fit, as was the holder of any personal property in the State of Missouri. The uncontradicted evidence shows that upon the organization of the present Waters-Pierce Oil Company, Mr. Pierce himself subscribed for all of the stock and paid therefor himself, and that thereafter he purchased the interest which the Standard Oil Company had in the property of the old Waters-Pierce Oil Company, paying therefor in stock, and then turned that property over to the present Waters-Pierce Oil Company, taking in payment therefor, the notes of the company which were subsequently liquidated.

Whatever view may be taken of the transaction or transactions through which the Standard Oil Company of New Jersey was vested with the ownership of the majority of the stock of the present Waters-Pierce Oil Company, this fact (as we have above pointed out) must not be overlooked, namely, that so far as the vendor of that stock—be it the Waters-Pierce Oil Company or Mr. Pierce—was concerned, the right to sell the same to anyone who would buy was unquestioned. Certainly when by the law of the State where the corporation is created the freedom of alienation of stock is emphatically recognized, it can hardly be contended that a foreign state in which said corporation does business can declare that to be a crime and punishable offense, which by the law of the corporation's domicile is valid and authorized.

From the above, the conclusion seems irresistible that if any offense has been committed under the above Act, it is an offense on the part of the Standard Oil Company and not on the part of the Waters-Pierce Oil Company.

(*c.*) IN DECLARING IT UNLAWFUL FOR THE STANDARD OIL COMPANY TO OWN STOCK IN THE WATERS-PIERCE OIL COMPANY AND PUNISHING THE WATERS-PIERCE OIL COMPANY ON ACCOUNT OF

SUCH OWNERSHIP, THE LATTER IS NOT ONLY DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW AND DENIED THE EQUAL PROTECTION OF THE LAWS, BUT SUCH LAW DIRECTLY IMPAIRS THE OBLIGATION OF A CONTRACT IN THAT IT DENIES A STOCKHOLDER OF THE WATERS-PIERCE OIL COMPANY THE RIGHT TO TRANSFER HIS STOCK TO WHOM HE PLEASES.

A stockholder in a corporation has an absolute right, prior to the dissolution of the corporation, to transfer his shares to whomsoever he may see fit, provided the transfer is **bona fide** and to a person having capacity to assume the obligations of a stockholder, unless such right is restricted by the charter of the corporation or some statutory provision, by a valid by-law or by a valid agreement with the corporation, and he cannot be deprived of this right by the corporation or the other stockholders without his consent. (Marshall on Corporations, paragraph 314; 1 Cook on Corporations, paragraph 12 and paragraph 331.)

In the latter authority above cited, Mr. Cook declares, "that shares of stock in a corporation are transferable the same as other personal property and that this is a principle of law coeval with the principle of stock itself."

As has already been pointed out, the right to transfer shares is given and subject to regulations and limitation only by the law of the state by which the corporation was created.

There are numerous cases, both in America and England, in which this question in one form or another has been presented to the courts, and the rule as above laid down has been uniformly recognized. The conclusion therefrom is that a stockholder, having once gained title to the stock of a corporation, stands in a relation of contract to that corporation in that no limitation may be placed upon his freedom of alienation of such stock without his consent, and in a like contractual situation with respect to the state, and from both situations there arises a duty on the part of the corporation whose stock he holds, as well as upon the state which created the corporation, to enact no rule, regulation

or law without his consent which shall in anywise abridge or limit this freedom of alienation which was a part of the property right in his stock when he acquired the same. Any law, therefore, of the state, the effect of which is to place a limitation or restriction upon this freedom of alienation, is within the prohibition of the Federal Constitution, in that it plainly interferes with the obligation of the contract between the stockholder and the corporation—if not between him and the state—through which arises and is secured the absolute freedom of alienation of his stock to whom he pleases.

The courts have always been jealous in their protection of this right of the stockholder to dispose of his stock when and how and to whom he pleases, and in a multitude of cases have declared that by-laws of the corporation restricting this right—by-laws which were in existence even when the stock was sold to the stockholder originally—were void, in that they constituted an unreasonable and evident restraint upon the alienation of property and in that respect were contrary to public policy.

Moore v. Bank of Commerce, 52 Mo. 377;

*In re* Klous, 67 Wis. 401;

Brinkerhoff-Farris Trust & Saving Co. v. Home Lumber Co. 118 Mo. 447;

Feckheimer v. National Exchange Bank of Norfolk, 79 Va. 80.

In **Trisconi v. Winship,** (43 La. Annual 45, 26, Am. St. Rep. 175,) the Supreme Court of Louisiana held that as a general rule stockholders indisputably have the right to sell their shares at pleasure, and in the Victor G. Bloede Co. v. Bloede, (84 Md. 129-142, 57 Am. St. Rep. 373,) the same principle was enunciated and applied.

In **McNulte v. Corn Belt Bank,** (164 Ill. 427; 56 Am. St. Rep. 203,) the Supreme Court of Illinois, speaking through Magruder J., declared that a by-law which attempted to restrain freedom of alienation of stock was illegal and void.

> "Not only because it seeks to keep the future action of the stockholders in reference to the increase of the stock in subjection to the original directors who passed the by-laws,

but also because it attempts to limit the right to sell or transfer stock by imposing unreasonable conditions. **Shares of stock in a corporation are as transferable as any other kind of personal property: and all unreasonable attempts to restrain the right to transfer such shares are void as being against public policy."**

(Citing 1, Cook on S. & S, sec. 331.)

In **Weston's Case** (L. R. 4 Ch. App. 20), this question of the right of alienating shares at will was squarely presented to the English Court of Appeals, in Chancery, and the same principle was recognized as being fundamental in the English law. The language of Sir W. Page Wood, L. J., is pertinent to the case at bar. He says:

> "It would be a very serious thing for the shareholders in one of these companies to be told that the shares, the whole value of which consists in being marketable and passing freely from hand to hand, are to be subject to a clause of restriction which they do not find in the articles.

Applying this language to the case under discussion, we may well say that it would be a very serious thing for the shareholders in the Waters-Pierce Oil Company to be told that their shares were subject to a law of the State of Texas restricting the alienation thereof, especially when such law had been enacted long after such shares had been acquired and by a state in which the company was not organized or chartered nor in which any of its stockholders are or were domiciled but which state had the power—we do not say the right—to punish the Waters-Pierce Oil Company and through it every shareholder therein, because such shares had been acquired by persons or corporations contrary to the will of the State of Texas. The mere statement of such a proposition is in itself a sufficient answer to it.

The plain effect of the statute, in the preceding paragraph of this argument referred to, as interpreted both by the trial and appellate court of Texas, is to punish the innocent stockholders of a corporation because one stockholder has transferred his stock to some person or corporation contrary to the law of a foreign state, and this punishment is imposed in the

nature of a heavy fine, the payment of which means an equivalent reduction of assets of the corporation and of the value of every share of stock, thus directly affecting the value of every share of stock outstanding, and, consequently, the property of every stockholder.

Such a law distinctly impairs the obligation of the contract between the stockholder and the corporation when he bought his stock, which obligation adheres to the stock into whosoever hands it comes.

We wish to be clearly understood in our contention in this respect. We do not assert that it is not within the power of the State of Texas to place limitations upon the alienation of stock as a condition precedent to a foreign corporation coming within the state and doing business, or even after such foreign corporation has come in to create such a condition as a precedent requirement for its future continuation in business. We willingly concede this, but with that admit only the right of the state to forbid the entrance of the corporation or to cancel its right to continue in the state, in the event that such conditions are not complied with. The question above presented is a far different one. The point there involved is primarily this: can the State of Texas, or any other state, enact a law, the effect of which is to render that unlawful which prior to such enactment was lawful—take away the property of a corporation, diminish the value of stock in the hands of every stockholder for acts which neither the corporation nor the stockholders could prevent, as punishment for the exercise of a right well recognized and universally admitted.

II.

**TO PUNISH THE WATERS-PIERCE OIL COMPANY BECAUSE PART OF ITS STOCK WAS HELD BY THE STANDARD OIL COMPANY, THE SAME HAVING BEEN ACQUIRED LONG BEFORE THE PASSAGE OF THE TEXAS ANTI-TRUST ACTS OF 1903 AND 1899 AND WHEN SUCH ACQUISITION WAS WHOLLY LAWFUL IS TO SUBJECT THE WATERS-PIERCE OIL COMPANY TO AN EX POST FACTO AND RETROSPECTIVE LAW AND DEPRIVE IT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.**

The old Waters-Pierce Company was incorporated in 1878, and obtained a permit to do business in the State of Texas, on or about July 6, 1889, which permit was cancelled on May 31, 1900. This company dissolved under the law of the State of Missouri in May, 1900, and the present Waters-Pierce Oil Company, plaintiff in error, was formed and took over for value the property and good will of its predecessor, purchasing the same from the owners thereof, viz., the stockholders of the old Waters-Pierce Company. At the time of the dissolution of the old Waters-Pierce Company, the Standard Oil Company of New Jersey owned 2750 shares of the stock of that company, and upon the incorporation of the present Waters-Pierce Oil Company, 2748 shares of stock of said company was transferred to the Standard Oil Company of New Jersey in exchange for its right, title and interest as stockholder in and as tenant-in-common of the surplus assets of the defunct Waters-Pierce Company. At the time when the shares in the old Waters-Pierce Company were acquired by the Standard Oil Company of New Jersey, such acquisition was wholly lawful as far as the record in this cause shows. The same is true with respect to the acquisition of stock in the present Waters-Pierce Oil Company when the same was formed in 1900. If, then, there was no law in force which denied to the Standard Oil Company

of New Jersey the right to acquire stock in the Waters-Pierce Oil Company when it did acquire such stock. the continued ownership of that stock was a vested right, and could not be disturbed by subsequent legislation without violation of the Federal Constitution. The Act of 1903 is, therefore, unconstitutional and void, in so far as it seeks to subject plaintiff-in-error to penalties and take its property by reason of the stock ownership of the Standard Oil Company existing prior to the passage of this Act, unless it can be shown or unless it is held that the prior law in existence at the time of such acquisition made such acquisition illegal. There is nothing in the record to show that some stock ownership of the Standard Oil Company on May 31, 1900, when the permit was granted to plaintiff-in-error to transact business in Texas, was in violation of any law of the State of Texas and in the absence of any such evidence it must be presumed that such stock ownership was lawful. It was consequently not competent or within the constitutional power of the State of Texas to interfere with such ownership or divest said Standard Oil Company of its property in said stock or make it an offense by this plaintiff-in-error, subjecting it to penalties and to a forfeiture of its permit for such vested and prior ownership to continue.

We do not desire to burden the court with any lengthy discussion of the phrases "**ex post facto law,**" and "**due process of law,**" as used in the Federal Constitution, nor do we think that such discussion is at all necessary. Both are phrases perhaps better understood than defined, and indeed any attempt at definition except with respect to the particular case, must of necessity be unfortunate. "Due process of law" has been declared, both by this court and most of the state appellate tribunals, to be synonymous with that simple and sturdy old Anglo-Saxon phrase, "the law of the land," a phrase which rings with the assertion of individual liberty, equality before the law, judgment only after hearing, condemnation only after opportunity for defense. This "law of the land" is the priceless heritage brought to these shores by our forefathers and upon which the whole structure of our

republican government is erected. Upon it is built a government, not of men or of institutions, but a government of laws, and he who moulds his conduct within the law may ever invoke the protection of this principle when it is sought by arbitrary or despotic power, be it executive, legislative or judicial, to punish him for that which at the time of commission was not unlawful, in that it was not forbidden. The prohibition laid upon the states by the constitution with respect to the passage of *ex post facto* laws received its proper enlargement in the 14th Amendment to that constitution, which limited the power of the state to pass any law by which a man might be deprived of his property, his life or his liberty, without "due process of law"—contrary to the "law of the land." The 14th Amendment was an express recognition of a limitation which most of our courts had declared to exist long before the passage of that amendment, especially with respect to the right of state legislatures to pass laws unreasonable, unjust, oppressive and contrary to the well known principles of right and of law as they had come down to us in the Anglo-Saxon struggle for personal freedom and liberty of conscience.

It is not necessary to quote authorities to substantiate the proposition that a corporation is a "person" within the meaning of that portion of the 14th Amendment above referred to. And it will be equally admitted that the rule above enunciated applies to foreign as well as to domestic corporations doing business within the state. Neither can be deprived of its property without "due process of law."

Can it be contended, then, that "due process of law" is being applied to a corporation which is declared guilty and subjected to an enormous penalty because of an act which it could not control or prevent for an act committed long prior to the enactment of the statute which declares the same unlawful and punishable, for an act which was committed wholly outside of the jurisdiction of the state administering this "due process of law" and which was wholly lawful in the state wherein and when such act was committed—can it be contended that this is the "law of the land?" An examination of the record

in this cause cannot fail to show that it is precisely upon such reasoning as this that the Waters-Pierce Oil Company has been penalized by the State of Texas through a fine equal, if not exceeding, the total value of all its tangible property within the state, and has had that property rendered practically useless by taking it from the corporation in the revocation of its permit to do business, and placing it under the charge and in the control of a receiver, even pending appeal.

To give a retrospective construction to a statute ordinarily clothes it with the character and all the mischiefs of an *ex post facto* law. (Kent Com. 455. Potter's Dwarris, 162, 163, note 9.)

In the leading case of **Calder v. Bull,** (3 Dallas, 386), Mr. Justice Chase uses the following pertinent language:

> "I cannot subscribe to the omnipotence of the state legislature or that it is absolute and without control, although its authority should not be expressly restrained by the constitution or fundamental law of the state. The people of the United States erected their constitutions or forms of government to establish justice, to promote the general welfare, to secure the blessings of liberty and to protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact, and, as they are the foundation of legislative power, they will decide what are the proper objects of it. The nature and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free republican governments. That no man should **be compelled to do what the laws do not require nor refrain from the acts which the laws permit.** These are acts which the federal or state legislature cannot do without exceeding their authority. There are certain federal principles in our free republican government which will determine and overrule an apparent and flagrant abuse of legislative power as to authorize manifest injustice by positive law or to take away that security for personal liberty or private property for the protection whereof the government was established. An act of the legislature (for I cannot call it a law) contrary to the great first principles of the social compact cannot be considered a

rightful exercise of legislative authority. The obligation of the law in governments established on express compact and on republican principles must be determined by the nature of the power on which it is founded. A few instances will suffice to explain what I mean. **A law that punishes a citizen for an innocent action, or in other words for an act which when done was in violation of no existing law;** a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause or a law that takes the property of A and gives it to B. It is against all reason and justice for a people to entrust a legislature with such powers, and therefore it can not be presumed that they have done so. The genius, the nature and the spirit of our state governments amount to a prohibition of such acts of legislation and the general principles of law and reason forbid them. The legislature may enjoin, permit, forbid and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right and prohibit what is wrong; but they cannot change 'innocence into guilt' or punish 'innocence as a crime' or violate the right of an antecedent lawful private contract or the right of private property. To maintain that our federal or state legislature possessed such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy altogether inadmissible in our free republican government."

And, in discussing the meaning of the term "*ex post facto* law," the learned Justice uses this language:

> "The prohibition in the latter is not to pass any law concerning and after the fact; but the plain and obvious meaning and intention of the prohibition is this: that the legislatures of the several states shall not pass laws after a fact done by a subject or citizen which shall have relation to such fact and shall punish him for having done it."

And then follows the classification of *ex post facto* laws which has become so well known to our American Courts, the first one of which—applicable to the case at bar—is this:

> "Every law that makes an action, done before the passing of the law and which was innocent when done, criminal; and punishes such action."

In **Fletcher v. Peck** (6 Cranch, 87), Chief Justice Marshall defines an *ex post facto* law as one which renders an act punishable in a manner in which it was not punishable when it was committed, and declares further that such law may inflict penalties on the person or may inflict pecuniary penalties which swell the public treasury. The legislature is then prohibited from passing a law by which a man's estate or any part of it shall be seized for a crime which was not declared by some previous law to render him liable to that punishment, and, in applying the rule thus announced to the case under discussion, the Chief Justice, in holding that a law annulling a previous grant was *ex post facto*, says:

> "Why, then, should violence be done to the natural meaning of words for the purpose of leaving to the legislature the power of seizing for public use the estate of an individual in the form of a law annulling the title by which he holds that estate? The court can perceive no safe grounds for making this distinction; this rescinding act would have the effect of an *ex post facto* law. **It forfeits the estate of Fletcher for a crime not committed by himself, but by those from he purchased.** This cannot be effected in the form of an *ex post facto* law or bill of attainder; why, then, is it allowable in the form of a law annulling the original grant?"

See also in this connection Watson v. Mercer, 8 Peters, 88; Coffin v. Rich, 45 Me. 507; American Building & Loan Association v. Rainboat, 48 Neb. 434; Stevens v. Southern Pacific Co., 109 Calif. 86; 41 Pac. 783; 29 L. R. A. 751.

(*a.*) THE **EX POST FACTO** EFFECT OF A LAW CANNOT BE EVADED BY GIVING A CIVIL FORM TO THAT WHICH IS ESSENTIALLY CRIMINAL.

The prohibition against the passage of *ex post facto* laws has been so often held to apply only to criminal statutes that are certain to meet with the contention that the Act which is the basis of the suit in the State of Texas against the Waters-Pierce Oil Company does not fall within the constitutional provi-

sion herein invoked, in that that Act is not a criminal law but merely provides for the recovery of penalties by civil suit.

"A crime," says Mr. Walker in his American Law (10 ed. p. 571), "in its legal acceptation signifies any act to which the law attaches a penalty of punishment without any reference to its moral turpitude." Mr. Bishop, in his Criminal Law, Vol. 1, Sec. 32, defines a crime as:"

> "Any wrong which the government deems injurious to the public at large and punishes through a judicial proceeding in its own name."

These definitions might be multiplied to show that it is the **nature of the act comitted** that constitutes the criminal offense, and not the form of proceeding by which the state seeks to punish the offender.

It is true that this proceeding is civil in its form, but, notwithstanding this, it must readily appear that the cause of action is essentially and in its nature criminal. The first section of the Anti-Trust Act, of May 25, 1899, provides that corporations or persons doing the things therein set forth "shall be deemed and adjudged **guilty of a conspiracy to defraud,** and be subject to the penalties as provided by this Act." The second section, after defining a monopoly, provides that "any and all persons, firms, corporations or associations of persons engaged therein shall be deemed and adjudged **guilty of a conspiracy to defraud,** and shall be subject to the penalties prescribed in this act." The sixth section of the Act, after citing further forbidden things, provides that "any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged **guilty of a conspiracy to defraud,** and shall be subject to the penalties prescribed in the Act." Other sections of the same Act, which are not involved in this case, conclude in a similar manner. The fifth section is as follows:

> "Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this Act shall forfeit

not less than Two Hundred Dollars nor more than Five Thousand Dollars for **every such offense,** and each day such person, corporation, partnership or association shall continue to do so shall be a **separate offense.** The penalties in such cases to be recovered by an action in the name of the state at the relation of the attorney-general or the district or county attorney; the monies thus collected to go into the state treasury and to become a part of the general fund, except as hereinafter provided."

The Texas Anti-Trust Act of 1903, after defining a trust, monopoly and conspiracy in restraint of trade and declaring the same prohibited and illegal, provides in paragraph 11 of said Act as follows:

"Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this Act shall for each and every day that such violation shall be committed or continued forfeit and pay the sum of Fifty Dollars which may be recovered in the name of the State of Texas in any county where the **offense** is committed or where either of the **offenders** reside or in Travis County. And it shall be the duty of the attorney-general or of the district or county attorney, under the direction of the attorney-general, to **prosecute** for the recovery of the sum, and the fees of the prosecuting attorney for representing the state in proceedings under this Act shall be over and above the fees allowed him under the general fee bill."

Section 13 of the same Act provides as follows:

"And in addition to the **penalties** and forfeitures herein provided for, every person violating this Act **may further be punished by imprisonment in the penitentiary not less than one nor more than ten years.**

The language above quoted from the Anti-Trust Laws of 1899, and 1903, is certainly appropriate to the definition of an offense against the law, and itself characterizes every violation of either act as an offense. If we apply the definitions above noted, there cannot be the slightest doubt that violations of either of these Acts constitute a crime. It is needless to observe that the word "crime" and the word "offense" are synonymous. Reference to the penal code of the State of Texas

will show that they are used interchangeably throughout the code.

In the case of **Huntington v. Attrill** (146 U. S. 657), the Supreme Court of the United States, in the following language, clearly lays down the test which shall be applied to determine when or whether a law is penal.

> "The test whether a law is penal in the strict and primary sense is whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual. According to the familiar classification of Blackstone wrongs are divisible into two sorts or species, private wrongs and public wrongs. The former are an infringement or privation of the private or civil rights belonging to individuals considered as individuals, and are therefore frequently termed civil injuries; the latter are a breach and violation of public rights and duties which affect the whole community considered as a community, and are distinguished by the appellation of crimes and misdemeanors."'

The principle that a crime is any wrong which the government deems injurious to the public at large, and punishes through a judicial proceeding in its own name, finds expression in many cases, and the fact that the judicial proceeding may be civil in form has been repeatedly held not to change the nature of that which in its real character is criminal.

From among the many cases, we select only a few to illustrate the law upon this subject.

In **Wisconsin v. Pelican Insurance Co.** (127 U. S. 265), the State of Wisconsin filed in the Supreme Court of the United States a civil suit to collect a judgment rendered in one of its courts against the Pelican Insurance Company, a Louisiana corporation, for penalties imposed by the State of Wisconsin for doing an insurance business in that state without having deposited with the proper officer the statement, required by the laws of Wisconsin, of the property and business of the corporation during previous years. The question was raised by the defendant that, though the judgment sued upon had been rendered in a proceeding in the form of a civil suit, nevertheless the Supreme Court should look through the form to the sub-

stance, and, that if it did so, it would ascertain that the judgment had been recovered upon a cause of action which was criminal in its character, and that, under the well-recognized rule that the courts of no country will execute the penal laws of another, which must be held applicable to an original suit filed in the Supreme Court of the United States between a state and citizens of another state, the Supreme Court of the United States could not properly entertain jurisdiction of the suit. The contention of the defendant was sustained by the Supreme Court of the United States, and judgment rendered for defendant on demurrer.

In holding that the cause of action of the State of Wisconsin, in the suit which had been instituted in one of its courts against the insurance company for penalties, and in which the judgment sued upon in the Supreme Court of the United States had been rendered, was penal, the Court, among other things, Mr. Justice Gray delivering the opinion, observed:

> "The cause of action was not any private injury, but solely the offense committed against the State by violating her law. The prosecution was in the name of the State, and the whole penalty would accrue to the State and be paid one-half into her treasury and the other half to her Insurance Commissioner, who pays all expenses of prosecuting for and collecting such forfeitures (Laws of Wisconsin, 1885, chap. 395). **The real nature of the case is not affected by the forms provided by the law of the State for the punishment of the offense**; it is immaterial whether by the law of Wisconsin the prosecution must be by indictment or by action or whether under her law a judgment there obtained the penalty might be enforced by execution, by *scire facias* or by new suit. In whatever form the State pursues her right to punish the offense against her sovereignty, every step of the proceeding tends to one end—the compelling the offender to pay a pecuniary fine by way of punishment for the offense."

In the case of **Boyd v. U. S.** (116 U. S. 616), which was a proceeding *in rem* to enforce a forfeiture of property for the violation of a revenue law, it appeared that the statute under which the suit was brought empowered the court in all suits and proceedings, other than criminal, arising under the revenue laws

of the United States, to require the defendant or claimant, on motion, to produce any of his books or invoices for the purpose of examination and proof under the penalty of having the allegations made in the motion deemed as confessed, and that the claimant in that case had been required by an order of the court to produce an invoice tending to show the quantity and value of the goods seized and had done so, and that the invoice had been introduced in evidence over his objections, to the effect that the law was unconstitutional and the order unauthorized.

One of the questions presented was whether the proceeding *in rem*, which was a civil action, in form at least, was a criminal case within the meaning of the Fifth Amendment to the Constitution of the United States, which declares that no person shall be compelled in any criminal case to be a witness against himself. The Supreme Court of the United States reversed the judgment of the trial court, and in its opinion, delivered by Mr. Justice Bradley, observed:

> "We are also clearly of the opinion that proceedings instituted for the purpose of declaring a forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal. In this very case the ground of forfeiture declared in the 12th section of the Act of 1874, on which the information is based, consists of the certain acts of fraud committed against the public revenue in relation to imported merchandise which are made criminal by statute, and it is declared that the offender shall be fined not exceeding Five Thousand Dollars nor less than Fifty Dollars or be imprisoned not exceeding two years or both; and in addition to such fine such merchandise shall be forfeited. These are the penalties affixed to a criminal act, the forfeiture sought by the suit being one of them. If an indictment had been presented against the criminal, upon conviction, the forfeiture of the goods would have been included in the judgment. If the government prosecutor elects to waive an indictment and to file a civil information against the criminal—that is, civil in form—can he by this defense take from the proceeding its criminal aspect and deprive the criminals of their immunities as citizens and extort from them the protection of their

private papers or as an alternative a confession of guilt? This cannot be. The information, though technically a civil proceeding is in substance and effect a criminal one. As showing the close relation between the civil and criminal proceeding on the same statute in such cases, we may refer to the recent case of Cofey v. United States, 116 U. S. 436, in which we decided that an acquittal on a criminal information was a good plea in bar to a civil information for the forfeiture of goods arising upon the same acts; as, therefore, suits for penalties and forfeitures incurred by the commission of offenses against the law of this *quasi* criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment to the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself."

In the case of **Lees v. United States** (150 U. S. 476), a civil suit was brought in the United States District Court to recover penalties and forfeitures for the violation of the Act of Congress prohibiting the importation of foreign laborers. Lees, one of the defendants, was called as a witness by the government, whereupon his attorney objected to his being compelled to testify, invoking the protection of the Fifth Amendment to the United States Constitution. The trial court overruled the objection and required Lees to testify. The case went up to the United States Supreme Court on writ of error, and the court, in passing upon the action of the trial court in compelling defendant to testify over his objections, declared through Mr. Justice Brewer:

"This, though an action in civil form, is actually criminal in its nature, and in such a case a defendant cannot be compelled to be a witness against himself. It is unnecessary to do more than to refer to the case of Boyd v. United States, 116 U. S. 616. The question was fully and elaborately considered by Mr. Justice Bradley in the opinion delivered in that case, and within the rule there laid down it was error to compel this defendant to give testimony in behalf of the government."

In the case of the **United States v. Shapleigh** (54 Fed. Rep. 126), a civil action was begun against the defendant for dam-

ages and penalties for violating an act of Congress rendering any person liable for penalties and damages for exhibiting a false or fraudulent claim against the United States to one of its officers for payment or approval. The trial court instructed the jury that, to entitle the government to a verdict in the case, every fact necessary to conviction must be proved **beyond a reasonable doubt.** The defendant was acquitted and the government carried the case by writ of error to the Circuit Court. Judge Sanborn of the Circuit Court delivered an elaborate opinion in the case, reviewing all the authorities upon the subject, and sustained the ruling of the trial court, holding that, though civil in form, the action was criminal and that the rules of criminal law were applicable in so far as to demand that the guilt of the defendant should be shown beyond a reasonable doubt.

In **Burgess v. Salmon** (97 U. S. 381), an action was begun against the defendant to recover an additional tax upon manufactured tobacco under an act passed after the manufactured goods had been surrendered and transported. The Supreme Court of the United States, speaking through Mr. Justice Hunt, declared the action, though civil in form, to be criminal and within the prohibition of passing an *ex post facto* law. To the same purport are the decisions in Fletcher v. Peck, 6 Cranch, 87; Cummings v. Missouri, 4 Wallace, 277; Pierce v. Carskaden, 16 Wallace, 234; United States v. Hughes, Fed. Cases, No. 15,416.

In the latter case, an action of debt was brought against the defendants to recover the value of certain importations of merchandise alleged to have been entered by them at the custom house, New York, on fraudulent invoices. On the trial of the cause, the United States District Attorney, under the Act of 1874, attempted to compel defendants to produce certain books and papers in connection with such invoices. Blatchford, District Judge, in holding that such order was void and that defendants could not be compelled to testify against themselves, says:

"It has always been held that the provisions of the Constitution of the United States that no *ex post facto* law shall be passed by Congress, and that no State shall pass any *ex post facto* law, apply not merely to criminal laws and cases, but to cases for the recovery of penalties and forfeitures."

In **State *ex inf.* v. Bland** (144 Missouri, 534), the Supreme Court of Missouri was called to pass upon the nature and character of the Corrupt Practices Act of that State. The court, speaking through Marshall, J., says:

"This Act is penal in its every nature and fiber. It provides for punishment as for felonies and as for misdemeanors, and also for forfeiture of office even after the incumbent has received a majority of the votes cast at the election and has been inducted into office. The Act should, therefore, be strictly construed, and nothing should be regarded as included in it which is not clearly and intelligently described in its very words. (Citing Connell v. Union Telegraph Company, 108 Mo. 459; Rozelle v. Harmon, 103 Mo. 339; State *ex rel.* v. Smith, 114 Mo. 180; Dudley v. Western Union Telegraph Company, 54 Mo. App. 391.)"

In **State *ex inf.* v. Firemen's Fund Insurance Company** (152 Mo. 1), the Supreme Court again declared such acts to be penal in their nature, and that they should be strictly construed; in this case directing its remarks particularly to the Missouri Statute forbidding the formation of pools and trusts, and punishing those who participated therein.

Judge Cooley, in his Constitutional Limitations, 7th Ed., page 375, sums up the rule in this language:

"It is not essential, however, in order to render a law invalid on these grounds (*ex post facto*) that it should expressly assume the action to which it relates to be criminal or provide for its punishment on that ground. If it shall subject an individual to a pecuniary penalty for an act which when done involved no responsibility or if it deprives a party of any valuable right—like the right to follow a lawful calling—for acts which were innocent or at least not punishable by law when committed, the law will be *ex post facto* in the constitutional sense, notwithstand-

ing it does not in terms declare the acts to which the penalty is attached criminal."

If our contention, then, is correct, that the Anti-Trust Act of 1899 is a penal act, and that suits brought thereon are criminal suits, the conclusion must logically follow that to give such act a retroactive effect upon acts committed prior to its passage is to clothe it with all the characteristics of an *ex post facto* law—and the same in equal measure is true of the Act of 1903—and thereby to render these acts void.

## III.

**THE STATE OF TEXAS CANNOT CONSTITUTIONALLY ENACT A LAW WHICH DENOUNCES AS AN OFFENSE AN ACT COMMITTED IN ANOTHER STATE AND PUNISH PLAINTIFF-IN-ERROR FOR AN ALLEGED OFFENSE COMMITTED WHOLLY OUTSIDE OF THE JURISDICTION OF THE STATE OF TEXAS.**

Says Mr. Justice Cooley, in his Constitutional Limitations, (7th Ed.), page 176:

> "The legislative authority of every State must spend its force within the territorial limits of the State. The legislature of one State cannot make laws by which people outside of the State must govern their actions, except as they may have occasion to resort to remedies which the State provides or to deal with property situated within the State. It can have no authority upon the high seas beyond State lines, because there is the point of contact with other nations, and all international questions belong to the national government. It cannot provide for the punishment as crimes of acts committed beyond the State boundary, because such acts, if offenses at all, must be offenses against the sovereignty within whose limits they have been done."

Our contention is that, in so far as it is sought to hold the Waters-Pierce Oil Company liable and to punish it because of

the fact that the Standard Oil Company of New Jersey acquired a portion of its stock, which transaction took place entirely outside of the jurisdiction of the State of Texas, and within the jurisdiction of the State of Missouri, and in so far as it sought to hold the Waters-Pierce Oil Company liable and punish it for entering into an alleged agreement with the Standard Oil Company, which said agreement, if made at all, was made outside the jurisdiction of the State of Texas, the said State of Texas is exceeding its constitutional powers, in that it is attempting to denounce and punish as an offense the doing of an act wholly outside of the territorial jurisdiction of the State.

> "Crimes are in their nature local and the jurisdiction of them is local. They are cognizable and punishable exclusively in the country where they are committed." (Lewis' Sutherland, Statutory Construction, Vol. 1, Sec. 13.)

"Criminal laws," says Mr. Justice Story, in the case of The Apollon (9 Wheaton, 362), "must always be restricted in construction to places and persons upon whom the legislature have authority and jurisdiction."

In the **State v. Knight,** Taylor 65 (N. C. 1799), an attempt was made by the State of North Carolina to punish the defendant for counterfeiting in another state. The court said:

> "The legislature of one State cannot define and punish crimes committed in another."

In *in re* **Grice** (79 Fed. Rep. 627), the petitioner, who was imprisoned by the State of Texas awaiting trial on an indictment charging a violation of the Texas Anti-Trust Act, sought to be released on *habeas corpus* before the Federal Court on the ground that the said Act was in violation of the federal constitution. That portion of the Act in question reads as follows:

> "9. Persons out of the State may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this Act, which do not, in their commission, necessarily require a personal presence in this State, the object being to reach and punish all per-

sons offending against its provisions, whether within or without the State."

The Circuit Court of the United States, speaking through Judge Swain, in discharging relator under the writ, uses the following language (page 638):

"The fifth paragraph of the said Act in which it is attempted to claim jurisdiction for offenses committed outside the State of Texas, is so absurd that a denial thereof is scarcely necessary. It has been decided in emphatic language by Mr. Justice Taney, in United States v. Booth, 21 Howard, 524, as follows: 'No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued, and an attempt to enforce it beyond these boundaries is nothing less than lawless violence.' This principle is elementary and not only common law but the commonest of common sense. It has been properly suggested that should this feature of this Act be carried out and administered, it would be unnecessary for any other State or the nation at large to have any other laws upon the subject, as all persons within the limits of the United States could be regulated in their dealings and conduct of their business according to the wishes of the legislature of Texas. The State in its criminal jurisdiction as to Acts committed within its own boundaries and within the limits prescribed by the Federal Constitution is sovereign, and its process should not be interfered with where it does not contravene said constitution, but beyond the boundaries of the State, it has no more authority in New York, Missouri or Ohio than it has in Great Britian or Austria, and that part of the Act which proposes this extra-territorial jurisdiction is absolutely null and void."

This case was appealed to the United States Supreme Court (Baker v. Grice, 169 U. S. 285), and reversed, solely, however, upon the jurisdiction of the subject matter involved.

In **State v. Cutshall** (110 N. C. 538; 16 L. R. A. 130), defendant was indicted for the violation of the criminal code defining and punishing bigamy, it being charged that the defendant contracted the second marriage in the State of South Carolina and outside of the State of North Carolina. The Supreme

Court, speaking through Avery, Justice, in a carefully reasoned opinion in which all the authorities are examined, says:

> "The attempt to evade the organic law by making the coming into this State (after committing an offense in another) a crime is too palpable in view of the admitted fact that the Constitution of the United States gives to citizens of all the States the immunities and privileges of its own citizens, of their guaranteed right under the interstate commerce clause to pass through another State without arrest and inquiry into their accountability for offenses against their own sovereignty, but especially because the trial of the new felony involves an investigation of the original bigamy by a jury not of the vicinage and remote from the witnesses."

In **Allgeyer v. Louisiana** (165 U. S. 578), the Supreme Court of the United States held that the State of Louisiana could not constitutionally punish as an offense an act of one of its citizens in entering into a contract of insurance outside of the State of Louisiana with a foreign insurance company for the insurance of property within that State. Mr. Justice Peckham, delivering the opinion of the court, said:

> "The mere fact that a citizen may be within the limits of a particular State does not prevent his making a contract outside its limits while he himself remains within it (citing Milliken v. Prate, 125 Mass. 374; Tilden v. Blair, 21 Wallace, 241).
>
> The contract in this case was thus made, it was a valid contract, made outside of the State, to be performed outside of the State, although the subject was property temporarily within the State. * * *
>
> Any act of the State legislature which would prevent the entering into of such a contract or the mailing within the State of Louisiana of such a notification as is mentioned in this case is an improper and illegal interference with the conduct of the citizen, although residing in Louisiana, and his right to contract and to carry out the terms of a contract validly entered into outside and beyond the jurisdiction of the State."

If our contention, based upon these authorities, is correct, the conclusion naturally follows that the imposition of penalties upon the Waters-Pierce Oil Company for alleged acts done and

alleged agreements entered into wholly outside of the jurisdiction of the State of Texas deprives the Waters-Pierce Oil Company of its property without due process of law, and in so far is unconstitutional and void.

## IV.

## THE WATERS-PIERCE OIL COMPANY CANNOT BE HELD LIABLE BECAUSE OF ANY ALLEGED AGREEMENT BETWEEN ITS PREDECESSOR, THE OLD WATERS-PIERCE OIL COMPANY AND THE STANDARD OIL COMPANY OF NEW JERSEY, SOLELY ON ACCOUNT OF THE PURCHASE BY THE WATERS-PIERCE OIL COMPANY OF ITS PREDECESSOR'S BUSINESS, PROPERTY AND GOOD WILL.

The record herein shows that the Standard Oil Company, from some time in the year 1882, owned a majority of the shares of the old Waters-Pierce Company down to the incorporation of this plaintiff-in-error on the 29th of May, 1900, and that, on or about the 24th of September, 1900, a majority of the shares of plaintiff-in-error which had up to that time been held by H. C. Pierce in trust for the said Standard Oil Company (the same having by agreement been so issued to him upon the formation of plaintiff-in-error on account of the interest of the said Standard Oil Company in the old Waters-Pierce Company) were transferred to the said Standard Oil Company by an indorsement of the certificates thereof in blank by the said H. C. Pierce without registration of any transfer of the same on the books of plaintiff-in-error until early in the year 1904, when the said Standard Oil Company caused the same to be transferred and registered on the books in the name of M. M. Van Beuren. And the record further shows that evidence was adduced at the trial that the old Waters-Pierce Company carried on its business throughout the

whole of Texas and in several other States and in Mexico, and obtained its supplies of refined oil almost exclusively from the Standard Oil Company, and that the said Standard Oil Company did not carry on such business in said territory, and that this plaintiff-in-error, after acquiring the business and property of the old Waters-Pierce Company, carried on its business in precisely the same territory and in precisely the same way as its predecessors, to whose business and property it had succeeded without extending the same into any other territory, and that the Standard Oil Company continued its business in the same manner and form as it had been doing for many years past, and did not extend its business into the territory in which plaintiff-in-error so carried on business, but confined its business to the same territory in which the same had been carried on prior to the formation of plaintiff-in-error. The above constitutes a brief but correct statement of all the evidence on this point introduced at the trial of this cause as shown by the record, and upon this evidence the court instructed the jury in such manner that the jury found from said evidence that the agreement or understanding originally entered into between the old Waters-Pierce Company and the Standard Oil Company became an agreement or understanding on the part of plaintiff-in-error with the said Standard Oil Company as soon as said plaintiff-in-error had acquired the business and property of the old Waters-Pierce Company, and conducted said business in the same manner and in the same territory as the old Waters-Pierce Company had done (Secs. Vol. II, VIII, IX, instructions, record, pp. 1145ff), and said jury also found under said instructions (Secs. X, XI instructions, Record, p 1147 ff,) and upon the above-mentioned evidence that the Waters-Pierce Oil Company had bought about or permitted a combination or union of its capital with the capital of the Standard Oil Company by means of the acts of the Standard Oil Company in acquiring a majority of the shares of the old Waters-Pierce Company long before the passage of the Texas Anti-Trust Acts of 1899 and 1903, and before this plaintiff-in-error as a corporation came into existence and in holding such shares until plaintiff-in-error was

incorporated and acquired the property and business of the old Waters-Pierce Company, and then taking a beneficial interest in a corresponding majority of the shares of the newly organized Waters-Pierce Oil Company for its interest in the old Waters-Pierce Company, in which acts of the Standard Oil Company plaintiff-in-error had no part, and which acts were not done in the State of Texas, nor was any evidence adduced to prove the existence of any combination or union as alleged, excepting as above shown, to-wit: the purchase by plaintiff-in-error of the property and business of the old Waters-Pierce Company which alone was a party to such agreement, if such agreement ever was made, and the ownership by the Standard Oil Co. of a majority of the stock of plaintiff-in-error, acquired in the manner and under the conditions hereinbefore pointed out.

We contend that the instructions of the trial court, the verdict of the jury found thereon and judgment entered, together with the ruling of the appellate court upholding the same, can be construed to mean only one thing—that the Waters-Pierce Oil Company, plaintiff-in-error herein, when it purchased the property, business and good-will of the old Waters-Pierce Company at the time of its dissolution, obtained not only through that contract of sale the property, tangible and intangible, but also the liabilities of its predecessor, criminal as well as civil. In other words, the old Waters-Pierce Company now being dead, its sins are to be visited upon its successor because of its temerity in purchasing the property of the defunct corporation which can no longer be punished.

Among the many quaint legal rules which obtain in the system of Roman jurisprudence, as expressed in the Code and Digest, none is probably more interesting to the Anglo-American lawyer than the rules of law applicable in Rome to the succession of property of a decedent, and especially that rule of law whereby an heir inherited, not only the assets of his deceased ancestor, but his debts as well (Gaius III, 83; IV, 38); under some circumstances, at one time, a Roman citizen might will away his debts as well as his possessions.

Such a principle or rule may, perhaps, have its advantages, but it will hardly be contended that any such principle has ever found place in our Anglo-American law. Yet it is precisely upon some such principle as this that the present Waters-Pierce Oil Company is charged with and convicted of having entered into a combination with the Standard Oil Company, contrary to the Anti-Trust Laws of Texas.

The right of a new corporation buying the assets of one which it succeeds to hold them free from the obligations of the latter, although not often denied, has been expressly affirmed in a number of cases.

In **Austin v. Tecumseh National Bank** (49 Neb. 416; 68 N. W. 628; 35 L. R. A. 444), it is specifically held, and the rule applied, that the debts of an established corporation to whose business and property another has succeeded cannot be recovered of its successor unless it affirmatively appears that the transaction by which the successor corporation obtained such property was fraudulent, or that the facts warrant the conclusion that the successor corporation is a mere continuation of its predecessor, or that a special agreement has been entered into by which the successor corporation assumes the debts of its predecessor.

In the **Capitol Traction Company v. Offutt** (17 App. D. C. 292; 53 L. R. A. 390), a case which we have already discussed in connection with another point in this argument, an action was brought against the Traction Company for an alleged tort committed by its predecessor, the Washington Georgetown Railroad Company, whose property, good-will and business had been purchased by the defendant. The Court of Appeals of the District of Columbia, speaking through Morris, J., uses the following language:

> "A contract of purchase and sale between two corporations is no different in law from a similar contract between two individuals except that individuals may contract freely with each other and corporations require legislative authority to enter into such contracts as are involved in the case under consideration. Construction and effect

would be the same whether such contracts were made by individuals or by corporations. In neither case would the purchaser become liable either for the torts or contracts of the vendor, and least of all for the torts, unless such liability entered into the transaction and became a part of the consideration for the transfer and then only in the manner and to the extent stipulated. This is so plain a principle of law and justice that it needs only to be stated in order to insure its prompt acceptance. It is very plain, therefore, that something more than the mere purchase of the assets and franchises of one company by another under authority of law given for such sale and purchase is required to effect a consolidation of the two companies or to charge the purchaser company with the liabilities of the vendor."

And applying the above principle to the cause before it, the court held that without express stipulation in the contract of sale or some showing of fraud, the defendant could not be held liable for the contracts or torts of its predecessor whose property it had lawfully acquired.

In **Wyman v. Hallowell Bank,** (14 Mass., 57; 7 Am. Dec. 194), an action of assumpsit was brought against the defendant Bank upon certain promissory notes or bank bills alleged to have been made by its predecessor whose business and property the defendant had purchased; the Supreme Court of Massachussets, speaking through Parker, Chief Justice, held that even through the successor Bank might have the same stockholders and the same officers as its predecessor yet unless fraud could be shown or some agreement to such effect appeared in the contract of purchase, the defendant could not be held liable for the debts of its predecessor.

In **Bellows v. Hallowell and Augusta Bank,** (2 Mason, 31; Fed. Cases, 1279), a similar action was brought against the same Bank in the District Court of the United States for the District of Maine. The United States Circuit Court, on appeal, speaking through Mr. Justice Story, in passing upon the same question involved in the preceding case, uses the following language:

"The first ground rests on the suggestion that the old bank and the new bank are the same corporation, the

new charter being but a re-incorporation or rather a continuation of the charter of the old bank which would otherwise have expired by its own limitation. If the premises were well founded, the conclusion would certainly follow that the new bank is liable for the debts of the old bank, but we are called upon to admit these premises, not upon the plain and positive enactment of the statute incorporating the new bank, but upon the collateral facts that the names of both corporations are the same, the officers are the same and a majority of the stockholders are the same and that the business of the old bank was for a time done and its debts paid by the new bank. It is certainly true that a corporation may retain its personal identity, although its members are perpetually changing, for it is its artificial character, powers and franchises and not the natural character of its members which constitute that identity and for the same reason corporations may be different, although names, officers and the members of each are the same. An insurance company composed of the same natural persons and officers and with the same name as an existing incorporated bank would still be a different corporation from the bank. The similarity of names of officers or of members or even of objects cannot then *per se* establish the identity of corporations created at different times by different charters and having a distinct independent being, and one corporation may transact the business and pay the debts of another corporation without thereby merging in the latter its distinct corporate existence. There is, indeed, a repugnancy in the statement of the proposition that two corporations are in point of law the same, for it would at the same time establish that there is but one corporation. To ascertain whether a charter created a new corporation or merely continued the existence of an old one, we must look to its terms and give them a construction consistent with the legislative intent and the intent of the incorporators."

The same rule and principle is applied in the case of Gulf, Colo. & S. F. Railway Company v. Newell, (73 Texas, 334; 50 Am. St. Rep. 788), in Columbus, Sandusky and Hocking R. R. Co. App. (109 Fed. Rep. 177) and Marshall v. W. N. C. R. R. Co. (92 N. C. 322).

From the above authorities it would seem to be clear that the Waters-Pierce Oil Company cannot be held liable as a party to

any alleged agreement between its predecessor, the old Waters-Pierce Company and the Standard Oil Company of New Jersey, which alleged agreement it is charged is in violation of the Anti-Trust Laws of Texas, solely on account of the fact that the Waters-Pierce Oil Company purchased the old Waters-Pierce Company's business, property and good-will. The mere fact that the Waters-Pierce Oil Company, plaintiff-in-error herein, did confine its business to the same territory in which the old Waters-Pierce Company originally operated is not of itself sufficient to connect plaintiff-in-error with any agreement with the Standard Oil Company by reason thereof, even admitting that there was originally such an agreement between the Standard Oil Company and the old Waters-Pierce Company and that said agreement was unlawful. The Standard Oil Trust Agreement above referred to was made some time in January, 1882, and so far as the record appears there is nothing to show that the old Waters-Pierce Company or any of its officers or stockholders except the Standard Oil Company ever became a party to that agreement. Plaintiff-in-error was incorporated in 1900, and we submit that it requires a considerable stretch of imagination to connect the present Waters-Pierce Oil Company with the agreement which was formed some eighteen years before it ever came into existence. It may be permissible in some cases to judge the future by the past but we submit that it is extremely illogical to test the remote past by events transpiring many years afterward; and yet this is the method applied in this case, in that it is claimed circumstances exist to-day from which a violation of the law may be inferred. But the State is not content even with this, but charges and convicts this plaintiff-in-error because on January 1st, 1870, thirty years before plaintiff-in-error was born, certain persons incorporated the Standard Oil Company of Ohio for the purpose, as is alleged, of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas. (Instructions, Record, p. 1141.) The purpose here charged

is based entirely upon conjecture, no evidence being offered to prove the same except that many years afterward said company or its successors did actually come into control of most of the oil business through careful, able and consistent business management and extension of its operations. The scheme and conspiracy which it is charged existed in the formation of the Standard Oil Company of Ohio in 1870, can hardly be held to constitute an infraction of the Anti-Trust Laws of the State of Texas, none of which existed at that time and for the violation of which plaintiff-in-error stands charged and convicted. The Anti-Trust Act of 1899, was not passed until more than twenty-nine years after the formation of the alleged conspiracy and the Anti-Trust Act of 1903 was not passed until more than thirty- three years thereafter. To connect this plaintiff-in-error with an agreement made long before it or even its predecessor came into existence would seem to tax even a fertile imagination. It is only from the operation of the present Waters-Pierce Oil Company many years after the incorporation of its predecessor whose business it purchased, that any design on the part of said company can be shown, to monopolize the business of selling petroleum in the State of Texas; and if one divests himself of the preconceived notion that the Standard Oil Company was formed for the express and sole purpose of obtaining and enjoying a monopoly of the oil trade of the country, in the furtherance of which design and purpose this plaintiff-in-error is directly interested and concerned,—if the record in this case alone is considered—there would be great difficulty, if not utter impossibility, in reaching the conclusion from the facts in this case that there ever existed or now exists any design on the part of the Standard Oil Company or of this plaintiff-in-error to monopolize and control the oil business either in the entire country or in the State of Texas. The State of Texas says in so many words,—the fact that the Waters-Pierce Oil Company actually does operate in practically all of the cities of Texas and has no competitors of any importance is proof conclusive that somewhere and somehow it conceived the

scheme and entered into the conspiracy to monopolize the oil trade and for that it must be held guilty for an infraction of the laws. And for this it is penalized in an enormous sum, its permit cancelled and its control and management of its property taken from it. We submit that the errors herein complained of, in their effect upon this plaintiff-in-error, deprive it of its property without due process of law, and in so far are within the prohibition of the XIV Amendment to the Federal Constitution.

## V.

**ADMITTING THE OWNERSHIP OF A PORTION OF THE STOCK OF THE WATERS-PIERCE OIL COMPANY BY THE STANDARD OIL COMPANY OF NEW JERSEY, THIS FACT IS NOT ENOUGH TO ESTABLISH THE EXISTENCE OF A "COMBINATION" BETWEEN THE TWO CORPORATIONS WITHIN THE MEANING OF THAT TERM AS USED IN THE TEXAS ANTI-TRUST ACTS OF 1899 AND 1903, AND TO HOLD THE WATERS-PIERCE OIL COMPANY GUILTY OF ENTERING INTO A "COMBINATION" WITH THE STANDARD OIL COMPANY AND PUNISHING IT THEREFOR IS TO DEPRIVE THE WATERS-PIERCE OIL COMPANY OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW, DENY IT THE EQUAL PROTECTION OF THE LAWS AND HOLD IT LIABLE UNDER EX POST FACTO AND RETROSPECTIVE LAWS.**

The following is a condensed statement of the material facts proved and agreed on at the trial of this cause and the material evidence introduced therein, touching the proposition above set forth:—

## ABSTRACT OF EVIDENCE.

The State of Texas introduced in evidence an agreement entered into between its counsel and counsel for plaintiff in error wherein the following facts were admitted: That the Standard Oil Company of New Jersey is a corporation organized under the laws of New Jersey; that since its organization in 1882, it has not conducted any business in the State of Texas, and that it has not applied for or been granted a permit to transact any of its corporate business in the State of Texas; that said Standard Oil Company of New Jersey owned a portion of the stock of the Waters-Pierce Oil Company, a corporation organized under the laws of the State of Missouri in May, 1878, to-wit: 2747 shares out of a total of 4000 shares of said company, and that since about the 24th of September, 1900, said Standard Oil Company of New Jersey has owned 2748 shares of the total of 4000 shares of the Waters-Pierce Oil Company organized under the laws of Missouri, May 29th, 1900; that the said Standard Oil Company of New Jersey owns and has owned practically since the date of their creation a majority of the capital stock of the various corporations below named and doing business as below stated, and that no one of said corporations has at any time since its organization transacted any business in the State of Texas or applied for or obtained a permit to do such business; said corporations and their place of business is as follows:

The Standard Oil Company of Indiana, incorporated under the laws of Indiana, June 11th, 1889, and doing business in Indiana and part of Missouri, Illinois, Iowa, Wisconsin, Michigan, Kansas, South Dakota and North Dakota.

The Standard Oil Company of New York, organized under the laws of the State of New York, August 10th, 1882, and doing business in New York, Connecticut, Rhode Island, Massachusetts, Vermont and New Hampshire.

The Standard Oil Company of Kentucky, organized under the laws of the State of Kentucky, October 7, 1886, and doing business in Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi and part of Louisiana.

The Continental Oil Company, a corporation organized

under the laws of the State of Iowa in December, 1884.

The Republic Oil Company, organized under the laws of the State of New York, June 4, 1901.

The State of Texas further introduced in evidence an agreement entered into between its counsel and counsel for plaintiff-in-error whereby the following facts were admitted, namely, that the copies of the agreement, commonly called the Standard Oil Trust agreement, being exhibits A and B, of the petition of the State of Texas (record, page 7 and page 16) were true copies of said agreements; that the Waters-Pierce Oil Company, organized under the laws of Missouri in May, 1878, the predecessor of this plaintiff-in-error, did not sign either of said agreements or the supplement thereto; that H. Clay Pierce at that time owned substantially 40 per cent of the stock of the old Waters-Pierce Oil Company, and that he did not sign either of the aforesaid agreements or deposit any of its stock thereunder; that Horace A. Hutchins and W. P. Thompson at the date of said agreements owned substantially 40 per cent of the stock of the said Waters-Pierce Oil Company, and that they did sign said agreement and did deposit their stock thereunder; that the Chess-Carley Company at the date of said agreements owned substantially 20 per cent of the stock of the said Waters-Pierce Oil Company and that said Chess-Carley Company did not sign said agreement, but did deposit their shares thereunder; in consequence whereof from the date of the organization of the Standard Oil Trust in accordance with said agreements the trustees of the said Standard Oil Trust owned and held substantially 60 per cent of the capital stock of the old Waters-Pierce Oil Company and continued to hold the same until some time in the year 1892. All reference made to the Waters-Pierce Oil Company hereinbefore is to the old Waters-Pierce Oil Company which was organized in Missouri in May, 1878, and which dissolved in 1900. The State of Texas introduced in evidence a copy of the instrument known as the Standard Oil Trust agreement, the same being exhibits A and B, attached to the State's petition in this suit, the original agreement being dated January 2, 1882, with the supplement thereto under date of January 4, 1882. This agreement was entered into between a large number of individuals, consisting of the three following classes, to-wit: (1) All the stockholders of certain corporations and partner-

ships and, among others, the Atlantic Refining Company, the Standard Oil Company of Ohio and the Standard Oil Company of Pittsburgh. (2) Certain individuals, among others, John D. Rockefeller, Benjamin Brewster, John D. Archbold, and (3) a portion of the stockholders and members of certain corporations and limited partnerships, among others, the American Lubricating Oil Company, the Consolidated Tank Line Company, Chess-Carley Company and the Waters-Pierce Oil Company; said agreement provided that as soon as practicable corporations should be formed in each of the states of Ohio, New York, Pennsylvania and New Jersey for the purpose of refining and dealing in petroleum and its products, and that all of the properties belonging to the corporations and limited partnerships of the first class above should be transferred to said several companies formed in the above named states, and also the businesses of the persons composing the second class above and the stock owned by the persons in the third class above should be conveyed to the trustees named in the agreement. Said agreement named nine trustees and provided for the election of their successors and to fill vacancies. It was further provided by said agreement that all of the properties and businesses thus amalgamated should be managed and controlled by the trustees in the agreement named and their successors during the lives of the original trustees and the life of the survivor of them and for twenty-one years thereafter; that in lieu of the properties and businesses thus placed in said trust, the various persons putting such property or business therein should receive certificates to be known as the Standard Oil Trust certificates, same to be issued in proportion to the value of the stock, property or business so placed in the trust. Said agreement further provided for the payment of dividends, etc.

The State of Texas further introduced in evidence certified copies of the charters of the following corporations, each of which were shown to have been incorporated for the purpose, among other things, of refining and dealing in petroleum and its products, namely:

The Standard Oil Company of Ohio, incorporated in Ohio, in 1870, by John D. Rockefeller, H. M. Flagler, Samuel Adams, Stephen V. Harkness and William Rockefeller.

The Waters-Pierce Oil Company, incorporated in Missouri in 1878, by W. H. Waters, H. C. Pierce, H. A. Hut-

chins, Francis B. Carley and W. P. Thompson, having an original capital of $100,000, which by an amendment to the charter June 13, 1882, was increased to $400,000, said increase in the capital stock being owned as follows, to-wit: Chess-Carley Company, $60,000; William H. Waters, $120,000; and the Standard Oil Company, $120,000.

The Standard Oil Company of New Jersey, incorporated in New Jersey August 1, 1882, with a total capital stock of 30,000 shares of a par value of $100 each, of which 29,996 shares were owned by the Standard Oil Company, together with different amendments to said charter whereby the capital stock was increased to one hundred and ten million dollars and whereby additional power was given said corporation, among other things, to own shares of stock, bonds or other evidences of indebtedness of other corporations, the list of stockholders at said time consisting, among others, of John D. Rockefeller, John D. Archbold, Henry M. Flagler, H. A. Hutchins, O. H. Payne, Henry H. Rogers, William Rockefeller and W. H. Tilford.

The Standard Oil Company of Kentucky, incorporated under the laws of Kentucky, in February, 1887, the charter naming as first directors, W. H. Tilford, George H. Vilas, Henry H. Rogers, John D. Archbold and W. P. Thompson.

The Standard Oil Company of Pittsburg, incorporated in Pennsylvania, August 20, 1868.

The Standard Oil Company of Indiana, incorporated in Indiana, July 18, 1889, the charter whereof named as first directors George H. Vilas, W. H. Tilford, W. P. Cowan, Frank Q. Barstow and Ambrose McGregor, together with an amendment to said charter under date of March 16, 1892, reciting that the Standard Oil Trust owned 4995 of the shares of the capital stock of said corporation.

The Standard Oil Company of Iowa, incorporated in Iowa, June 10, 1885, by John D. Archbold, W. H. Tilford and S. C. T. Dodd, together with an amendment to said charter dated February 24, 1892, authorizing an increase of capital stock and showing the stockholders at that time to be H. L. Tevis, W. H. Tilford, Henry H. Rogers, John D. Archbold, Benjamin Brewster, H. N. Fl[illegible], O. B. Jennings, William Rockefeller and John D. Rockefeller.

The charter of the Standard Oil Company of New York, incorporated in New York, August, 1882, by William Rockefeller, J. A. Bostwick, Benjamin Brewster, O. B. Jennings

and Charles Pratt, with various amendments to said charter, the particulars whereof are not necessary to be herein set forth.

The charter of the Atlantic Refining Company, incorporated in Pennsylvania, April, 1870, with sundry amendments thereto, and showing that W. G. Warden and C. E. Bushnell were officers of said company at sundry times.

The charter of the Waters-Pierce Oil Company (plaintiff-in-error) incorporated in Missouri, May 29, 1900, by H. Clay Pierce, Andrew M. Findlay, J. P. Gruet, Charles N. Adams and John D. Johnson, and showing that the copy of said charter was filed in the office of the Secretary of State of the State of Texas, May 31, 1900.

The permit to do business in the State of Texas issued to the Waters-Pierce Oil Company (plaintiff-in-error) by the Secretary of State of the State of Texas, May 31, 1900.

Said State of Texas further introduced in evidence a certified copy of an affidavit showing the dissolution on May 28, 1900, of the old Waters-Pierce Oil Company, incorporated May 7, 1878, showing that said affidavit of dissolution was duly filed in the office of the Secretary of State of the State of Missouri, May 29, 1900, and in the office of the Secretary of State of the State of Texas, May 31, 1900. Evidence was further introduced to show that a permit to do business in Texas theretofore issued to the old Waters-Pierce Oil Company, incorporated in 1878, was on June 15, 1897, cancelled by the judgment of the District Court of Travis County in a suit by the State of Texas against said company, and the said judgment was affirmed by the Supreme Court of the United States, March 19, 1900.

The State of Texas further offered in evidence the deposition of **Ida M. Butts**: That she was the administratrix in the estate of George Rice, who died in 1905; that said George Rice was at the time of his death the owner of certain certificates of the Standard Oil Trust, and that as administratrix she had come into possession of one such certificate; she further testified (over objections of defendant, plaintiff-in-error herein) that after a suit brought by the Attorney General of the State of Ohio in said state to oust the said Standard Oil Company of Ohio from further participation in the Standard Trust Company or to cause it to cease to do business in the State of Ohio if it remained in

said Trust, was decided in favor of the State of Ohio, "the Standard Oil Trust pretended to go out of business," and they then increased the capital stock of the Standard Oil Company of New Jersey and made it to all intents and purposes the same sort and character of organization in effect as had been the Standard Oil Trust—that is, they made it the holding company of all the companies hitherto included in said Standard Oil Trust. The witness further testified (over objections of defendant, plaintiff-in-error) that in 1896, there were twenty companies in the great grand division of the trust, to-wit: The Atlantic Refining Company, Standard Oil Company of Kentucky, the Buckeye Tank Line Company of Ohio, the New York Transit Company of New York, the National Transit Company of Pennsylvania, Solar Refining Company of Ohio, the Northwestern Natural Gas Company of Ohio, the Union Pipe Line Company of New York, the Southern Pipe Line Company of Pennsylvania, the Northern Pipe Line Company of Pennsylvania, the Eureka Pipe Line Company of West Virginia, the Indiana Pipe Line Company of Indiana, the Standard Oil Company of Indiana, the Standard Oil Company of New York, the Standard Oil Company of New Jersey, the Standard Oil Company of Ohio, the Ohio Oil Company of Ohio, the Forest Oil Company of Pennsylvania, the Southern Pennsylvania Oil Company of Pennsylvania and the Anglo-American Oil Company, Limited.

The witness further testified that fractional certificates of the shares of stock for each of the companies above mentioned were issued to J. L. Kemper, in lieu of certain of the aforesaid Standard Oil certificates held by the said George Rice, copies of which certificates were attached to her said deposition. There was also attached to said deposition as an exhibit, a certificate signed by the trustees of the Standard Oil Trust by W. H. Tilford, attorney in fact, dated November 15, 1899, showing that George Rice was the owner of the equitable title of 1-9725 of the amounts of the corporate stocks held by the trustees of the Standard Oil Trust in each of the corporations whose stocks were held by said Trust on the first day of July, 1892, and which equitable ownership was represented by one share of Standard Oil Trust surrendered for cancellation and directing the officers of the several corporations included in the said Trust as aforesaid to issue certificates for said interest.

State of Texas further offered in evidence the deposition of **R. H. McNall:** That H. M. Tilford was in the oil business and connected with the Continental Oil Company, doing business in the western part of the United States with the head office at Denver, and was also connected with the Standard Oil Company of San Francisco and that the Continental Oil Company did business in Colorado, Utah, Montana, New Mexico, Idaho and Arizona, and that the Standard Oil Company of San Francisco did business in Washington, Oregon, California, Nevada, and he thought in Arizona.

**E. M. Wilhoit** testified by deposition for the State as follows: That he was agent at Topeka, Kansas, for something like four years for the Standard Oil Company of (he thought) Kentucky, and stated that this was the same company that did business in Missouri, but he did not state within what years he acted as such agent. He further testified that prior to representing said Standard Oil Company at Topeka, he had been the agent for the Standard Oil Company at Wichita, Kansas, but did not state within and at what time he had acted as such agent. He further testified that the Consolidated Tank Line Company was absorbed by the Standard Oil Company, and that he was employed by said Consolidated Tank Line Company at the time of such absorption. He further stated that the Indian Territory was not in the Territory in which the Standard Oil Company and the Consolidated Tank Line Company did business from and out of Wichita, Kansas, but that he sometimes had taken orders from the Indian Territory and had labeled such goods with Waters-Pierce Oil Company's labels and had charged such goods to the Waters-Pierce Oil Company. He further testified that during two different years (without stating what years) he traveled and took orders for the Consolidated Tank Line Company or the Standard Oil Company in the Panhandle of Texas, and was instructed to shade prices liberally to secure orders, as it was in the territory of the Waters-Pierce Oil Company, and that upon requesting that he be allowed to make such trip for the third season, he was informed that the Waters-Pierce Oil Company had "gotten on to them" so that they could make no further shipments into that territory. Said witness further testified that in certain portions of Mis-

souri, the Standard Oil Company did not do business, and the Waters-Pierce Oil Company did do business, and that in other portions of said state the Waters-Pierce Oil Company did business and the Standard Oil Company did not; the Standard Oil Company did business in Kansas, and the Waters-Pierce Oil Company did not; that the Waters-Pierce Oil Company did business in the Indian Territory, and the Standard Oil Company did not.

**Charles F. Hatfield** testified for the State by deposition as follows: That prior to 1889 he had been the private secretary to Col. W. P. Thompson, and fro that year to November, 1904, he had worked in different capacities for the Waters-Pierce Oil Company, that while he was private secretary to Col. Thompson, a dispute arose between the Waters-Pierce Oil Company and the Consolidated Tank Line Company with reference to whose territory a certain county in Missouri was in, and that this matter was finally referred for adjustment to Col. Thompson in New York, and that he made a map showing the dividing lines in Missouri, that a copy of such map was retained in the office of New York, and one sent to each of the aforesaid companies. He further testified that he had been employed at 26 Broadway, New York, while with Col. Thompson, prior to 1889, and that during that time several different companies were represented there by various officials connected with various employes such as the Domestic Trades Committee, Manufacturing Committee, Lubricating Oil Committee, Cooperage Company; that all of said committees reported to the Executive Committee of which, according to general understanding, John D. Rockefeller was Chairman; that Col. Thompson represented the Consolidated Tank Line Company, the Waters-Pierce Oil Company and other companies; that H. A. Hutchins represented the Standard Oil Company of Chicago, Cleveland and some others, and that H. M. Tilford largely represented the Western Companies like the Continental and San Francisco interests.

**Mr. H. Clay Pierce** testified by deposition on behalf of the State of Texas as follows: That he was at the time of testifying, September 10, 1906, Chairman of the Board of Directors of the Waters-Pierce Oil Company, organized in Missouri in 1900; that during the fall and winter of 1877 and 1878, he organized and incorporated under the laws of Mis-

souri the first Waters-Pierce Oil Company and that it succeeded to the business and property of Waters, Pierce & Co.; that the original capital stock of said Waters-Pierce Oil Company was $100,000, of which Waters, Pierce & Co. subscribed for 40 per cent, Horace A. Hutchins and William P. Thompson 40 per cent and Chess-Carley & Company of Louisville, Kentucky, 20 per cent, and that the first officers of said first Waters-Pierce Oil Company were William H. Waters, Director and President; H. Clay Pierce, Director and Vice-President; Charles M. Adams, Secretary and Treasurer; Horace A. Hutchins, Director; William P. Thompson, Director, and Francis D. Carley, Director. Witness further testified that some time after the organization of the Waters-Pierce Oil Company, the stock belonging to Messrs. Hutchins and Thompson and Chess-Carley & Company was transferred to the trustees of the Standard Oil Company, and that the witness (Mr. Pierce) purchased the interests of William H. Waters in the 40 per cent belonging to Waters-Pierce & Company. He further testified that when the license of the first Waters-Pierce Oil Company was revoked by the State of Texas, he (Mr. Pierce) was told by a prominent citizen of the State of Texas that the people of that state would not tolerate the methods of the Standard Oil Company, and that no corporation controlled by the Standard Oil Company would be permitted to do business in Texas; that he explained the situation fully to the Executive Committee of the Standard Oil Company, and they agreed that he should organize a new company, the stock of which should be held by him (Mr. Pierce), and that he should manage and control the company absolutely free from any dictation or direction on the part of said Standard Oil Company.

He further testified that up to the spring of 1904, the Standard Oil Company had made no attempt to interfere in any way with his management and control of the Waters-Pierce Oil Company, but that sometime in the spring of 1904, the Standard Oil Company transferred the stock which had stood in his (Mr. Pierce's) name to M. M. Van Buren, and began in other ways to assume control over the affairs and operations of the company; that he protested against this conduct as a violation of their agreement with him and as contrary to the representations he had made to the people of the State of Texas.

Mr. Pierce further testified that in 1878 when he organized the first Waters-Pierce Oil Company, its predecessors, Waters, Pierce & Company and H. C. Pierce & Company, had already an established business in all of the territory in which the Waters-Pierce Oil Company now operates, and that it was agreed between him and the representatives of the Standard Oil Company of Ohio, that being the only Standard Oil Company of which he knew anything at the time, that said first Waters-Pierce Oil Company should confine its operations and transact its business within the territory in which its predecessors, Waters, Pierce & Company and H. C. Pierce & Company, had heretofore transacted their business, and that a map was made showing such territory, including a portion of Illinois, a portion of Missouri, a portion of Louisiana west of the Mississippi River, the State of Arkansas, what is now the Indian Territory and Oklahoma, the State of Texas, and the Republic of Mexico, and that ever since said time the Waters-Pierce Oil Company had confined its operations to building up its trade in that particular territory; that the present Waters-Pierce Oil Company was organized in 1900, and succeeded to the established business of the old Waters-Pierce Oil Company, and since that time had confined its operations exclusively to building up the business in the territory occupied by its predecessor, the old Waters-Pierce Oil Company.

Mr. Pierce further testified that in the year 1892, the directors of the old Waters-Pierce Oil Company consisted of Messrs. H. Clay Pierce, A. M. Finlay, H. M. Tilford, C. M. Adams, and J. P. Gruet, and that this Board of Directors continued until the dissolution of the old Waters-Pierce Oil Company in 1900; that upon the organization of the present Waters-Pierce Oil Company in 1900, the Board of Directors then elected consisted of the witness, H. Clay Pierce, and A. M. Finlay, C. M. Adams, J. P. Gruet and J. D. Johnson, and that this Board of Directors continued until the year of 1904, when W. F. Taylor took the place of J. D. Johnson and R. P. Tinsley that of J. P. Gruet. The witness further testified that the Waters-Pierce Oil Company purchased almost all of its supplies of the Standard Oil Company, and it depended upon the Standard Oil Company for almost all of its supplies, and that neither the present nor the old Waters-Pierce Oil Company had ever attempted to extend business beyond the territory above

named and in which it did business, and that the reason, therefore, was because he (Mr. Pierce) as Manager, did not deem it expedient to do business beyond the territory wherein the Waters-Pierce Oil Company was thoroughly and fully equipped and did not contemplate extending such business for the reason that the original Waters-Pierce Oil Company had agreed that it would confine its operations to the territory in which it and its predecessors had transacted business, and that this agreement was made with Col. O. H. Payne as the representative of the Standard Oil Company of Ohio, and that as a result of this agreement the Waters-Pierce Oil Company had confined its business to certain territory, but that he had not and never had had any means of knowing the reasons for the operations of the Standard Oil Company. He further testified that on the organization of this plaintiff-in-error, May 29, 1900, he subscribed and paid for the entire capital stock, but subsequently at the request of Mr. W. H. or H. M. Tilford, he transferred in blank 2748 shares of this stock, and delivered the certificate to Mr. Garth, the transfer being made pursuant to what his attorney informed him was the agreement at the time of the formation of the present Waters-Pierce Oil Company, but that this stock remained on the books of the company in his (Mr. Pierce's) name until some time in June, 1904, when it was transferred on the books of the company to M. M. Van Buren; that W. H. Tilford and H. M. Tilford were connected with the Standard Oil Company and were members of the Domestic Trades Committee of the Standard Oil Company.

Mr. Pierce further testified that according to his understanding these 2748 shares which he transferred and delivered to Mr. Garth belonged to and were to be transferred to the Standard Oil Company or its representatives, and that any dividends upon said shares which came into his possession were transferred by him to the Seaboard National Bank of New York, as he understood for the Standard Oil Company; that the reason the ownership by the Standard Oil Company of said 2748 shares did not appear upon the books of the company when it was organized—that is, the personal reasons of the witness were that it had been agreed by his attorney and the general counsel of the Standard Oil Company that the stock should stand in his name for the

purpose of enabling him (Mr. Pierce) to own, control and operate the said Waters-Pierce Oil Company; that he had the understanding through his attorney that he was to remain the owner of record of said stock, and to control the company and to continue to do so as long as the stock remained in his name. Witness further testified that in 1904 after the Standard Oil Company had caused such 2748 shares to be transferred on the books of the company to M. M. Van Buren, said Standard Oil Company began to assume control over the affairs of the Waters-Pierce Oil Company by ousting directors that had been elected by the witness and substituting those of the Standard Oil Company's own selection, and by sending men to manage the Waters-Pierce Oil Company. Witness further testified that the Standard Oil Company audited the books of the old Waters-Pierce Oil Company whenever it saw fit to do so, and that the old Waters-Pierce Oil Company sent reports of its business to the Standard Oil Company, but the witness did not personally know that the books of the present Waters-Pierce Oil Company (plaintiff-in-error herein) had ever been audited by the Standard Oil Company from the time of the organization of the present Waters-Pierce Oil Company up to 1904. He further testified that after the present company was organized, the reports and communications were sent to R. H. McNall, 26 Broadway, New York, instead of to the various heads of the departments of the Standard Oil Company, as had been the case during the existence of the old Waters-Pierce Oil Company; that Mr. McNall had been clerk in the office of H. M. Tilford, and was selected for this position because of his familiarity with the business and that the purpose was to facilitate business, avoiding the delays of receiving and transmitting orders, and that McNall was to reside in New York, with his office at 26 Broadway, the home of the Standard Oil Company, and through him all communications of the various Standard Oil Company's interests would be transmitted, and that after McNall's appointment to this position, which was styled "commercial agent," he continued to maintain his office in that of Mr. Tilford's. Witness testified that he did not know until he read it in the newspapers that McNall's mail was directed to him at 75 New street, and that he did not know why this was done.

Mr. Pierce further testified with reference to the reports

made by the Waters-Pierce Oil Company to the Standard Oil Company through Mr. McNall that "the different heads of the different departments of the Standard Oil Company in New Jersey were in the habit of communicating through Mr. McNall their desires and, as the Manager of the Waters-Pierce Oil Company, it was my understanding that the heads of departments requested such information as the Standard Oil Company of New Jersey, who was a majority stockholder in the Waters-Pierce Oil Company, desired to have and recognizing the right of the largest stockholder in the company to have such information concerning its operation as it desired, I very readily instructed the various heads of the departments of the Waters-Pierce Oil Company to send such information as was asked for."

Mr. Pierce further testified that H. M. Tinsley came to St. Louis in April, 1904, to assume charge of the Accounting Department of the Waters-Pierce Company, as successor to Mr. J. P. Gruet and remained until some time in April, May or June, 1905, that Mr. Tinsley did not come to St. Louis to take charge of the business of the Waters-Pierce Oil Company, but under the agreement between the witness (Mr. Pierce) and W. H. Tilford, representing the Standard Oil Company, Mr. Tinsley was appointed to succeed Mr. Gruet as the auditor or comptroller of the Company, and to have to do only with the books and accounts of the company, and both agreed that under no circumstances was he to interfere with the management of the company. Witness stated that at this time Mr. Finley was president of the Waters-Pierce Oil Company, and Mr. Tinsley was given the title of Vice-President to supply the position made vacant by the retirement of Mr. Gruet; that when Mr. Tinsley came to St. Louis he was assigned by Mr. Finley to the position in reference to the books and accounts which had been made vacant by the retirement of Mr. Gruet, and that Tinsley at first made no objection to taking charge of the books, but finally refused to take charge thereof; that Mr. Finley, on account of his health, was compelled to go abroad some time in May or June, 1905, and that immediately upon Mr. Finley's departure Mr. Tinsley assumed charge of the Waters-Pierce Oil Company in all its departments; that Mr. Tinsley proceeded at different dates to remove old and important officers and employees of the company and heads of departments and

substituted others in their places; that when this information was brought to the knowledge of the witness he protested to the officials of the Standard Oil Company against the unwarranted action of Mr. Tinsley in violating the agreement.

The witness, Mr. H. Clay Pierce, further testified by deposition, the same being offered by defendant below (plaintiff-in-error), as follows: That he (Mr. Pierce) was not and never had been a shareholder in the Standard Oil Company of New Jersey, and did not and never had owned any stock in any oil company other than the Waters-Pierce Oil Company; that when the Standard Oil Trust was organized he (Mr. Pierce) was urged to place the Waters-Pierce Oil Company in the Trust, but refused to do so; that when the first Waters-Pierce Oil Company was organized, it was agreed by all parties interested that the witness should control and direct its policy, and that he constantly continued to do so from the date of its organization until February, 1900, when ill health compelled him to retire as President of the company, and he elected his brother-in-law, A. M. Finlay, as his successor. He further testified that when the present Waters-Pierce Oil Company was organized in order that the company should conduct its business in accordance with the laws of every state in which it was operating, he placed the attorney of the company on its executive committee with instructions to examine all reports and transactions to the end that no law should be violated; that after frequent interviews and discussions with reference to the action of the Standard Oil Company in transferring the stock to M. M. Van Buren, the management and control of the company was again committed into the hands of the witness, and that his son, Clay Arthur Pierce, was then the president of the company, and was conducting it as an independent business. Mr. Pierce further testified that the volume of business of the present Waters-Pierce Oil Company was so great that it would have been impossible for it to obtain supplies sufficient to meet its requirements from any other source than the Standard Oil Company, and that he felt sure that at the time of testifying (September, 1906), it could not do so; that the Waters-Pierce Oil Company was not interested in any oil wells or oil producing property within the United States. Witness further stated that the Waters-Pierce Oil Company had

never had any agreement or understanding with the Republic Oil Company, the Standard Oil Company or any other company or person for the purpose of fixing or intending to fix the price at which any of the products of petroleum should be sold on the market.

Mr. Pierce detailed the developments of the oil business by himself and the Waters-Pierce Oil Company, the improvements in the methods of delivery of oil, the substitution of tank stations and direct deliveries to consumers and dealers in tank wagons and in tin cans in place of the old method of shipping in wooden barrels and detailed the consequent saving in the conveyance of oil to the purchasers by said improved system.

In answer to the question as to why the Waters-Pierce Oil Company did not buy oil from independent refineries, the witness answered "as a rule the oils produced by the independent refineries were of inferior quality and were produced in such small quantities by each independent; although the aggregate was considerable, that it would have made it much more expensive for the Waters-Pierce Oil Company to have supplied its trade from a great many sources as against the one."

The State of Texas further offered in evidence the deposition of **Mr. Wade Hampton** as follows: That he (Mr. Hampton) was the general auditor of the accounts of different companies, among others, the Standard Oil Company of New York, the Atlantic Refining Company, and the Standard Oil Company of Indiana. Witness testified in some detail as to the auditors in his office being sent by him at different times to audit books of the Waters-Pierce Oil Company. In view of the admission by defendant below (plaintiff-in-error herein) of the fact that auditors of the Standard Oil Company did audit the books of the Waters-Pierce Oil Company from time to time, it is not deemed necessary to give more of the details of the testimony of this witness. The evidence showed that these auditors were paid by the Waters-Pierce Oil Company for the time employed in making such audits. As to this, the witness, H. C. Pierce, in his testimony testified that the payment of these auditors by the Waters-Pierce Oil Company was without his knowledge and certainly would have been stopped by him if he had known it.

The State further introduced in evidence certain letters written by Mr. Wade Hampton of the Waters-Pierce Oil Company dated respectively February 8, 1901, February 8, 1902, November 12, 1902, November 24, 1902, and November 10, 1903, and advising with reference to auditors going to audit the books of the Waters-Pierce Oil Company, and asking that such auditors be placed on the pay-roll of said company during the time so employed, and stating the salaries to be paid them; the first of such letters—the one dated February 8, 1901—stated that "for reasons which you undoubtedly will appreciate, it is best that Mr. Conrey (auditor) be considered an employee of your company during his examination." The state further introduced a letter from the said Hampton to H. C. Pierce, President of the Waters-Pierce Oil Company, dated July 7, 1899, relating to the auditing of the books of the old Waters-Pierce Oil Company. These letters appear in the record page 533.

The State of Texas further offered in evidence the deposition of **Maywood Maxon** as follows: That he had been engaged in the oil business most of his life, and had worked for different companies, that he knew Alexander McDonnell, who was President of the Consolidated Tank Line Company and afterwards President of the Standard Oil Company of Kentucky, that the Standard Oil Company of Kentucky had an office at 26 Broadway, New York, and that he (the witness) was Manager at one time for the Iowa Tank Line Company at Davenport, Iowa, that said company sold Standard Oil Company's oils except turpentine, that the Iowa Tank Line Company made reports to H. R. Payne, Secretary, 26 Broadway of the movement of Union Tank Line cars, that the Iowa Tank Line Company did business in the City of Trenton, Mo., and that the Consolidated Tank Line Company was not allowed to sell at Trenton, that the Consolidated Tank Line Company absorbed the Iowa Tank Line Company about 1885, that the Consolidated Tank Line Company went into the Standard Oil Company of Kentucky, and that he was its manager until December 31, 1902, that as manager he was not allowed to sell oils in the territory of the Waters-Pierce Oil Company in Illinois, that the Standard Oil Company of Kentucky had a storage and shipping depot in East St. Louis, under his jurisdiction, but that all orders or in-

quiries from such territory were referred to the Waters-Pierce Oil Company.

**G. J. Steigerwald** testified by deposition for the State of Texas as follows: That he was in the oil business with the Fred G. Clark Company; that his first connection with the oil business was as clerk for Schofield, Schurmer & Teagle of Cleveland, Ohio, from March 4, 1891, to January, 1901; that he was next secretary and treasurer of the Scio Refining Company with which company he remained until June 1st, 1901; that he was afterwards with the Republic Oil Company; that the said Republic Oil Company acquired the refinery of the Scio Oil Company; that the Republic Oil Company was located at Cleveland, Ohio, with distributing branches throughout the middle west and lake states and that he continued with the Republic Oil Company until April 15, 1904; that while the Scio Refining Company and Scofield, Schurmer & Teagle were in business they sold in practically each of the United States and that Scofield, Schurmer & Teagle were not large dealers in the State of Texas, but that in the States of Ohio, Michigan, Indiana, Nebraska and some adjacent territory they were the largest and most aggressive competitors of the Standard Oil Company and of the Waters-Pierce Oil Company in the territory allotted to them; and that they competed in the distribution of oil by establishing branch houses and shipping therefrom in barrels and distributing by tank wagons. The witness further testified as to reports made by the Republic Oil Company to 26 Broadway, New York, and that the business of the Republic Oil Company was that in the territory in which it operated, as above stated, it was to secure and supply the trade of those who were dissatisfied with or prejudiced against the Standard Oil Company or its subsidiary companies and that it did not enter into active competition with the Standard Oil Company; and that a station of the Republic Oil Company formerly maintained by Scofield, Schurmer & Teagle at Springfield, Missouri, in the territory of the Waters-Pierce Oil Company was closed by instructions of the President of the Republic Oil Company and the equipment removed from Springfield to Kansas City, Missouri.

The State of Texas further offered in evidence the deposition of **A. H. Gardner**, who testified as follows: That

he was in the oil business in Kansas City, Missouri, and had lived there for fourteen years prior to which time he had lived at Denver, Colorado; while at Denver, he had been in the employ of the Continental Oil Company which sold oil in various northwestern states but did not enter into competition with or sell oil in any territory in which the Waters-Pierce Oil Company sold oil; that the Continental Oil Company made reports to H. M. Tilford, 26 Broadway, New York; that after going to Kansas City he entered the employ of the National Oil Company which said company was not in any way connected with the Standard Oil Company's interest; that Scofield, Schurmer & Teagle were in business in Kansas City and continued there until about five years before; that he had not in the conduct of his business in Missouri met the Waters-Pierce Oil Company and the Standard Oil Company as competitors in the same place.

The State of Texas further offered in evidence the deposition of **Edward P. Pratt** as follows: That he lived at Kansas City, Missouri, and had lived there since 1892, and that from 1882 to 1892 he lived at Des Moines, Iowa; that while living in Des Moines he was an officer of the Des Moines Oil & Tank Line Company and that this Company was sold to the Consolidated Tank Line Company; that he was manager of the Consolidated Tank Line Company at Des Moines until March, 1892; that there was in Missouri a dividing line between the territory in which the Consolidated Tank Line Company did business and the territory in which the Waters-Pierce Oil Company did business; that the Consolidated Tank Line Company was succeeded by the Standard Oil Company of Kentucky in 1896 and afterwards by the Standard Oil Company of Indiana, and that he was respectively manager for each of these companies in Kansas City and that there was no change in the territory in which they did business from that in which the Consolidated Tank Line Company had done business; that while he was manager at Kansas City of the Consolidated Tank Line Company and the Standard Oil Company of Kentucky and Indiana, if an order was received from a dealer in the Waters-Pierce Oil Company's territory, such order was either sent to the Waters-Pierce Oil Company at St. Louis or the shipment was made by the Consolidated

Tank Line Company which reported the sale to the head office of said company at Cincinnati; while he was manager at Kansas City he did no business in Texas, because it was not in his territory.

The State of Texas further offered in evidence the deposition of **A. V. Jockel** as follows: That he was employed by the Standard Oil Company of New Jersey from June, 1904, until December, 1904, in the capacity of bookkeeper; that he worked for the Waters-Pierce Oil Company at Oklahoma City, Oklahoma Territory, from December, 1904, to February, 1905; that in November, 1904, he was informed by the manager of the Newark branch of the Standard Oil Company of New Jersey that his transfer had been requested to some western agency and that Mr. King desired his presence at 26 Broadway, New York, the following day; that he was given a letter of introduction to Mr. King which he presented and Mr. King introduced him in turn to Mr. R. H. McNall with whom he made all arrangements regarding his transfer to the Waters-Pierce Oil Company; that about a week later he left New York for St. Louis and saw Mr. Tinsley whom Mr. McNall had directed him to see before going to Oklahoma City; that he made his final arrangements with Mr. Tinsley and then left for Oklahoma City; that the duties of Mr. King were merely the auditing of the monthly reports of the Waters-Pierce Oil Company sent to the St. Louis office; that before going with the Waters-Pierce Oil Company, Mr. Young, the manager of the Standard Oil Company at Newark, New Jersey, instructed him not to mention the fact that he had been with the Standard Oil Company; that the oils sold by the Waters-Pierce Oil Company at Oklahoma City were obtained from the Standard Oil Company of Indiana and from the Galena Oil Company.

The State of Texas further offered in evidence the deposition of **Harry Egbert Platt** as follows: That he resided in New York, and was clerk in the office of W. H. & H. M. Tilford for about two years, beginning in February either in the year 1902, or 1903, that while there he knew Mr. R. H. McNall, who had a desk in H. M. Tilford's room, and that while there he saw reports from the Waters-Pierce Oil Company to R. H. McNall; that Mr. McNall was commercial

agent for the Waters-Pierce Oil Company, and that letters addressed to him were addressed to 75 New Street, New York, which was the rear entrance to the building at 26 Broadway, that various reports received by Mr. McNall were sent to Silas H. Payne and W. E. Bemis, Mr. Bedford and others, all having offices at 26 Broadway, and that it was the custom for letters written at various departments at 26 Broadway to the Waters-Pierce Oil Company to be sent to Mr. McNall to be signed by him.

The State further offered in evidence the deposition of **Albert A. Smith**, as follows: That he resided in Brooklyn, was employed in the office of Messrs. Burt & Goodeno, at 26 Broadway, New York, in May, 1903, in the department known as the Shipping Department, and that in May of the following year, he was transferred to the office of W. E. Bemis where he remained about a year and one-half. Mr. Bemis was a member of the committee known as the Domestic Trades Committee, and was in charge of the department known as the Statistical Department, that reports came to Mr. Bemis from all over the world, and that witness had seen the reports from the Waters-Pierce Oil Company, that these reports were reports of monthly deliveries of oil and different products connected with the business as well as reports of competitive shipments, that letters were dictated to him at Mr. Bemis's office and sent to McNall to be signed, that the letters he wrote were sent in to Mr. McNall to be signed and copied in his book and returned to be mailed.

The State further offered in evidence the deposition of **Francis D. Carley** as follows: That he resided in White Plains, New York, and had been engaged in the oil business from 1865 to 1884, first, with the firm of Chess-Carley & Company, afterwards with the corporation Chess-Carley Company, and afterwards for a few years with the Water-Pierce Oil Company, that the corporation of Chess-Carley Company was engaged in selling oil in Texas. Witness testified that he sold his interests in the Chess-Carley Company to the M. K. & T. Tank Line for stock in the Waters-Pierce Oil Company.

State further introduced in evidence the deposition of **W. N. Davis** as follows: That he resided in Kansas City, and

was engaged in effecting sales of lubricating oils and other products of petroleum; that he was the manager in Kansas City, and had been with the Keystone Oil Company of Kansas City and the Inter-Ocean Oil Company of Chicago for about nine years; that prior to that time he was connected with the Interstate Oil Company which did business all over the world; that he met the Waters-Pierce Oil Company, the Standard Oil Company, in competition in Missouri, but had never met both companies in the same place; that he had worked for the Consolidated Tank Line Company, and that there was a line in Missouri, between the territory of the Consolidated Tank Line Company and the territory of the Waters-Pierce Oil Company, and that they did not compete; that while connected with the Consolidated Oil Company, there was some controversy over a station at Joplin, Missouri, which he had established, which was afterwards turned over to the Waters-Pierce Oil Company.

State of Texas further offered in evidence the deposition of **William A. Morgan** as follows: That he resided in Sedalia, Missouri, and had been engaged as traveling salesman for the Standard Oil Company of Missouri from December 1, 1898, until October, 1900; that the Standard Oil Company transacted business in certain parts of the State of Missouri, and the Waters-Pierce Oil Company did no business in such parts; that the Standard Oil Company did no business in those parts of the state in which the Waters-Pierce Oil Company did business.

State of Texas further offered in evidence the deposition of **H. R. Knowlenberg** as follows: That he resided in St. Louis, and had been a traveling salesman for the Waters-Pierce Oil Company from about 1893 to about 1898 or 1899, and worked in Illinois and Missouri; that prior to that time he had worked for the Vacuum Oil Company of Rochester, as traveling salesman in the same territory; that the Standard Oil Company purchased the business of the Vacuum Oil Company, whereupon he went to work for the Waters-Pierce Oil Company; that when he made trips in Illinois soliciting business, his reports were sent to the Standard Oil Company at East St. Louis, Illinois, and when he solicited business in Missouri, his reports were sent to the Waters-Pierce Oil Company.

State of Texas further offered in evidence the deposition of **T. R. Hopkins** as follows: That he lived in Lawrence County, Missouri, and had been connected with the Waters-Pierce Oil Company in the capacity of agent at Seneca, Joplin, Webb City and Pierce City, all in Missouri, from 1887 to 1893, and that the Standard Oil Company and the Waters-Pierce Oil Company did not compete with each other in the State of Missouri.

State of Texas further offered in evidence the deposition of **Mr. R. H. McNall** as follows: That he resided in Greenwich, Connecticut, and had an office at 26 Broadway, New York, where he had been for about twenty years, that he had worked for the Pratt Manufacturing Company for about ten years, and afterwards for the Standard Oil Pratt Works, and then with Mr. Tilford as an assistant, and had remained with him for about five years until some time in the year 1900, when he was employed by the Waters-Pierce Oil Company to look after such business as they might give him in New York City, being given a little later the title of Commercial Agent, and at this time he occupied a desk in the office of H. M. Tilford; that his mail was addressed to 75 New Street, the rear entrance of 26 Broadway; that he attended to making purchases for the Waters-Pierce Oil Company, received reports and wrote letters to the Waters-Pierce Oil Company; that some of the reports received by him were submitted to and examined by different persons at 26 Broadway, and that he signed and mailed the Waters-Pierce Oil Company various letters written in other departments at 26 Broadway, and that such letters were marked with the initial of the person writing the same, namely, "S. H. P.," representing Silas H. Payne; "T. H. W.," T. H. Wheeler; "W E. B.," W. E. Bemis;" "H. M. T.," H. M. Tilford. "C. E. B.," C. E. Bedford; "W. H. T.," W. H. Tilford.

Witness further identified various letters from him to the Waters-Pierce Oil Company to the different officers thereof, which said letters are attached to his deposition, and copies are found on page 605 ff. of the record herein. These are letters relating to requests for notices of dividends as declared by the Waters-Pierce Oil Company, changes of salaries in Mexico, advances in salary, sugges-

tions as to bookkeeping, requests for monthly reports and various other matters of information with reference to the conduct of the business, and letters acknowledging receipts of information, receipts of letters, reports from the Waters-Pierce Oil Company and one letter from the witness, R. H. McNall, to S. Johnson, St. Louis, dated March 24, 1904, suggesting that the Waters-Pierce Oil Company's minimum selling price on crude scale wax should be certain prices, stated in the letter, F. O. B. cars Cleveland, Ohio, Whiting, Indiana or New York, stating that while the price named was suggested as a minimum price, he did not want to try to get anything above these prices if by so doing any business might be jeopardized and further stating that on all orders received after that date the billing price of the Waters-Pierce Oil Company would be one-half cent below the price suggested. None of said letters, however, contained any suggestion as to the price at which the Waters-Pierce Oil Company should sell any article dealt in by it except this one letter making the suggestion with respect to the selling price of crude scale wax.

Witness testified that he was in the employ of the Waters-Pierce Oil Company from the spring or summer of 1900, until the spring of 1906, during all of which time his office was at 26 Broadway, New York, and that among other things he conducted correspondence passing between the Standard Oil Company and the Waters-Pierce Oil Company, and for the Standard Oil Company in regard to the business of the former such as reports of sale, dividends and general information with reference to the conduct and result of the business of the Waters-Pierce Oil Company, and that during this time he wrote letters to the Waters-Pierce Oil Company at the dictation of the various heads of the departments of the Standard Oil Company.

The State of Texas further introduced in evidence other letters written by the witness, R. H. McNall, to different officers of the Waters-Pierce Oil Company, which letters related to prices of the Standard Oil Company of oil and other products at their different refineries, requests for information as to the business of the Waters-Pierce Oil Company, and that of competitors and suggestions as to systems of bookkeeping and requests for reports, etc. None of these letters contained any suggestion as to the price at which the Waters-Pierce Oil Company should sell its prod-

ucts or any of its commodities in which it dealt; one of these letters was admitted in evidence dated January 30, 1908, relating to the bill of the Waters-Pierce Oil Company against the Standard Oil Company, Marine Department, calling attention to the fact that the price of one of the articles was not given in the bill, returning the bill and asking that the price of the article be furnished. From the letter it appeared that this was for goods delivered by the Waters-Pierce Oil Company to some ship.

The State of Texas further offered in evidence the deposition of **S. K. Wheeler,** who testified that he was Assistant General Manager of the Waters-Pierce Oil Company, and was General Representative of the company from November, 1903 to 1905, that the prices at which the Waters-Pierce Oil Company sold its products and commodities in which it dealt were fixed by the General Manager in consultation with other officers of the company, and that he as Assistant General Manager, had at times participated in said consultation in the absence of the General Manager himself; that the factors entering into the fixing of prices were the cost of the article, competition at the point of selling and the judgment of the officers as to the price the article should bring in case there was no competition, and that prices were often raised or lowered unaffected by competition.

**Clay Arthur Pierce** testified for the State by deposition as follows: That he was thirty-three years old, and was President of the Waters-Pierce Oil Company; having been such since June, 1905, and that he had actively discharged the duties as President of the Company and managed and controlled its affairs as far as a President could do so; that his duties had been that of executive head of the company, managing its business affairs and all details connected therewith, and to take final executive action on all business of any nature pertaining to the company; that he had succeeded A. M. Finlay as President of the Waters-Pierce Oil Company; that he was first employed by the old Waters-Pierce Oil Company in the spring of 1898 as Assistant Treasurer, and was re-employed as such by the new company when it organized in 1900, and that he continued in that position until June, 1905, at which time he was elected President; that two months previous to that time he had

been made Acting President and occupied the position as such; that his duties as Assistant Treasurer were such as naturally fall to that position, and in addition he sat in the Executive Committee of the company as the Secretary of that committee, and was a member of that committee from the time of its formation until the same was disbanded; that as he remembered the Executive Committee was organized in 1900, and existed from that time until the fall of 1904; that since the organization of the Executive Committee he had usually been one of three who had determined and fixed the selling price at which the company sold its commodities in Texas; that when requisitions for supplies for the Waters-Pierce Oil Company were ordered sent from the refinery of the Standard Oil Company at Whiteing, Indiana, such requisitions were sent direct to Whiteing, Indiana, and the same was true with reference to requisitions on the Atlantic Refining Company, Sugar Creek Refining Company and all the other refineries; that when requisitions for supplies were made on the Security Oil Company, at Beaumont, they were sent direct to that company at Beaumont; that the Waters-Pierce Oil Company received a small amount of gasoline from Whiteing, Indiana, or Sugar Creek, or Neodesha, for its business in Texas, but that the bulk of the supplies of the Waters-Pierce Oil Company in Texas were received from the Corsicana Refinery and the Security Oil Company at Beaumont; that for Texas, Louisiana, Oklahoma, Indian Territory and the Southern part of Arkansas, the Waters-Pierce Oil Company purchased what it could from the Gulf Refinery and the Texas Refinery; that the Waters-Pierce Oil Company did business in the southern half of the State of Missouri, in a portion of the State of Illinois, immediately east of the Mississippi River, and all of Arkansas, all of Texas and all of Oklahoma and Indian Territory, a portion of Louisiana west of the Mississippi River, and in all the Republic of Mexico; that the Standard Oil Company had certain contracts with steamship lines entering Texas ports to supply the same with oil, and that the Waters-Pierce Oil Company furnished such ships with supplies whenever requested on account of the Standard Oil Company, and charged the same to the Standard Oil Company, and that the prices for such sales were made by the lubricating department of the Waters-Pierce Oil Company, and these prices were fixed

by the head of the lubricating department of the Waters-Pierce Oil Company, the Executive Committee and the Advisory Board not doing so. The witness further testified that R. P. Tinsley was elected Vice-President of the Waters-Pierce Oil Company April 28, 1904, and that he resigned June 22, 1905; that Mr. A. M. Finlay was elected President February 18, 1904, and served until June 22, 1905; that Mr. Tinsley came to the home office of the Waters-Pierce Oil Company and assumed the duties of Vice-President some time in April, 1904, and left about the end of April, 1905, nearly two months before he actually tendered his resignation. Witness further testified that from the time of his connection with the Waters-Pierce Oil Company, his father, H. Clay Pierce, had been Chairman of the Board of Directors, and that such matters as witness had found it advisable to refer to him for final decision were decided by him and thereafter handled entirely in accordance with his ideas, and that so far as he could recall the same procedure was followed by A. M. Finlay when he was President; that at the time Mr. Tinsley was in St. Louis, the witness had nothing to do with the fixing of prices, and does not know how such prices were fixed; that from the time of organization of the company down to the time Mr. Tinsley came to St. Louis, in 1904, H. Clay Pierce directed the general business of the company and carried it out through the other officers of the company, and that he continued to do so after Mr. Tinsley left. Witness further testified that without actually knowing he had understood that the Standard Oil Company owned about two-thirds of the stock of the Waters-Pierce Oil Company, and that as such owner the said Standard Oil Company had the right to ask for such information as a two-thirds stockholder or a majority stockholder would be entitled to, and for that reason statements with respect to the company's business were sent to the Standard Oil Company at their request. Witness further testified that the lubricating department of the Waters-Pierce Oil Company, from time to time, received requisitions from the Standard Oil Company's marine department to deliver marine oils to certain vessels at Galveston, Texas; that they would state definitely when the vessel would be in port and the amount of oil she would need; that these were vessels with which the Standard Oil Company had contracts for the sale and delivery of marine oils;

that upon such requisitions, the Waters-Pierce Oil Company made deliveries through its lubricating department, and bill these oils to the Standard Oil Company at prices which it had named in the letter to the head of the Waters-Pierce Oil Company's lubricating department; that the witness had adjusted these prices from time to time, the Standard paying in accordance therewith; that the Waters-Pierce Oil Company had nothing to do with the prices charged by the Standard Oil Company to vessels so furnished with oil, and that witness knew nothing about the terms of the contract between the Standard Oil Company and such vessels.

The defendant (plaintiff-in-error herein) introduced a portion of this same witness's deposition not offered by the State of Texas, as follows: That from the organization of the Waters-Pierce Oil Company, up to the time that R. P. Tinsley disbanded the Executive Committee, the prices at which oils were sold were fixed by that Committee. Witness was unable to state how they were fixed during the time Mr. Tinsley was Vice-President; that since the latter's resignation, which was accepted some time during June, 1905, the prices were adjusted by A. M. Finlay, Vice-President; C. P. Ackert, General Manager, and the witness as President of the Company, final adjustment being at all times in the hands of the witness as such President; that since the formation of the Advisory Committee, which was formed some time in the fall of 1906, the prices had been considered by the Advisory Committee, voted upon by them, but always referred to the witness as President for final adjustment; that this Advisory Committee was composed of the witness, Chairman of the Board; A. M. Finlay, Vice-President; C. P. Ackert, General Manager; C. M. Adams, Secretary and Treasurer; Mr. Harris, Manager of the lubricating department, and Mr. Stanley, Comptroller of the company; that the method above set forth was absolutely the only means by which prices were finally fixed during the time he had anything to do with the fixing of prices, and that to his certain knowledge the prices of the company, and at which its goods had been sold, had never been fixed other than as herein stated and that during all the time he had been an officer of the Waters-Pierce Oil Company (plaintiff-in-error herein), it had to his knowledge been managed entirely and absolutely as an independ-

ent concern by its own officers; that during his connection with the company, the Standard Oil Company, as a large stockholder in the Waters-Pierce Oil Company, had received from time to time, reports to which a heavy stockholder was entitled. The Standard Oil Company, from time to time, offered suggestions in line with their own ideas as to the way the Waters-Pierce Oil Company should be managed or the way in which prices should be adjusted, and that these were merely incidental suggestions received from time to time; that where these suggestions met with the views of the management of the Waters-Pierce Oil Company, they were approved and adopted, but in the majority of cases, they were not followed at all. Witness further testified that the Standard Oil Company had nothing to do directly with the fixing of prices or control of business of plaintiff-in-error in any manner, shape or form; that during May, June and July, 1904, after Mr. Tinsley's coming to St. Louis, the Eexecutive Committee continued in existence, and during that time the prices were fixed by the Executive Committee, but that from the dissolution of the Executive Committee, down to the time Mr. Tinsley left St. Louis, witness did not know how prices were fixed. The letter referred to by the witness written by him to the Comptroller of the Waters-Pierce Oil Company with reference to the marine oil prices read as follows: "Dead Sir:—Effective December 1, 1905. You will please charge the Standard Oil Company, marine oil department, prices as follows for all our deliveries to their companies. (Giving prices). The above, you understand, supersedes the former Vice-President, R. P. Tinsley's instruction to you of May 5th, last."

The State of Texas further introduced in evidence the deposition of **Andrew M. Finlay.** Mr. Finlay testified that he was president of the Waters-Pierce Oil Company, plaintiff-in-error herein, up to June, 1905, that is, from February, 1904, until June, 1905; that Mr. Tinsley came into the company some time in April, 1904, and left the last of May or the first of June, following. The witness testified that when a division manager wanted a supply of oil for any part of Texas he would make a requisition upon the general manager at St. Louis and if it was approved it would go to Mr. Adams' department and that Mr. Adams would make out an order on the regular order form and

if the order was to be shipped from St. Louis, it would be sent to the company's works in St. Louis; if the order was to go from the Corsicana Refinery Company or the refinery at Whiteing, Indiana, it would be sent to Mr. Bogardus, the representative of the Standard Oil Company of Indiana, at Chicago. Witness stated that the Waters-Pierce Oil Company determined the points from which its shipments should be made; that after the organization of the Security Company at Beaumont, Texas, orders for oil purchased of the Security Company were sent by the Waters-Pierce Oil Company direct to its agent at Beaumont or Sawyer, Texas, and this agent would place the order with the Security Company or the Gulf Company or the Texas Company. Witness stated that the Waters-Pierce Oil Company purchased the bulk of its supplies for Texas and elsewhere from the Standard Oil Company or its interests; that during the time of the existence of the Executive Committee of the Waters-Pierce Oil Company, he (Mr. Finlay) was a member of said committee and that the prices at which the company sold oil or other commodities in Texas were passed upon first by the general manager of the company or himself and recommendations were then made to the executive committee; when approved by the committee, the prices were promulgated by the general manager. Witness stated that the prime factors in fixing prices were the cost of goods, including freight, marketing and competition; that the prices of oils in the lubricating department were fixed during that time in that department and that it was not true that the Standard Oil Company fixed the prices of oils in the lubricating department of the Waters-Pierce Oil Company; witness stated that when Mr. Pierce employed Mr. McNall he instructed the witness to give Mr. McNall any information or reports that he might ask for and to address him as commercial agent. Witness stated that orders sent to Mr. McNall were not placed by him, but by Mr. Adams; that when McNall was first employed by the Waters-Pierce Oil Company he had his office at 26 Broadway, New York, and communications were addressed to him at that number; that he did not remember when the change of address to 75 New Street was made; that Mr. McNall requested that his mail be sent to the latter address and that he (the witness) referred this to the general coun-

sel for the company who advised against the change, but Mr. McNall insisted upon it.

Witness further testified—this portion of his deposition being offered in evidence by plaintiff-in-error—as follows: That he was the brother-in-law of H. Clay Pierce and was connected with the old Waters-Pierce Oil Company from the time of its organization to its dissolution and had been with the present Waters-Pierce Oil Company since it was organized; that he had been Vice-President in the present company from the time of its organization until 1904 when he was made president and that ever since the organization of this company he had had the active direction and supervising control of the marketing department; that the prices at which the company sold its oil to the trade had been fixed by Mr. Ackert, Mr. C. A. Pierce, Mr. H. C. Pierce and the witness, and that during the time that Mr. Tinsley was in St. Louis, prices were fixed by Mr. Ackert, Mr. Tinsley and the witness. Witness further testified that during the time Mr. Tinsley was in St. Louis he attempted to interfere a good deal with the management of the Waters-Pierce Oil Company, but that he (the witness) as president of the company at the time endeavored to and did run the company as an independent concern; that the manner in which Mr. Tinsley attempted to interfere in the management of the company was by insisting on things being done which were not approved of by the witness, as, for example, in discharging old and tried employees and putting in new men, and Mr. Tinsley made himself so generally disagreeable that his continual nagging broke down the health of the witness, so that in March, 1905, he was compelled by direction of his physician to go abroad and was away until June 1st of that year; that during the time he was abroad Mr. Tinsley was Vice-President and Mr. C. P. Ackert, a cousin of Mr. H. C. Pierce, was general manager of the company, and Mr. Steven Johnson, a brother-in-law of Mr. H. C. Pierce, was manager of the lubricating department. Witness further stated that while he was President of the Waters-Pierce Oil Company the books were audited from time to time by auditors sent there by Mr. Wade Hampton of New York; that these audits occurred at intervals of a year or perhaps a year and a half and were allowed for information of the majority stockholders in New York; that such audits had no relation to the management or control

of the Waters-Pierce Oil Company but were employed simply to show that the books and accounts were in proper condition and correct.

The State of Texas further introduced in evidence the deposition of **Mr. Steven Johnson**, who testified that he had been the manager of the lubricating department of the Waters-Pierce Oil Company for a number of years prior to October, 1906; that he generally fixed the selling prices of lubricating oil sold by the Waters-Pierce Oil Company. He stated that the lubricating department of the Standard Oil Company sometimes made suggestions as to selling prices and that if these suggestions met with the approval of the Waters-Pierce Oil Company, they were adopted, otherwise, they were not. Witness further testified that in fixing the prices of lubricating oils he took into consideration the cost of the oil including freight and the profits that were warranted in order to maintain competition with other dealers; that there never was any understanding between him or his associates in the lubricating department of the Waters-Pierce Oil Company and the Standard Oil Company in regard to the prices at which the Waters-Pierce Oil Company was to sell lubricating oils; that such suggestions as were made by the Standard Oil Company as to prices were adopted if conditions justified; otherwise they were not and that the prices were determined by other conditions, namely, by competition and the prices at which competitors were selling the same kind of oil.

**Royer Campbell** testified for the State of Texas mainly with reference to a contract between him and the old Waters-Pierce Oil Company and with reference to services rendered by him to the present Waters-Pierce Oil Company, charged in petition of plaintiff to have been illegal. This testimony was withdrawn by the court from the jury and none of the testimony of this witness is considered material to the question here involved.

The State of Texas offered in evidence the deposition of **H. J. Cohn**, who testified that he had worked for the Waters-Pierce Oil Company in St. Louis from April, 1900, until September, 1902; that he was familiar at that time with the territory in which the Waters-Pierce Oil Company did business in Missouri, and that the Standard Oil Com-

pany did not do business in the territory in Missouri in which the Waters-Pierce Oil Company did business, nor did the Waters-Pierce Oil Company do business in Missouri in the territory in which the Standard Oil Company did business. Witness stated that he knew in a business way of the firm of Scofield, Schurmer & Teagle and that they were absorbed by the Republic Oil Company. He stated that prior to going to St. Louis he lived at Marshall, Texas, where he was employed by the Waters-Pierce Oil Company for about eight years in different positions from office boy to salesmen and division auditor, and that during that time the Waters-Pierce Oil Company received the greater part of its supplies from the Standard Oil Company's refinery at Whiteing, Indiana, and the refinery at Corsicana, Texas; that it received its railroad oils from the Galena Signal Oil Company at Franklin, Pennsylvania.

The State of Texas further offered the testimony of the witness **A. W. Clem**, much of which related to the contract alleged in the petition of the State between the witness, the Eagle Refining Company and the old Waters-Pierce Oil Company, to services rendered by witness to the latter company and to the present Waters-Pierce Oil Company. This testimony was withdrawn from the jury by the charge of the court. Witness further testified that he lived in Dallas, Texas; had been engaged in the oil business in that city since about the year 1890; that he had first been in business for himself under the name of the Eagle Refining Company up to 1894, when he sold his business to the old Waters-Pierce Oil Company for whom he worked until its dissolution and that he was in the employment of the present Waters-Pierce Oil Company at Dallas doing business under the name of the Eagle Refining Company up to about December 31, 1903; and that he continued in the employ of the Waters-Pierce Oil Company for about two months after that date, after which time he again went into the oil business for himself and at the time of his testimony was so engaged in the oil business at Dallas, Texas. Over the objections of defendant below, plaintiff-in-error herein, the witness testified to numerous instances of the old Waters-Pierce Oil Company cutting prices for the purpose of destroying competition; that at the time of the trial of this suit below there were in competition with the present Waters-Pierce Oil

Company in the sale of oil at Dallas, Texas, and adjacent territory, the Richardson-Gay Oil Company, the Ira O. Wise Oil Company and the Gulf Refining Company. The witness further testified, over objections of defendant below, that in 1894, after going into the oil business at Dallas, he wrote to the Security Oil Company to quote him prices on oil and that his first letters were not answered; that in 1906 he wrote them for prices on naphtha and that they quoted him about what the market was selling for in Dallas and about two cents above the price he was paying for this product to the Gulf Refinery from whom he had been obtaining it. He further stated that he knew nothing about the extent of the output in Texas of the different refineries.

**C. W. Cahoon** was further sworn as a witness on behalf of plaintiff below, State of Texas, and testified as follows: That he had worked for the old Waters-Pierce Oil Company in various capacities from about 1888 up to the dissolution of that company and that he had been in the employ of the present company since its organization in the position of manager of the Central Texas Division with his headquarters at Dallas. Witness stated that the principal source of oil supply used by the Waters-Pierce Oil Company in Texas in his division was Corsicana at the time of the trial below, but that up to two months before this time, Neodesha, Kansas, had been the principal source of supply; that he did not know what company or concern owned the refinery at Neodesha; that all his requisitions for oil for use in his division were placed with the Waters-Pierce Oil Company at its St. Louis office; that prior to two months before the trial below the Security Oil Company's refinery at Chaison, Tex., had been a source of supply to his division as well as the refinery at Neodesha, and that at that time his division had received about as much of its supplies from the Gulf Refining Oil Company as from the Security Oil Company. Witness further testified that he had occasion to inform himself as to the probable output of Eupion oil by the Corsicana Refinery and that it was probably one thousand to fifteen hundred barrels per week; that "P. W." oil meant prime white and was a low grade oil and that "S. W." oil meant standard white and was a still lower grade than prime white, but that he could give no estimate of the production by the Corsicana Refinery of "P. W." and "S. W." oils; that at

the time of testifying his division took from eight hundred to one thousand barrels per week of "W. W." or Eupion oil from the Corsicana refinery; that the Waters-Pierce Oil Company in its Texas business handled a very large percentage of the output of the Corsicana refinery and that it had endeavored to take the entire output of that refinery so far as high grade oil was concerned; that in his judgment the Waters-Pierce Oil Company had done approximately eighty per cent of the business done in Texas since its organization in 1900. Over the objections of defendant below, plaintiff-in-error herein, witness further testified that for a period of about sixty days in 1906 the Waters-Pierce Oil Company marketed some "P. W." and "S. W." oil produced at Corsicana under the name of Eupion and that this was done on account of a shortage in the supply of the better oil.

On cross-examination, witness testified as to the method employed by the Waters-Pierce Oil Company in doing business in Texas. He stated that it had a large number of tank stations in that state; that oils were shipped to the various stations in bulk in tank cars and that a large percentage of the deliveries were made by the company in tank wagons and in some of the territory practically all deliveries were made by tank wagons; that the company not only delivered in that way to the local trade but in most places delivered to every little town within a radius of fifteen and sometimes twenty miles from the central station; and that the deliveries were made by delivering direct from the wagon to the tank of the purchaser without any waste or trouble to the purchaser. Witness further stated that the Waters-Pierce Oil Company did not at all times meet reductions in the prices of its competitors though it sometimes did so; but that the company depended largely upon its superior grades of oil and its superior facilities for handling the oils in barrels; that the advantage to a merchant in buying oil from a tank wagon was that he could get oil in such quantities as he required from five gallons up and have it placed in his tank direct by the company, whereas if the oil was permitted to stand in the house in barrels there was considerable loss and if transferred to a tank there was considerable time and labor involved and that a large majority of the retail merchants at this time insisted on having their oil delivered from tank wagons. Witness

further stated that as a rule the Waters-Pierce Oil Company charged no more for oil delivered from tank wagons than if delivered in iron or wooden barrels. Witness further stated that the Waters-Pierce Oil Company had in his territory about eighty-five wagons, tank wagons and can wagons for delivery, and was increasing its equipment in this respect; that it had not been the policy of the Waters-Pierce Oil Company since its organization to cut prices on oil below those quoted by its competitors, but when prices were so cut by competitors, the company cut its own prices whenever it became a question of either meeting the competitor's price or permanently losing the trade, and that the service furnished by the company in its business was such that it could maintain a slightly higher price than its competitors. Witness stated that sometimes discounts were given to jobbers that might make the prices of the Waters-Pierce Oil Company sometimes lower than those of its competitors.

On re-direct-examination by the State, witness testified with reference to discounts given by the Waters-Pierce Oil Company to various customers, the different prices at which oils were sold at different places and concerning details of the different business in Texas, the particulars of which do not affect the question here raised and are not necessary to be set forth.

The State of Texas further offered in evidence the deposition of **E. S. Horn,** who testified as hereinbefore shown that he had been an assistant of Mr. Johnson, in the Lubricating Oil Department of the Waters-Pierce Oil Company, that in said department was handled all sorts and kinds of greases, lubricating oils, wax and things of like character, and that the company had a manufacturing establishment in St. Louis, wherein it compounded cylinder oils and greases, and that it purchased approximately 50 per cent of its lubricating oils from the Standard Oil Company; that it was not a fact that the Standard Oil Company fixed the prices at which the Waters-Pierce Oil Company sold the above named products, purchased by it from the Standard Oil Company, and that the latter company had nothing to do with the fixing of such prices; that if they made any suggestions, they would not carry them out. Witness further testified (this portion of his deposition being introduced

by defendant below, plaintiff-in-error) that with reference to deliveries of lubricating oils to the plant of the Central Coal & Coke Company (Louisiana & Texas Lumber Company) that the Standard Oil Company of Kansas City were negotiating with the purchasing agent of the Central Coal & Coke Company for prices of oil delivered at Kennard, Tex., and that the manager of the Standard Oil Company asked the Waters-Pierce Oil Company to quote them prices for delivery of oil to the Central Coal & Coke Co. at Kennard, Texas, naming the grades of oil wanted, and that the Waters-Pierce Oil Company did quote prices as above to the Standard Oil Company, and that the prices so quoted were accepted, and the Waters-Pierce Oil Company was asked to honor the requisition of the Central Coal & Coke Company and rendered invoices to the Standard Oil Company which paid for the oils delivered in that way.

The State of Texas further offered in evidence the deposition of **C. M. Adams**, who testified as follows: That he was a director of the Waters-Pierce Oil Company; that at the last election of the Board of Directors of the company, he received the proxy of Mr. M. M. Van Buren, with instructions to vote the stock standing in the latter's name, and which further stated that he (Mr. Van Buren) would be pleased to see the whole board re-elected; that the board was composed of Messrs. H. Clay Pierce, Clay Arthur Pierce, M. M. Van Buren, W. F. Taylor, and the witness, C. M. Adams. Witness stated that W. F. Taylor was an attorney belonging to the firm of Carter, Ledyard, Taylor & Company, of New York, and owned one share of stock in the Waters-Pierce Oil Company; that since the organization of the latter company up to some time in June, 1905, with the exception of a period in which Mr. J. D. Johnson had been a member of the Board of Directors, the witness thought it was true that there had always been three members of the Board of Directors, who were supposed to represent the Standard Oil Company.

The following portion of the deposition of Mr. Adams was offered by defendant below (plaintiff-in-error herein). Witness testified that when the present Waters-Pierce Oil Company was incorporated he subscribed for one share of stock, became a director and was made Treasurer of the company, and was a member of the Executive Committee,

during its existence; that the price at which the Waters-Pierce Oil Company sold oils and other products was determined by the officers of the Waters-Pierce Company in charge of the marketing department, and that there had been no limitation in any manner as to the amount and quantity of products sold by the company; that it sold all it could, the amount being determined by the demand.

Witness further stated that there had been no agreement or understanding, so far as he knew, between the Waters-Pierce Oil Company or any of its officers, with any Standard Oil Company, or any Standard Oil interests, regarding the prices at which the Waters-Pierce Oil Company was to sell or had sold its oils, or other products, or regarding the quantity of such oils, or other products sold by the Waters-Pierce Oil Company, and he stated that he thought he was in a position to know if there had been any such understanding or agreement; that nearly all of the refined oils and gasolines sold by the Waters-Pierce Oil Company were ordered through his office. Witness further testified with reference to the reports of the business done by the Waters-Pierce Oil Company, made to the Standard Oil Company through Mr. McNall, that they had no relation to the management of the Waters-Pierce Oil Company's business, but were given simply as a matter of information; that the Waters-Pierce Oil Company's method of procuring supplies of refined oils and gasolines was that the managers would make requisitions for such supplies to the office in St. Louis, these would go to the general manager's office, then to Mr. Finlay, the Vice-President, and from him to the witness, and that the witness thereupon ordered the goods from where they were to be shipped from. Mr. Adams stated that the Chicago office governs the refining at Whiteing, Ind.; Sugar Creek, Mo., and Neodesha, Kansas, and he thought the refinery at Corsicana, Texas; that whenever shipments were to be from the Corsicana refinery, the orders were either sent direct to the Standard Oil Company of Indiana, at Chicago, or to Edward Bogardus, their representative; that neither Mr. Taylor nor Mr. Van Buren, while members of the Board of Directors of the oil company had ever attended a meeting of the Board, and that while Mr. Tinsley was in St. Louis, there was no change in the manner of fixing the prices at which the company sold its products, so far as the witness knew. Mr. Adams further testified (this

portion of his deposition being offered by the State of Texas), that before Mr. Tinsley came into the Waters-Pierce Oil Company, there was an Executive Company which had general control of the business of the company and which fixed the prices at which oils should be sold; that after Mr. Tinsley came, that committee was abolished, and that during the time Mr. Tinsley was with the company, the prices were fixed by the Executive officers of the company.

The State of Texas further offered in evidence the deposition of **Mr. Charles S. Keith,** who testified as follows: That he was the Vice-President and General Manager of the Central Coal & Coke Company, and also General Manager of the Louisiana & Texas Lumber Company; that the Central Coal & Coke Company had an office in Kansas City; that the Louisiana & Texas Lumber Company had a sawmill at Kennard or Ratcliff, Texas, which had been in operation since about 1901 or 1902, and that the supplies for the mill were purchased from his office in Kansas City; that the Central Coal & Coke Company also owned and operated mills at Neame and at Carson, Louisiana.

Witness stated that in years 1903 or 1904, the Central Coal & Coke Company had a contract with the Waters-Pierce Oil Company for supplying it with lubricating cylinder oils, greases, etc., for these mills; that in 1905, it had a contract with the Bonner Oil Company; in 1906, with the Standard Oil Company and in 1907 that the contract was divided between the Standard Oil Company and the Bonner Oil Company, the former supplying the oils to the Texas plants and the latter to the Louisiana plants; that during no year did the Central Coal & Coke Company, and the Louisiana & Texas Lumber Company have a contract for the supplies of oil with two oil companies except during the year 1907. Witness stated that he did not know whether or not, the Waters-Pierce Oil Company furnished the supplies contracted to be furnished by the Standard Oil Company, but that their remittances for the oils contracted to be furnished by the Standard Oil Company were made direct to the latter company. Witness stated that the contracts for oils for the concerns represented by witness were always let in competition, and to the lowest bidder.

Copies of the various contracts referred to by witness are attached to his deposition (Record pages 852-870).

**Mr. C. P. Ackert** introduced as a witness for the State of Texas testified under cross-examination by defendant below as follows: That he was an Assistant General Manager of the Waters-Pierce Oil Company from the time of its organization until he became General Manager; that as General Manager he was in charge of the marketing of oils; that the Waters-Pierce Oil Company had about 450 stations in Texas, one or more stations in every county in the state, and about 250 tank stations—that is, stations where tanks were erected for distribution for the trade—and that the company had about 450 employees in Texas, and that 60 or 65 per cent of the total sales of refined oils made by the company in Texas were made by delivery from tank wagons or can wagons. Witness further testified that the first Executive Committee of the Waters-Pierce Oil Company was organized in June or July, 1900, and that he was a member of that Committee; that the first organization of the Committee was informal; that the organization was subsequently formally effected by resolution of the Board of Directors some time in the year 1902; that that Committee was composed of Messrs. A. M. Finlay, C. A. Pierce, C. M. Adams, J. P. Gruet, H. C. Pierce, Stephen Johnson, J. D. Johnson, and the witness, C. P. Ackert; that it was made up of the heads of the various departments, and was presided over by the President of the company; that the Committee continued in operation until 1904; that all matters of a general character were referred to and considered by that Committee; that in October or November, 1906, an Advisory Committee was organized, composed of Messrs. C. A. Pierce, A. M. Finlay, Edward Stanley, C. L. Harris and the witness, C. P. Ackert, respectively heads of departments of the company; that during the existence of the Executive Committee above mentioned, the selling price of the products dealt in by the company were fixed by this committee, and that neither the Standard Oil Company, nor anyone else had anything to do with the fixing of such prices, during that time; that after the dissolution of the Executive Committee, and until the Advisory Committee was created, prices were fixed by the officers of the company, and that during this period neither the Standard Oil Company nor any one else besides the officers of the Waters-Pierce Oil Company had anything to do with the fixing of prices; that Mr. Tinsley first went to St. Louis about March, 1904, and

that Mr. Finlay performed the duties of President from Feburary, 1904, until he left, and during his absence from about the middle of February, 1905, until June 15th, 1905, Mr. R. P. Tinsley acted as President of the company; that Mr. Tinsley left St. Louis about June 1st, 1905, and was succeeded by Mr. C. A. Pierce as President. A. M. Finley became Vice-President and these two positions have been occupied thus ever since. Witness further stated that while the Standard Oil Company fixed the prices at which it sold its products to the Waters-Pierce Oil Company, as well as to other persons, that it had no relation to the prices at which the Waters-Pierce Oil Company sold to its trade in Texas or elsewhere, but that the Waters-Pierce Oil Company fixed its own prices. Witness further testified that the Standard Oil Company, since May, 1906, had been competing with the Waters-Pierce Oil Company in portions of Illinois and of Louisiana, in which the Waters-Pierce Oil Company did business, and that the latter company had been aggressively "going after" such business.

The State of Texas introduced in evidence certain letters written by R. H. McNall to the Waters-Pierce Oil Company and its various officers, relating to the quotation of prices charged by the Standard Oil Company for goods purchased from it by the Waters-Pierce Oil Company, requests for information, reports of business done by the Waters-Pierce Oil Company, suggestions as to methods of bookkeeping and reports, etc., etc. No letter was introduced from Mr. McNall or anyone else, containing any suggestions whatsoever as to prices at which the Waters-Pierce Oil Company should sell any article in which it dealt except the one single letter of Mr. McNall's to Mr. Stephen Johnson, hereinbefore referred to, in which a price was suggested for the sale of scale wax.

The State of Texas also introduced in evidence various letters from the Standard Oil Company of Indiana, written from Chicago by Mr. Edward Bogardus and Mr. W. P. Cowan, to the Waters-Pierce Oil Company and its officers relating to the prices at which the Standard Oil Company would sell oils, gasoline and naphtha from its refineries at Neodesha, Sugar Creek and Corsicana. Not one of any of these letters contained even a suggestion as to prices that the Waters-Pierce Oil Company should sell any of its products.

The State of Texas further introduced in evidence copies of certain letters written by Mr. C. W. Cahoon, Manager of the Waters-Pierce Oil Company, from its Dallas office, to Mr. C. P. Ackert, General Manager of the Company, at St. Louis, said letters referring to various matters of detail of business, prices, discounts, rebates, etc., none of which it is believed to have any bearing on the question here under consideration.

The evidence showed that when the Waters-Pierce Oil Company wanted oil shipped from the Corsicana refinery, it was ordered through the Chicago office of the Standard Oil Company of Indiana, and that as to oil bought by the company from the Security Oil Company, at Beaumont, it dealt directly with the latter company. The record is wholly silent as to any evidence whatsoever, showing or tending to show any connection between the Security Oil Company at Beaumont, and any Standard Oil Company.

In the 11th paragraph of the court's charge (Record, p. 1148) it is practically asserted that in the light of the above evidence the fact that the Standard Oil Company owned a majority of the stock of the Waters-Pierce Oil Company was enough to establish the existence of a "combination" within the meaning of the Texas Anti-Trust Acts and the jury so found by their verdict rendered in the cause. The only facts upon which it could be contended that the jury deduced their finding that there was an agreement or understanding between the Standard Oil Company and plaintiff in error between the dates named in said charge to fix or regulate the price of oil in Texas are the fact of the ownership by the Standard Oil Company of a majority of the stock of the Waters-Pierce Oil Company and the fact that the books of the Waters-Pierce Oil Company were audited by the Standard Oil Company, and the fact that the Waters-Pierce Oil Company made reports of its business to the Standard Oil Company. We admit that these are facts which it would be proper for a jury to consider in determining whether or not there was such understanding or agreement, if there were any conflict in the evidence as to that point, but we submit that the fact of such stock ownership, such auditing and such

reports are not in and of themselves enough to prove such understanding or agreement and that there is no evidence in the record tending to show any such understanding or agreement and that no such understanding or agreement existed is shown by every witness examined by the State of Texas upon this point.

It should be borne in mind that the testimony as to this issue involved only the time **from June 1st, 1900, to March 31, 1903.** H. C. Pierce, who was tendered as a witness for the State of Texas, testified that upon the organization of plaintiff-in-error, it was agreed between him and the officers of the Standard Oil Company of New Jersey that he should control and manage the Waters-Pierce Oil Company as an independent company (Record, p. 442) **and that up to the spring of 1904** the Standard Oil Company of New Jersey made no attempt to interfere in any way with his management and control (Record, p. 442), and that there had never been any understanding or agreement between the Standard Oil Company of New Jersey or any one else and the Waters-Pierce Oil Company to fix or regulate the price of oil in Texas. (Record, pp. 500 and 507.) During the time here under consideration, the absolutely uncontradicted evidence shows that the management of the Waters-Pierce Oil Company was wholly and entirely under the control of its officers, composed in the main of H. C. Pierce, his brother-in-law, A. M. Finlay, his cousin, C. P. Ackert, his brother-in-law, Steven Johnson and his son, C. A. Pierce, (Record, pp. 497 ff, and p. 927), and each of these witnesses was tendered as a witness for the State of Texas and testified to the same facts, and that the price at which the Waters-Pierce Oil Company sold oil in Texas during the time here under consideration was determined entirely by the managing officers of said company, that is, by the persons above named and that there was no agreement or understanding with the Standard Oil Company or anyone else with reference to the matter of fixing such prices. (Record, p. 673, 691, 935, 957.)

The case of the **Commonwealth** *ex rel.* **v. Ponxsutawney**

**Waterworks Co.** (197 Pen. St. 569; 47 Atl. 843), raised a question, practically identical with the proposition here involved. In that case, the attorney-general brought *quo warranto* against the Water Company and sought to forfeit its charter, alleging that it had lost its existence, having conveyed its properties and franchises to the Lindsey Water Company, and because it had conveyed to and vested in the latter the control, management and supervision of its franchises, business and property. The proof to sustain this charge consisted in the fact that a majority of the stock of the defendant water company had been sold to the Lindsey Water Company, and from this it was sought to be deduced that such acts were the acts of the defendant company and the misconduct alleged, for which the defendant company should be punished. The Supreme Court of Pennsylvania, speaking through Brown J., says in answer to this proposition:

> "What a majority of the stockholders did was to sell their stock, as was their right, and through the purchaser it passed into the control of the Lindsey Water Company. But the individual stockholders, as clearly appears from the testimony, sold to an individual who purchased and paid for it with individual money and though such sales may give to the Lindsey Water Company, subsequently acquiring the stock, a controlling interest in the Ponxutawney Water Company, the latter could not have prevented the sales and, not having been a party to them, **is not accountable for them or for their effect.** The Lindsey Water Company by acquiring a majority of the capital stock of the Ponxsutawney Water Company did not acquire the property and franchises of the latter; the transfer of the majority of the stock was not a transfer of the property of the company; the transfer was of the rights of the stockholders, and the existence of the corporation was in no manner affected by it. It is being continued subject to the supervision of the Commonwealth with the right to go on in the exercise of its privileges and the performance of its duties until by some act of its own, either of omission or commission, the penalty will be forfeiture. No misconduct of the Lindsey Water Company and nothing that one or more of the majority of the stockholders of the defendant water company may have done in disposing

of their stock can be charged to it. **If it is to be punished, it must be for its own sins and not for those of another.** We have no concern on this appeal with what the Lindsey Water Company is alleged to have done. Certainly nothing has been disclosed showing that the property of the appellee has passed to it. If it has undertaken to exercise control over the same and to mortgage what it does not own, the appellee is not affected. All the rights of the latter as they came from the Commonwealth are still secure and will be protected from invasion."

In **Gates v. Hooper** (90 Texas, 563; 39 S. W. 1079), the Supreme Court of Texas laid down a definition for the term "combination" as used in the Anti-Trust Acts which has ever since been recognized in that State as authoritative and correct. In that case Mr. Justice Demman says:

"In order to constitute a trust within the meaning of the statute there must be a combination of capital, skill or acts by two or more. **'Combination,' as here used, means 'union or association.' If there be no 'union or association' by two or more of their 'capital, skill or acts,' there can be no 'combination' and hence no 'trust.'** When we consider the purposes for which the 'combination' must be formed, to come within the statute, the essential meaning of the word 'combination' and the fact that a punishment is prescribed for each day that the trust continues in existence, we are led to the conclusion that the union or association of 'capital, skill or acts' denounced is whether the parties in the particular case **designed the united co-operation of such agencies which might have been otherwise independent and competing for the accomplishment of one or more such purposes.**"

In the **State v. Continental Tobacco Company** (177 Mo., 1; 75 S. W. 737), an information was filed by the attorney-general against the defendant company under the Anti-Combination Statute of Missouri, which prohibited any corporation, partnership or individual from creating or entering into any pool, trust, agreement, combination, etc., to regulate or fix the price of any article of manufacture or to maintain such price, etc. It was sought to punish the defendant, a foreign corporation, authorized to do business in Missouri, by revocation of its per-

mit, etc., because it had purchased the business and property of a number of other corporations, some of them situated in the State of Missouri, and it was charged specifically that, by reason of this fact the defendant corporation was guilty under the above Anti-Combination Statute. The Supreme Court of Missouri, speaking through Judge Fox, held that the purchase by one corporation of the plants, business, and good will of another, if done in good faith, in the extension, conduct and management of its business, was the legitimate exercise of a right. In discussing the term "combination" the court refers directly to the above cited case of Gates v. Hooper with approval, and practically declares that something more is necessary to prove the existence of a combination within the meaning of the statute than the mere fact that one corporation has acquired some part of the property or even all of the property of another corporation.

In this connection it must be remembered that so far as the record goes to show, the evidence is uncontradicted that the Standard Oil Company was not engaged in the business of merchandising oil in Texas, but that so far as any connection which it had with the Waters-Pierce Oil Company is concerned, it was merely and solely a refiner and producer of oil, supplying the latter company with the product which it distributed to its customers. The Standard Oil Company was essentially a manufacturer. The Waters-Pierce Oil Company was as essentially merely a dealer.

We submit that the manufacturer, wholesale dealer and retail dealer occupy the positions of three distinct classes of dealers in the commercial world and that it is a fixed and universal custom for each to confine himself to his own particular line of business and not to encroach upon the province of the other. The fact is almost universally recognized that, commercially speaking at least, it is an unpardonable offense for the manufacturer to infringe upon the business of the wholesale dealer or retail dealer or for the wholesaler to sell at retail. We submit that it cannot be made a violation of law for the manufacturer to agree not to compete with the jobber

who wholesales his products or for the wholesaler to agree not to encroach upon the territory of the retailer or compete with him, especially when he is dependent upon the wholesaler for his supplies. This custom is so generally recognized in the business world that it is looked upon as one of the very means by which monopoly in trade is prevented and by which the people are assured of the intelligent activity and experience of the retail merchant as well as of the wholesale merchant whose business makes it necessary that they keep in touch with all the markets and bring to their customers the most desiriable and cheapest goods that can be obtained. This is the very principle upon which the Anti-Trust laws are founded and if the right to contract between the manufacturer and wholesaler and the wholesaler and retailer, each mutually agreeing not to infringe upon the other's line of business is denied, the very principle of the Anti-Trust Statutes is defeated, for this would be one of the most effective methods of stifling competition.

The principle contended for here stands even upon a firmer foundation than that of mere commercial custom. It is a principle expressly recognized in the legislative enactments of the State of Texas. Subdivision 14, of Article 642, of the R. S. of Texas, declares that corporations may be organized for the transaction of any manufacturing or mining business and the purchase and sale of such goods, wares and merchandise used for such business.

Subdivision 24 of the act governs corporations engaging in the retail business; that the same may be formed for the purchase and sale of such goods, wares and merchandise and agricultural farm products.

Subdivision 25, provides for the organization of the wholesaler as a corporation; that such companies may be formed for the purpose of buying and selling goods, wares and merchandise of any description by wholesale or wholesale and retail "provided that no corporation created under this subdivision shall be chartered with a capital stock of less than $20,000.00; and provided further that such wholesale and retail business shall not be conducted apart or in separate establishments."

It is apparent from these laws that the State of Texas has fully recognized the principle above submitted, in that it has provided that no wholesaler shall surreptitiously engage in the retail business, but that if he does so engage public notice shall be given to the whole world by compelling him to maintain his retail business in the same establishment as his wholesale business. This is the only kind of corporation, for whose creation articles 642 and 643 provide, in which such limitation and restriction can be found.

Continuing the idea advanced in the above cited quotation from **Gates v. Hooper** and in the light of the proposition we have just advanced, we submit that there can be no combination in violation of the Anti-Trust Acts of the State of Texas, where competition is either impossible, (as was held in the case of **State v. Compress Co.**, 95 Texas, 603), or improbable, as must be the logical result from the statutes above noted. We contend that in applying the Anti-Trust laws of the State of Texas to any given state of facts the state must first allege and prove that the status of the parties to the alleged combination was such that they were free agents in the pursuit of their respective businesses and that they were natural competitors.

In the case of **Ft. W. & D. C. Ry. Co. v. State** (87 S. W. Rep., 236), the Supreme Court of Texas went even further and declared that in order to sustain a case under the Anti-Trust Laws of the state, it was not alone necessary to show the probability of competition but also to show the right of competition.

In this connection also, we cannot avoid raising this question: If the State of Texas, seeks to predicate the charge of combination upon the fact that the Waters-Pierce Oil Company purchased all or the bulk of its supplies from the Standard Oil Company, was it not first of all necessary that the state should allege and prove that it would have been practical and possible for the Waters-Pierce Oil Company to have procured its supplies from some other source than the Standard Oil Company? No presumption in this connection can be indulged

in to assist this radical defect and error. This is a penal case and everything that is necessary to support the conviction must be distinctly alleged and proved. No allegation of this kind appears in the petition and there was not only no proof tending to show that the Waters-Pierce Oil Company could have obtained its supplies from other sources, but on the contrary, the evidence of the witnesses offered by the state clearly shows that because of the extensive business in which the Waters-Pierce Oil Company was engaged it was practically impossible to procure oil in sufficient quantity and quality from any other source than the Standard Oil Company.

(*a.*) NOR DOES THE FACT OF SUCH OWNERSHIP OF A PORTION OF THE STOCK OF THE WATERS-PIERCE OIL COMPANY BY THE STANDARD OIL COMPANY OF NEW JERSEY WARRANT THE CONCLUSION THAT THE WATERS-PIERCE OIL COMPANY HAD BROUGHT ITS MANAGEMENT AND CONTROL UNDER THE MANAGEMENT AND CONTROL OF THE STANDARD OIL COMPANY.

At the trial of this cause, plaintiff-in-error offered an instruction to the court directly covering the above proposition, which instruction was refused. On the contrary the court charged the jury (paragraph 10 of the court's charge, Record, p. 1147), that if they found that the direction of the affairs of plaintiff-in-error and the affairs of the said Standard Oil Company, were under the same management and control on March 31, 1903, or any date subsequent thereto and prior to April 29, 1907, and that they were placed under such management or control by their respectively authorized officers under such circumstances that such common management or control caused or tended to create or carry out any restriction in the sales in Texas of such oil as is referred to in said paragraph of the charge or to fix, maintain or increase the price in Texas of such oil or to prevent or lessen in Texas the competition in the sale of such oil, the jury should return a verdict for the state. The above charge was given in face of the fact that there was

absolutely no evidence that the direction of the affairs of plaintiff-in-error and said Standard Oil Company was, after the passage of the statute of 1903, brought under the same management or control or was under the same management or control on the 31st of March, 1903, when that statute was passed or on any subsequent day thereafter. Nor was there any evidence that the Standard Oil Company had any power to bring the direction of the affairs of the two corporations under the same control or management until the majority of the shares of plaintiff-in-error were transferred on the books thereof in the name of M. M. Van Beuren some time in the year 1904. Nor was there any evidence that the Standard Oil Company ever exercised any such power either before or after said stock was so transferred. By reason of said charge, the jury found this plaintiff-in-error guilty of the offense of bringing the direction of its affairs under the same management and control as those of the Standard Oil Company, although no evidence was adduced to show that plaintiff-in-error had any part whatsoever therein and although what was done, namely the transfer of the stock as aforesaid, was not done in Texas but wholly outside of the jurisdiction thereof and without in anywise being subject to the control of this plaintiff-in-error. Much of the argument and most of the authorities cited in support of the proposition immediately preceding are equally applicable here, and it does not seem necessary to repeat them or to multiply authorities. It is certainly a new departure in jurisprudence when a court will be permitted to indulge in a presumption on a criminal trial or at least in a cause penal in its nature without any evidence to support that presumption— a presumption which in its every essential is bound to be inimical and prejudicial to the defendant in the cause. If, as a result of such wholly erroneous charge the jury finds a verdict upon which a judgment in the way of a fine is entered, it can hardly be contended that this is not a deprivation of property without due process of law,—a violation of that "law of the land," which inherently guarantees to every person the right to a fair and impartial hearing upon the merits and according to the rules

of jurisprudence, established and recognized as a fundamental in our system of law, not the least of which rules is this, that courts must confine their instructions to juries to the record and not indulge in presumptions without evidence to sustain the same.

There can be no question but that it is the right of a party to be protected against a law which violates a constitutional right, whenever by its terms or the manner of its enforcement it is manifest that a decision which denies such protection gives effect to the law, and that such a decision is reviewable in this court. (W. &. W. R. Co. v. Alsbrook, 146 U. S. 279.)

VI.

**IN THE ADMISSION OF INCOMPETENT, FRIVOLOUS AND IRRELEVANT EVIDENCE, WHOLLY FOREIGN TO ANY ISSUES IN THE CAUSE, ARBITRARILY ADMITTED AND WITHOUT REGARD FOR RULES OF LAW AND THE CONSTITUTIONAL RIGHT OF PLAINTIFF-IN-ERROR TO A FAIR AND IMPARTIAL TRIAL OF THE ISSUES RAISED, SAID EVIDENCE BEING CALCULATED TO EXCITE, INFLAME AND PREJUDICE THE MINDS OF THE JURY AGAINST PLAINTIFF-IN-ERROR, THE CONSTITUTIONAL RIGHT OF PLAINTIFF-IN-ERROR TO A FAIR AND IMPARTIAL TRIAL IS DENIED, AND BY THE JUDGMENT UPON THE VERDICT IN SAID CAUSE PLAINTIFF-IN-ERROR IS DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.**

Against the objection of plaintiff-in-error, the court admitted evidence of the Standard Oil Trust agreement of 1882, in the petition of the State of Texas set forth, which said agreement was made many years before the incorporation of plaintiff-in-error and to which it was admitted plaintiff-in-error never became a party. (Record, p. 398 and 7 ff.) Over objection the court further admitted in evidence the 3rd, 4th, 5th, 6th, 7th,

and 8th paragraphs of the agreement of counsel called Stipulation No. 1 (Record, pages, 424, 425, 426), setting out that the Standard Oil Company of New Jersey owned a majority of the shares of the companies therein mentioned, to-wit: the Standard Oil Company of Indiana, Standard Oil Company of New York, Standard Oil Company of Kentucky, and Continental Oil Company and the Republic Oil Company, although each and every one of such companies therein mentioned did not transact any business in the State of Texas and were in no wise competitors with this plaintiff-in-error, and said evidence was in no way connected with or had any relation to any of the questions involved in the cause. The court also, over objection of plaintiff-in-error, admitted in evidence that plaintiff-in-error had given rebates and discounts to certain dealers (Record, p. 719), and had sold oils at different prices in different localities in Texas, all of which evidence was wholly irrelevant to any issues in the cause and could have no other effect than to inflame and prejudice the minds of the jury against this plaintiff-in-error. The court, also over objection, admitted in evidence the testimony of the witness, C. W. Cahoon, (Record, p. 781) to the effect that at certain points in Texas where there was competition, the defendant sometimes sold oils at less than at points where there was no competition, which said testimony was wholly immaterial to anything at issue in said cause, had no tendency whatever in showing any violation of any of the laws of Texas and could have no other effect than to prejudice the jury. The court, further, and in like manner over objection, admitted in evidence the testimony of said Cahoon to the effect that for about sixty days in the year, 1906, certain brands of oil of grades inferior to that known as "Eupion Oil" had been sold by plaintiff-in-error as "Eupion Oil," (Record, pp. 799, 800) which said evidence was wholly frivolous as well as irrelevant and calculated to excite, inflame and prejudice the minds of the jury against plaintiff-in-error. The court in like manner, over objection, further admitted in evidence the testimony of witness A. W. Clem (Record, p. 740) to the effect that the old Waters-Pierce Company in 1891, (nine years before this plaintiff-in-error was organized and incorporated) cut the prices

of oil at Seymour and other places in Texas, and also that the old Waters-Pierce Company in 1894, (six years prior to the organization of this plaintiff-in-error) after it bought out the business of the same witness, advanced the selling price of oil from 9½ cents to 22 cents per gallon (Record, p. 744), all of which testimony did not relate in any way to this plaintiff-in-error or its doings, and was wholly irrelevant and immaterial to any issue involved in the cause, and the effect whereof was clearly to inflame and prejudice the minds of the jury against said plaintiff-in-error.

The court, in like manner, over objection, admitted in evidence the testimony of the witness Royer Campbell (Record, p. 694) to the effect that in 1894, (six years prior to the incorporation of this plaintiff-in-error) when he quit buying from the old Waters-Pierce Company and bought from other persons in San Antonio, the old Waters-Pierce Company immediately cut the price of oil from 16 cents or 17 cents to 8 cents and 10 cents per gallon (Record, p. 697), and also his testimony as to the character and nature of the warfare and competition which the old Waters-Pierce Company carried on with him in 1894, (Record, p. 697, 698) all of which evidence did not relate in any way to this defendant, or to any of its acts and was wholly irrelevant and immaterial to any question in issue and solely calculated to prejudice and inflame the minds of the jury against said plaintiff-in-error.

Over objection, said court also admitted evidence of the incorporation of the Standard Oil Company of Ohio (Record, p. 396), and of the Standard Oil Company of New Jersey (Record, p. 1011), and of the incorporation of the old Waters-Pierce Company (Record, p. 1004), which said corporation was dissolved and went out of existence in 1900, as evidenced by the certificate of the Secretary of the State of Missouri, in the record shown (Record, p. 439), all of which evidence was wholly immaterial to any question at issue, and could have no effect but to divert the minds of the jury from the issues involved and to prejudice them against plaintiff-in-error.

We can conceive of no theory of this cause which would justify the admission in evidence of the testimony above

mentioned, the highly prejudicial character and tendency of which is plainly apparent. It would seem to be fully as competent to show that a man on trial for murder had been guilty of other distinct offenses, such as swindling, robbery and rape, as to show on the trial of this cause wherein plaintiff-in-error was charged with being a party to agreements and understandings in violation of the Anti-Trust Laws of the State of Texas, that it had deceived and misled its customers and imposed on them by selling them an inferior grade of oil under the name of a superior grade. Knowing full well how extremely unpopular the Standard Oil Company or any corporation of that name was in the State of Texas, it was not only highly improper but it was absolutely prejudicial to the constitutional rights of plaintiff-in-error, to permit any testimony to be given concerning said Standard Oil Company and its acts, with nothing to show that plaintiff-in-error was in any wise connected therewith.

It will doubtless be argued that on a question of the admission or rejection of evidence the trial court and the appellate courts of the state must be deemed to be final judges, and we admit that within certain limitations this is true. But we contend that there are certain fundamental principles and rules governing the admission of evidence, especially in criminal causes or in causes of a penal nature, which are so firmly embedded in our jurisprudence, which are so plainly necessary for the protection of life, liberty and property,which have grown up in response to inherent feelings of right and justice, that they have become as much a part of the "law of the land" as that rule which says that no man shall be condemned without first being heard in his own defense. Of what good is the right of defense in a court of justice as against charges presented, if the trial of the cause is to be made a travesty by submitting to the jury evidence of everything under the sun excepting that which is material to the issue? Surely, it will not be urged that this is that "due process of law" which safeguards the person, which safeguards the citizen, be he person or be it a corporation, from unjust and arbitrary judicial proceedings. It cannot be contended that the limitations of the

Federal Constitution in this respect upon the power of the states apply solely to acts of the legislature. It has been held time and again in both the Federal and State courts that the protection extended by the Fourteenth Amendment against the arbitrary exercise of power by the states includes not only legislative acts but those of the executive and judicial departments as well. And it is upon this that we insist that a constitutional right has been violated. We contend not merely that error has been committed, by the admission of immaterial, prejudicial evidence, but that, in such admission the due process of law guaranteed to this plaintiff-in-error and to every citizen of the Republic has been arbitrarily and capriciously denied.

Says Prof. Robinson, in his work on American Jurisprudence, page 238, in speaking of the history of American constitutions:

> "Thus our constitutions, however recent their appearance as written laws, are not the figments of a day, the venturesome experiment of political empiricism, but the natural, inevitable outgrowth of ancient and well comprehended principles, whose truth has been tried and tested by ages of practical experience and demonstrated by the freedom, enlightenment and happiness of the people among whom they have prevailed."

And in discussing the limitations upon the legislative power of the states, he uses the following language, page 257:

> "But in a state whose written constitution is a limitation of pre-existing powers under which all unasserted governmental powers retain their former comprehensiveness and vigor, the acts of legislative bodies may be invalid, although they are not mentioned or referred to in the constitution. Prior to the adoption of the written constitution, the legislative power was not without its limits, established by the nature of the state and those fundamental principles of the social compact which underlie all governmental action, irrespective of constitutional provisions. **These unwritten and irremovable limitations are not destroyed,** though many of them may be expressed therein **and legislative enactments which exceed them are no less invalid than if they violated the words as well as the spirit of the constitution.** The constitutions of our

individual states being such limitations of pre-existing powers, therefore, do not present the sole test of the invalidity of statutes promulgated by their several legislatures, but, in addition to their written constitutions, **there is still in force the unwritten higher law to whose necessary and unchanging principles the enactment of the legislative body must also conform."**

And on page 259, he says:

"A legislature cannot enact a law which palpably infringes any of these rights to assert and defend which the state has been established. The sovereignty of the state-although unlimited in measure or degree, exists only for specific purposes which together constitute the welfare and advancement of the people of the state, and any action of its governmental agency which is subversive of these purposes is necessarily beyond their powers. **What the state itself could not do without a violation of its highest obligations to its citizens, no institution of the state can lawfully perform.** Whenever, therefore, a statute enacted by the legislature is so absurd, unjust or impracticable as to defeat the objects for which the government was organized, the statute is invalid."

This phrase, "due process of law," was carefully discussed under circumstances not essentially different from this cause in the well-considered case, **in re Ziebold** (23 Fed. Rep., 791). In that cause a writ of *habeas corpus* was asked of the United States Circuit Court upon the grounds that petitioner was unlawfully deprived of his liberty under an act of the State of Kansas giving power to the county attorney to summons persons and compel them to testify before him in proceedings under the law of Kansas prohibiting the manufacture and sale of intoxicating liquor. The question was squarely presented whether a person imprisoned for refusing to appear or testify in proceedings of such character was restrained of his liberty without due process of law within the meaning of the Constitution of the United States. Says the Circuit Court of the United States, speaking through Foster, J.:

"The first matter of inquiry is the meaning of the term due process of law.' If it has no broader meaning than the purposes prescribed by act of the legislature, it is the

end of the cause. But such a construction would render the constitutional guarantee mere nonsense; it would then mean, no state shall deprive a person of life, liberty or property unless the state shall choose to do so. It has repeatedly and uniformly been adjudicated that the terms 'due process of law' and 'law of the land' have a broad and comprehensive meaning, and originated in that very bill of right, Magna Charta, and operate as restriction **upon each branch of government."** (Citing Murray's Lessee v. Hoboken Land Co., 18 Howard, 272; Davidson v. New Orleans, 96 U. S. 107; *ex parte* Virginia, 100 U. S. 346.) * * * * * * * * * * * * The words 'due process of law' must be directed at something deeper than mere forms and rules by which courts administer law; they were evidently intended to guarantee and protect some real and substantial right to life, liberty and property as the ultimate result **and probably to prohibit any arbitrary and oppressive proceedings by which the individual is deprived of either."**

And in discharging the prisoner, the court concludes by saying:

> "I believe no precedent can be found for the application and use of judicial power in the manner and for the purpose contemplated by this act, **and that it is a dangerous innovation on the fixed maxims and rules in the administration of justice, established for the protection of private rights."**

In *ex parte* **Virginia** (100 U. S. 346), the Supreme Court of the United States, in discussing the meaning of the term, "due process of law," says:

> "They have reference to the actions of a political body denominated a state by whatever instruments or in whatever modes that action may be taken. A state acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provisions therefore must mean that **no agency of a state** or of the officers or agents by whom its powers are executed shall deny to any person within the jurisdiction the equal protection of the laws; whoever by virtue of a public position under a state government deprives another of property, life or liberty without due process of law, violates * * * * * * * the constitutional inhibition, and as he acts in the name of and

for the state and is clothed with the state's power, his act is that of the state. This must be so or the constitutional provision has no meaning."

Mr. Justice Johnson, speaking for the Supreme Court of the United States, in **Bank of Columbia v. Okley,** (4 Wheaton, 235), says:

"As to the words from **Magna Charta,** incorporated in the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at last settled down to this: that they were intended to secure the individual from the arbitrary exercise of the power of government, unrestrained by the established principles of private rights and distributive justice."

In **U. S. v. Cruikshank,** 92 U. S. 554, and in **Hurtado v. California,** 110 U. S. 527, the foregoing language is expressly approved.

Judge Cooley, in his Constitutional Limitations (7th ed., p. 506) says:

"Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

In **Utah v. Bates** (14 Utah, 293; 47 Pac. 78; 43 L. R. A. 33), the question was presented to the Supreme Court of Utah whether a trial for felony by eight jurors did not violate "due process of law" guaranteed by the state constitution or the same guarantee as included in the Fourteenth Amendment to the United States Constitution. Zane, Chief Justice, in holding the statute which provided for a trial by eight jurors constitutional, and not within the prohibition of the Federal Constitution, says:

" 'Due process of law' is a general expression and is equivalent to 'law of the land.' It permits the deprivation of life, liberty or property according to law, not otherwise. Is shields such rights from arbitrary power. 'Due

process of law' in a case like this requires a law describing the offense. The offense must be described in an accusation; the accused must be given his day in court; his trial must proceed according to an established procedure consisting of rules of pleading and practice. **The admission of evidence for and against him must be according to established rules** and he must be convicted by the judgment of a competent court and the punishment authorized by law. The definition of the offense and the authority for every step in the trial must be found in the law of the land. **Nothing essential can emanate from arbitrary power. The rights of the defendant and the duty of the court are equally under the finger of the law."**

If the law laid down by the learned court, above quoted, is correct; if the definition and interpretation of due process of law as therein given meets the approval of this court, and is—as we believe it is—correctly expressive of every security of right and justice guaranteed by the Federal Constitution, an examination of the record in this cause and especially of the evidence admitted herein upon which plaintiff-in-error was convicted, cannot fail to convince this court that in the trial of this cause plaintiff-in-error was not given the protection of the law of the land, as designed by the Federal Constitution.

In **San Jose Ranch Company v. San Jose Land and Water Company,** (126 Calif. 322; 58 Pac. 824), the question was squarely presented to the Supreme Court of California whether it was violation of "due process of law" to deprive defendant of rights under well known principles of pleading and practice, and especially with respect to the admission and rejection of evidence. In that case the discussion narrowed itself down to the meaning of a section of the Code of Civil Procedure of California which provided that no judgment, decision or decree of a lower court shall be reversed because of error, ruling, instruction or defect unless it appear from the record that the same were prejudicial to defendant or plaintiff below, and that a different result would probably have been reached if such error, ruling, instruction or defect had not occurred or existed.

The Court, speaking through Temple, J., says:

"Ordinarily we cannot ascertain or determine from the record whether the appellant has suffered substantial injury or whether a different penal result would have been reached had not some particular error been committed. If the court should erroneously refuse to receive any evidence for a party and should arbitrarily determine all issues against him, this court could not determine from the record whether he would have fared better if the evidence had been admitted. So, if in an ordinary action of law a court were to erroneously deny a jury trial, the record could not disclose that a different result would have been probable if the error had not been committed, **although it would plainly enough show that a party had been denied a trial according to the law of the land.** A person against whom such a ruling has been made and who has lost his case has been deprived of life, liberty or property, without 'due process of law.' And this amendment, if valid, would prevent a reversal of the cause upon that ground. That it might result in preventing the appellate courts from enforcing the fundamental right to a jury trial is not really of greater moment, **perhaps not so much,** as the fact that it may prevent this court from enforcing uniformity in the administration of the law. Under this rule any and all trial courts may refuse to be governed by the law of procedure and evidence solemnly enacted by the legislature; and unless we can determine from the record both that the party complaining has suffered substantial injury and that a different result would have been probable if the law of procedure had been followed there could be no reversal. It is the right of every person, before he can be deprived of his property, to have a trial according to law—**to have the same character of trial, governed by the same established rules of evidence and procedure as are applied in other cases under similar conditions.** 'Due process of law' is law in its regular administration through courts of justice. (Citing 2 Kent Com. 10.)"

In **Pennoyer v. Neff** (95 U. S. 714; 24 L. ed. 565), Mr. Justice Field says of the words "due process of law" when applied to judicial proceedings:

"They then mean a course of legal proceeding according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights."

It can hardly be denied in the face of these authorities that uniformity in the administration of justice is a **fundamental right,** and every litigant may demand that his case shall be tried so far as practicable by the same fundamental and established rules of procedure and evidence as well as upon the same principles which are applied in other like controversies. This is due process of law—the law of the land. And the conclusion is inevitable that a denial of this right, either through legislative, executive or judicial authorities of a state, is a denial of a fundamental and inherent right, guaranteed to the citizen by the Federal Constitution. Surely, if that right so guaranteed is denied by the court of a state to which the litigant naturally looks for an assertion of that right, nothing else is left to him than to appeal to the Federal Courts for the protection which the Federal Constitution guarantees to him.

## VII.

## THE FINE IMPOSED IS SO GROSSLY EXCESSIVE AS TO DEPRIVE PLAINTIFF-IN-ERROR OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

In this cause the verdict of the jury assessed penalties under the Act of 1899, against plaintiff-in-error in the sum of $1,549,500.00 for alleged violations of law for each of the days between May 31, 1900, and March 31, 1903, a total of 1033 days, and at the rate of $1,500.00 per day; and under the Act of 1903, in the sum of $74,400, for alleged violations of said law for each of the days between April, 1903, and April 29, 1907, a total of 1,488 days, and at the rate of $50 per day; making a total of penalties assessed for said alleged violations of law, of $1,623,900, taking into no consideration the Sundays within said periods and other days in which plaintiff-in-error did not or could not have operated its business within the State of Texas.

We do not contend that this excessive fine is within the prohibition of the Federal Constitution against levying excessive

fines, but we do contend that whenever a fine is so grossly excessive as to be wholly out of proportion to the offense committed, to be essentially destructive of the property of defendant, it is in violation of such well known and fundamental principles of law as to constitute a violation of the law of the land and deprive defendant of its property without due process of law.

If punishment is inflicted for the purpose of suppressing crime and reforming the offender, we submit that the amount of the penalty in this cause is so large as to destroy plaintiff-in-error in the State of Texas, thus violating the declared purpose of all criminal law, of affording the offender an opportunity to reform and correct its conduct or methods of business. In short, the punishment as imposed, while answering the first definition of the object of all punishment, namely, to suppress crime, instead of carrying out the second equally fundamental purpose, namely, that of reforming the offender, has instead, the effect of destroying the offender. The 20th Paragraph of Magna Charta clearly indicates the purpose of punishment and the extent to which fines may be imposed, and it will not be contended that the principle therein enunciated has ceased to exist in our American law. Under that principle, it was the established policy of the English law not to impose a fine upon an offender to the extent of depriving him of all his goods, but to leave to him the opportunity to reform and to evade his destruction. As bearing upon the question under discussion, we quote the following extract from Cooley on Const. Limitations (7th ed., 471.)

> "It is also a constitutional requirement that excessive bail shall not be required nor cruel and unusual punishment inflicted."
>
> "**Within such bounds as may be prescribed by law** the question what fine shall be imposed is one addressed to the discretion of the court. But it is a discretion to be judicially exercised and there may be cases in which a punishment, though not beyond any limit fixed by statute is nevertheless so clearly excessive as to be erroneous in law. A fine should have some reference to the party's ability to pay it. By Magna Charta, a freeman

> was not to be amerced for a small fault, but according to the degree of the fault; and for a great crime in proportion to the heinousness of it, **saving to him his contentment;** and after the same manner a merchant, **saving to him his merchandise.** And a villein was to be amerced after the same manner, **saving to him his wainage.** The merciful spirit of these provisions addresses itself to the criminal courts of the American States through the provisions of their constitutions."

Now while it may be answered that a foreign corporation which violates the law of the state and thereby forfeits its right to do further business in the state does not technically fall within the rule here announced, we submit that since corporations, foreign as well as domestic, are guaranteed the equal protection of the law, we must look behind the technicality of the creation of the corporation as such to the rights of the individuals who, in final analysis, are the real owners of its property.

In this case we have plaintiff-in-error as the first defendant convicted of a violation of a new and untried law, (the Act of 1903 and, so far as pecuniary penalties are concerned, of the Act of 1899, also). Since it was shown that there were other concerns in the State of Texas competing with plaintiff-in-error as a dealer in oils, if the methods of doing business and the prices charged by plaintiff-in-error for its products were oppressive upon the people of Texas, certainly we should expect to find abundant evidence in the record of its culpable wrong doings. And in such case, we should expect that complaints would have been made and prosecutions instituted long before the institution of this suit.

The history of the past few years is replete with discussions in newspapers, magazines and otherwise, of combines, trusts, pools and monopolies, words which have too often been distorted from their real and true meanings, and have become almost synonymous with all that is evil. While it may be true that there is no such thing as a "good trust," it is certainly not in accord with the spirit of a great, free and enlightened government to sanction the confiscation of private property

through the accumulation of penalties against a defendant whose only sin arises from the fact that another corporation held a majority of its stock and furnished it with its manufactured product; and this in view of the further fact that, while this other corporation did so hold a majority of the stock of plaintiff-in-error, it permitted a minority stockholder to keep his own relatives and friends as managing officers and from among them to constitute a majority of its board of directors and at the same time furnished its oil to plaintiff-in-error at a price at which it could and did compete on equal terms with other persons engaged in the same line of business.

There is nothing in the record to show any material, substantial or culpable wrong-doing toward the people of the State of Texas on the part of plaintiff-in-error; nothing to show any "heinousness of the offense" and it is nothing short of confiscation for the State of Texas at this late day to enforce the Anti-Trust Act of 1899 against a foreign corporation except to the extent of forfeiting its permit to do business in the State—to wait seven years and until long after the Act had been repealed and the amount of the penalty for such offenses actually and greatly reduced and then to insist upon a verdict against this plaintiff-in-error for $1,500.00 per day for 1,033 days.

We contend that the action of the court, as one of the departments of the State government, in sanctioning the act of the prosecuting officers of the State of Texas in delaying this prosecution against plaintiff-in-error for nearly seven years and permitting the State to enforce penalties for each day's violation of the laws, including days in which plaintiff-in-error admittedly was and could not have been doing business, is a denial to this plaintiff-in error of the protection guaranteed it under the Fourteenth Amendment to the United States Constitution.

Without wishing to be tedious, we nevertheless feel in duty bound to discuss fully the contention here advanced, a contention which at first glance may seem novel, if not, indeed, without merit.

Further on in this argument we shall discuss fully the proposition that the several Anti-Trust Acts of the State of Texas are so vague, indefinite and ambiguous as to fail to define any

offense with such certainty as to inform the public in advance of the constituents of the offense. Without wishing to anticipate the argument on that point, we desire to emphasize the proposition that these Anti-Trust Statutes of the State of Texas have never been the subject of judicial consideration upon the point here directly involved—whether a foreign corporation can be subject to penalties because of the holding of its stock by any person or corporation engaged even in a similar line of business, when it is not distinctly and conclusively shown that such holding of stock was in violation of the law of the State where the corporation was created. In this connection it should not be forgotten that the State of Texas has never heretofore attempted to subject a foreign corporation to penalties for violating its Anti-Trust Laws, but has in each and every case confined its efforts to the cancellation of the permit of such corporation, following it usually by an injunction preventing such corporation from further doing business in the State.

If the law under which plaintiff-in-error is being prosecuted had been the subject of judicial construction and interpretation, and its meaning clearly declared, or if the law itself clearly and with certainty defined the acts which constitute an offense a different question would be presented.

It cannot be contended that the Act of 1899 is a statute which clearly defines an offense, and that its meaning is clear of all doubt and that it clearly and unquestionably embraces the particular transactions through and by means of which plaintiff-in-error was organized as a corporation under the laws of the State of Missouri, or its subsequent transactions and relations with the Standard Oil Company of New Jersey. The fact that this statute did not clearly and satisfactorily express the legislative will is best shown by its repeal by the Act of March 31, 1903, and it is a fair contention that the legislature, it it did not doubt the constitutionality of the Act of 1899 because it was so indefinitely framed and of such doubtful construction that it did not sufficiently and clearly define an offense, did believe that the enormous fines and penalties which could be inflicted under its provisions would bring it in conflict with the constitu-

tion of the State; otherwise there is no explanation why the penalties were reduced from a maximum of $5,000.00 per day to a fixed fine of $50.00 per day, for the same offense under both statutes.

In addition to the authorities cited in support of the proposition next immediately following, we make special reference to the reasoning of Mr. Justice Brewer in discussing the right to enforce an uncertain law in the case of **Cutting v. Goddard,** (183 U. S. **loc. cit.** 101). After stating a number of supposable cases, the learned Justice says:

> "It may be said that these illustrations are not pertinent because they are of civil actions, whereas this statute makes certain conduct by the stock yards company a criminal offense and simply imposes punishment for such offense; that it is within the competency of the legislature to prescribe the penalties for all offenses, either those existing at common law or those created by statute; and, further, that although the penalties herein imposed may be large, yet obedience to a statute like this can only be secured by large penalties; for otherwise the company, being wealthy and powerful, might defiantly disregard its mandates, trusting to the manifold chances of litigation to prevent any serious loss from disobedience. A penalty of a dollar on a large corporation whose assets amount to millions would not be very deterrent from disobedience. It is doubtless true that the State may impose penalties such as will tend to compel obedience to its mandates by all individuals or corporations; and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of a statute, the question would be very different from that here presented. But when the legislature in an effort to prevent any inquiry of the validity of a particular statute so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalty imposed then it becomes a serious question whether the party is not deprived of the equal protection of the law."

It is true that in this case the final decision was not made to depend upon the proposition, broadly announced, that a criminal statute of doubtful meaning cannot be enforced at all until

after the court shall have construed it and declared its meaning. But the application of the principle in this case clearly presents the question whether the State can delay acting for a long period of time, bring suits against other corporations and expressly therein avoid setting up any claim to recover penalties, and then finally select a particular corporation to inflict upon it cumulative penalties for seven years in the first and only case in which the full meaning of the statute is attempted to be declared and enforced.

As we have already pointed out, the record wholly fails to disclose any evidence that in the formation of the present Waters-Pierce Oil Company there was any understanding or agreement as to the fixing of prices in the sale of oil in Texas, but on the contrary, the uncontradicted evidence upon this point showed that it was understood between Mr. H. C. Pierce and the representatives of the Standard Oil Company that Mr. Pierce, even though the minority stockholder, should be permitted to manage and control the new company without dictation or interference on the part of the Standard Oil Company and that under this agreement Mr. Pierce was actually permitted and did in fact name the board of directors, and at all times had on said board a majority (usually his own relatives) more directly friendly to his interests than to the interests of the Standard Oil Company, and that this same policy was maintained in the selection of managers of the different departments of the business and in the appointment of the company's agents. These facts stand uncontradicted and undisputed.

The facts disclosed by the record show that when the old Waters-Pierce Company was excluded from the State of Texas because of the misconduct of a few of its local agents, the stockholders of said company were confronted with the question as to what was to be done with the valuable property, and especially the valuable business which had been created in the State of Texas by many years of careful management and the investment of large capital. But one course was open in order to conserve this property and maintain its value—to organize a new corporation under practically the same management as

that which had made the old company so valuable to its stockholders. The record shows that the Standard Oil Company was chiefly engaged in the business of refining oils, was essentially a manufacturing corporation, and also held the stock of different companies through which its business as a manufacturer was conducted, and also held some stock in certain marketing companies.

It is admitted that the Standard Oil Company under its organization and charter could not have obtained a permit to do business in the State of Texas for more than one purpose. Let us suppose that this company had applied for a permit to transact business in Texas and had only the single purpose of engaging in business as a merchant or dealer in oils in the State. Had it done so, the question would present itself: Would not its own charter have conclusively shown that it could not lawfully do business in the State of Texas and would not this fact have justified, if it did not actually require the Secretary of State to refuse the permit? Had it organized another company and excluded Mr. Pierce, would not this have been attempting to do **indirectly** what it could not do directly?

Instead of pursuing either of these courses, the Standard Oil Company was contented to let Mr. Pierce organize a new company, to take over the property and business of the former company with the distinct understanding that he should be permitted to dictate its policy and control its business, just as he had managed the property and business of the old company, and while the evidence shows that for a short time there was a disposition on the part of the Standard Oil Company to violate this agreement, it also shows that such effort was soon abandoned.

There is absolutely nothing in the record to show that there was ever any agreement between Mr. Pierce and the Standard Oil Company that the new company should buy all of its supplies from the Standard Oil Company, and at this point, we desire to call special attention again to the fact that the evidence does not show that it would have been possible for Mr. Pierce and those under him, as managers of plaintiff-in-error, to have secured their supplies from any other source than that

from which they did actually procure them, namely, from the Standard Oil Company. The Waters-Pierce Oil Company made its wholesale purchases of oil for use in its business from the Standard Oil Company, not because of any agreement or understanding with that company, but because it was good business policy, and nothing more. We, therefore, have a state of facts in which there was no agreement and no understanding to regulate or to fix the price of oils in Texas or to maintain the price when so regulated or fixed, and no agreement to fix or limit the amount or quantity of such oils sold and, therefore, nothing to which Section 1 of the Anti-Trust Law of 1899 could apply.

Does Section 2 of the Act of 1899 apply to the facts as presented in this cause? We here must confess our inability fully to understand just what is meant and intended to be included within Section 2 of the Anti-Trust Act of 1899. If we exclude all unnecessary words, the section referred to may be conveniently divided into four subdivisions and rewritten to read as follows:

"1. A monopoly is any union, combination, consolidadation or affiliation of capital, assets, property, etc., between persons, firms or corporations to regulate, fix or maintain the price of any article of merchandise, etc., or by which it is sought to promote, accomplish, execute or carry out the fixing, regulating or maintaining of prices or whereby such result is reasonably calculated to be produced.

2. A monopoly further includes the aggregation, amalgamation, affiliation, consolidation or incorporation of the capital, assets, property, etc., of one or more firms or corporations.

3. A monopoly may further be created by the purchase, acquisition or control of shares or certificates of stocks or bonds or other corporate property or franchises whether this results from a union or combination between two or more persons, firms or corporations or by the act of a single individual.

4. All corporations or partnerships that have heretofore been or may hereafter be created by the consolidation or amalgamation of the separate capital, assets, proper-

ties, etc. of two or more firms or corporations are hereby declared to be a monopoly."

From the first subdivision which we have made of this section of the act it will be seen that its terms are in every way sufficient to denounce even the ordinary partnership, to prohibit the formation of new partnerships and to require the dissolution of all existing partnerships, for, certainly, two individuals who combine their capital and form an ordinary partnership thereby actually exclude themselves from competition with each other and to the extent of their ability, by combining in this manner, do an act that is reasonably calculated to affect, fix, regulate or maintain prices.

The regulation or fixing of prices is reasonably calculated to be effected under the second subdivision as above rewritten by the creation of any ordinary corporation in any line of business whatsoever, and certainly in such business where the incorporators might otherwise become competitors or where an existing co-partnership is incorporated.

By the third subdivision, the control of two or more corporations by a single individual is prohibited, and, if the reading we here give is correct, we must confess ourselves at a loss to understand what this provision means. It will be seen that this follows the attempt to define a monopoly as the result of the combination between two or more persons or corporations. As an amalgamation or consolidation of the affairs of any two or more corporations may be brought under a single management by a single individual, it would seem that this law intends to prohibit the individual from acquiring a sufficient amount of shares of stock, bonds or other corporate property in order to give him control—in other words, the individual is hereby prohibited from buying as much as his money or credit will enable him to buy.

As to just what is meant by acquiring the "bonds" of a corporation in order to give the purchaser a control of it, and as to how the corporation may be controlled by acquiring its property or franchises, we also confess ourselves unable to comprehend. If the property of a corporation is sold the

corporation thereby loses its dominion over it, and certainly it will not be contended that the ordinary trading corporation has any franchise at all except the primary franchise to exist. And this primary franchise cannot properly be subject to sale.

By the fourth subdivision, it would seem clear that if two or more firms or corporations had heretofore been consolidated into a single firm or corporation, and that even by authority of law existing at the time of such consolidation, this existing status, originally proper and lawful, is under the terms of the Act declared a monopoly, and its creation an offense against the Act. A better example of an *ex post facto* law could hardly be found, if our interpretation of this section is correct.

In attempting to analyze Section 2 of the Anti-Trust Act of 1899, we have endeavored fairly to re-state it in comprehensible terms, so far as we are able to understand its provisions; if our analysis is correct, it seems clear that this section embraces practically every act by which any two persons unite their capital, skill or acts in a common enterprise; that the Act denounces the incorporation of an existing firm, a right clearly recognized in law, and forbids a single individual to acquire the stock or property of any competing corporation, no matter what his purpose may be in so purchasing such stock or property.

It may be said that the Legislature did not intend to denounce ordinary business relations arising between men, and that only acts injurious to the public are included in the terms of this section. If such be the contention, we answer that these things are so intermingled with the other provisions in the Act that it is impossible to separate the good from the evil, and that Section 2, when considered together, fails to define any offense with such sufficient certainty that it can be enforced as a penal statute. Certainly the situation which is presented by the record in this case falls more clearly without the express terms of this section than does the act of forming or continuing a partnership when the members might otherwise be competitors with each other. For, as the record shows, we have here the Standard Oil Company, a producing corporation, a foreign corporation admittedly without any

legal right to do business in the State of Texas, holding stock in the Waters-Pierce Oil Company, a mere distributing corporation not engaged in the same line of business in Texas, and lawfully admitted under a valid permit.

In this connection, we desire to call particular attention to the case of **Gates v. Hooper,** (90 Texas, 563; 39 S. W. 1079), in which the Supreme Court of Texas distinctly recognizes the feature of the good will of a business as being the proper subject of contract, and upheld the right of a purchaser of the good-will to exclude the seller under the terms of the contract from entering into competition with him.

There is a strong and striking analogy between that case and the facts which are presented in this, in that the good-will which was an incident to the established business of the old Waters-Pierce Company in Texas was its most valuable asset. That good-will was an indivisible thing, and as the old company was required to give up its business in the state, under the above decision there can be no doubt that it could have sold this good-will and excluded itself under the contract from any future competition with the purchaser thereof. If the company had then been dissolved—as it was—this good-will as an asset of the business, after the claims of creditors had been satisfied, remained as the property of the stockholders, to-wit: of Mr. Pierce and the Standard Oil Company, as tenants in common of a property to which that good-will was an incident. And under the authority of Gates v. Hooper, we submit this proposition: Could not these individual owners of the assets of the defunct Waters-Pierce Company have sold the business in Texas with the good-will attaching thereto, and under a valid contract excluded themselves from entering into any future competition with the purchaser? Since the good-will was an indivisible asset, the conclusion would seem necessarily to follow that the owners thereof had a right to make a similar agreement with respect to the new company, and for the additional reason that one of these owners, strictly speaking, had not the right to enter the State of Texas as a competitor, unless it can be held that it is competent for a state to make it an offense because a foreign corporation will not so adjust its

affairs as to qualify it for admission and, after doing this, apply for a permit to do business in the State. It would seem wholly unnecessary to state the proposition that every foreign corporation has a constitutional right to remain out of the State of Texas.

In support of our contention that, in this final analysis, the stockholders of the old Waters-Pierce Company were the owners of its property and had the right to take all necessary steps to maintain and secure its full value to them, we must conclude that the law would be the same with respect to this corporation as it would be of a corporation whose stock was held entirely by separate individuals. This suggestion does not require that we shall claim for the Standard Oil Company, as a foreign corporation, the same right as an individual stockholder—that is, to become the purchaser of the property and continue the business in the State of Texas—but we do contend that the Standard Oil Company had every right of an individual stockholder except one—this right of purchase and continuation of the business of the old Waters-Pierce Company in the state. This, therefore, included the right to join in the dissolution of the old company for the purpose of protecting its property in the State of Texas and the consequent right to make agreements and contracts with respect to the sale of that property, the same as any other stockholder, in order to realize the most therefrom or best preserve its value.

It certainly cannot be contended that the judgment of ouster entered against the old Waters-Pierce Company is to be construed as one of outlawry against the individual stockholders of that company, and a destruction, if not confiscation, of their property.

This claim will not stand analysis upon any other principle than that it is competent for a state to outlaw the stockholders of a corporation, and confiscate their property when it has been found that the corporation has misused its franchise or violated the law of the state. We find nothing in the laws of the State of Texas to sanction such a principle. And we submit that the judgment of ouster entered against the old Waters-Pierce Company in 1900, could have no greater effect than to cancel

the permit of that corporation and enjoin it from further doing business in the State of Texas. The individual rights of the stockholders in the concern were not before the court. And since there was nothing in the law which denied to these stockholders their full and complete rights of ownership, which included the right to dissolve the old Waters-Pierce Company as an existing corporation under the laws of the State of Missouri under which it had been originally incorporated, and thereafter to deal with the property as could any other owner or owners of similar property, we must limit the judgment to this, its proper legal effect. That we are not mistaken in our construction of the rights of stockholders of a dissolved corporation might be shown by a multitude of authorities. We content ourselves with reference to only a few, and these in the State of Texas.

In **Olsen v. Homestead Land Co.** (87 Texas, 371), the Court says:

> "The right which a shareholder in a corporation has by reason of the ownership of shares is a right to participate according to the amount of his stock in the surplus of the profits of the corporation on a division, and, ultimately on its dissolution, in the assets remaining after the payment of its debts."

In **Arkansas Harbor Company v. Manning** (94 Texas, 563), the court says:

> "A stockholder merely as such has no direct agency in the control of the business of a corporation. He has no direct interest in the property; his right to such property is collateral. But in its last analysis, the stockholders are the beneficial owners of the assets of the corporation."

And in **Baldwin v. Johnson** (95 Tex., 85), the court says:

> "The pleading and evidence show that the John Henry Shoe Company had been dissolved under the laws of the State in which it was created, and being so dissolved in that State, it was defunct as to every other State; for the State which gave it life had the power to prescribe the manner and means of its dissolution. No debts existed against the corporation and the commissioners appointed

> under the laws of Louisiana were merely for the purpose of collecting the assets and distributing them among the stockholders, **but the property itself upon the dissolution of the corporation became the property of the stockholders, each one of whom owned an undivided interest in it in the proportion that his stock bore to the whole capital stock."**

From the foregoing it will be seen that the courts of the State of Texas clearly recognize the principles for which we contend, and, assuming the right of dissolution, which is shown by the record to have been exercised, we are again confronted with the proposition: Was the action of the stockholders of the old Waters-Pierce Company in forming the new company, the present Waters-Pierce Oil Company, under the circumstances, a violation of the Texas laws? The fact must not be lost sight of that we have here an ownership by tenants-in-common of an existing property in which by far the larger element in the value thereof consisted of the good will incident to a long established and enormous business. We need not argue this element of value in view of the rule now firmly recognized and established that a few horses, wagons, and tanks, distributed over a large territory cannot be taken as the standard by which to determine the value of the entire property. And confronted with this situation, we submit that these stockholders had the right to dispose of their property as they saw fit, to organize a new company and have the property transferred to it just as they would have had the right, had there been two natural persons owning the stock, to have taken over the property themselves and to have continued the business of the old company or to have transferred the property to a corporation with which they had absolutely no connection, and then to have made an agreement with such company not to compete with it, as was held in **Gates v. Hooper.**

Unless it is held that by Section 2 of the Act of 1899, the Legislature of Texas intended to make it an offense for joint owners, whether as tenants-in-common or partners, to incorporate and transfer their common property to a corporation, or unless it be held that all existing partnerships and corporations were there-

by declared illegal, the conclusion must follow that what was done in the formation of the present Waters-Pierce Oil Company, this plaintiff-in-error, was as clearly within the terms of this statute as would be the formation of a new partnership or the continued holding by tenants-in-common of property which had devolved upon them by the death of a natural person or the dissolution of a corporation.

Referring again to the case of **Gates v. Hooper,** which was the last pronouncement of the Supreme Court of the State of Texas on the subject of trusts and combinations immediately prior to the formation of the present Waters-Pierce Oil Company, we find in that opinion the following discussion of what is meant by the term "combination" as used in the Anti-Trust Acts of that State:

> "In order to constitute a trust within the meaning of the statute, there must be a combination of capital, skill or acts by two or more. Combination, as here used, means union or association. If there be no union or association by two or more of their capital, skill or acts, there can be no combination; and hence, no trust. When we consider the purposes for which the combination must be formed, to come within the statute, the essential meaning of the word "combination" and the fact that a punishment is prescribed for each day that the trust continues in existence, we are lead to the conclusion that the union or association of capital, skill or acts denounced is where the parties in the particular case designed the united cooperation of such agencies **which might have been otherwise independent and competing for the accomplishment of one or more of such purposes."**

Conceding, that notwithstanding the fact that Mr. Pierce and the Standard Oil Company did no new or independent act by which their separate capital was brought together in a common enterprise, but as a matter of fact, were merely tenants-in-common of property cast upon them by the dissolution of the old company, and that, being in effect the inheritors of an existing status, even this did not of itself relieve them from the operation of this statute—conceding all this—are we not justified in insisting that before it can be claimed that there

was any combination in violation of the laws of Texas it must must be found that both Mr. Pierce and the Standard Oil Company had the legal right to enter the State of Texas as competitors in a common business? In answer to this, the opinion in **Gates v. Hooper** (*supra*) would seem to be conclusive, viz: That before there can be a combination it must be shown that "the parties in the particular case must have designed the united co-operation of such agencies **which might have been otherwise independent and competing.**"

The conclusion from this would seem to be irresistible that in order to hold that the formation of the present Waters-Pierce Oil Company was illegal we must give the laws of the State of Texas an extra-territorial effect and say that they can operate upon a contract made by or with a foreign corporation, which foreign corporation has not the legal right to enter the State and bring its entire business here; and this, too, in view of the settled law that if that foreign corporation should come here, the State has the right to change its laws and exclude it without regard to the question whether the act upon which the exclusion is predicated conforms to the Constitution of the United States or not. Can it be contended that a State may thus penalize a foreign corporation for not coming within its bounds to transact business, when it may exclude it at will, or penalize another person for making a contract with it outside of the State?

The case of the **State of Texas v. The Compress Company** (95 Texas 603; 69 S. W. 58), will be found in accord with the case of **Gates v. Hooper,** above referred to, both holding that a combination in violation of law cannot exist where competition is utterly impossible or improbable. And in **Ft. W. & D. C. Ry. Co. v. State** (87 S. W. 336 Texas), the rule is laid down that there can be no combination in violation of law where one of the parties to the alleged combination has not the legal right to do the alleged forbidden act without the consent of the other.

From these cases we deduce the proposition that in applying the Anti-Trust Laws of the State of Texas to any given state

of facts, we must first of all inquire and determine the status of the parties to the alleged combination and must find that they were free agents and natural competitors in some particular line of business in the State of Texas.

In the **Compress** case, above referred to, the Supreme Court of Texas, held that because competition between compresses was improbable, if not impossible, the law was not violated. In the **Railway** case, above referred to, the alleged violation of the law consisted of an exclusive contract between the Railway Company and a Sleeping Car Company, and the court held that because sleeping car companies had no legal right to operate their cars on the tracks of railway companies, there could be no combination between them.

We need not undertake to apply these cases to the facts as shown in this record, further than to say that the Supreme Court of Texas holds in each of them that in order to establish a case within the Anti-Trust Laws of the State, it is necessary to show both the right of competition and the probability of competition. Under the record herein, we find the Standard Oil Company has admittedly no right to enter the State of Texas, and we contend further that it is most improbable that the Standard Oil Company would enter the State of Texas even if permitted to do so since under the law it would have no right to remain in the State for any definite period whatsoever.

The case of **Ft. W. & D. C. Ry. Co. v. State,** above cited, presents another question bearing upon the discussion here involved, namely: Was it not incumbent upon the State of Texas in this case specifically to allege and prove that it would have been practicable and, in a business sense, possible for plaintiff-in-error to have secured its supplies of oil from some other source than the Standard Oil Company? It will be observed that in this case the Supreme Court of Texas waives this question as not being necessary to the decision, but if it must appear that competition is not only possible but probable, in order to sustain the charge of illegality where there is a direct combination, it would seem necessarily to follow that before plaintiff-in-error can be convicted of buying its supplies of

oils from the Standard Oil Company it must clearly appear that it could have obtained those supplies from some other source without injury to its business as the same had been uniformly conducted.

It is unnecessary to cite authorities in support of the proposition that nothing is ever presumed in favor of a judgment inflicting penalties, but that all necessary facts to support the conviction must be specifically alleged and proved. No allegation of the character above pointed out is contained in the petition of the State and there is not one item of proof in the record tending even remotely to show that plaintiff-in-error could have obtained its supplies from any other source, and in this connection it must also be remembered that the record wholly fails to show any proof of any agreement between plaintiff-in-error and the Standard Oil Company upon this subject. To sum up, then, we submit that no case could be presented in which the law was more uncertain in its terms or of more doubtful application to a particular state of facts than is presented by the record in this case. And when we take into consideration the further fact that after seven years delay in the institution of this prosecution, and then a denial to this plaintiff-in-error of every protection of the statutes of limitation, which are held to bar every other offense in the State of Texas except that of murder, the conclusion cannot be escaped that plaintiff-in-error has clearly been denied the equal protection of the laws and that the excessive fine imposed against it under the verdict, in the face of all these facts, results clearly in depriving it of its property without due process of law, in violation of its rights under the Federal Constitution.

(*a.*) IN INCLUDING PENALTIES FOR SUNDAYS IN THE ABSENCE OF PROOF SHOWING THE DOING OF BUSINESS ON SUCH DAYS, PLAINTIFF-IN-ERROR IS DENIED DUE PROCESS OF LAW.

As further bearing upon this question of excessive fine and the denial of due process of law to this plaintiff-in-error by

reason thereof, we desire to call the attention of the court to the fact that under the instruction of the trial court the jury found against plaintiff-in-error on each of the issues submitted for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for each of the days between April 1, 1903, and April 29, 1907, being 1488 days. Since this plaintiff-in-error was convicted of conducting its business as a merchant or dealer in oils, upon the charge that each day upon which it conducted its business constituted a separate offense, and there being no evidence that it conducted its business or made any sales on Sundays or holidays, the court should have so instructed the jury, that they must exclude the same from their computation, and whereas by said verdict it clearly appears that the same were included in their computation, this defendant contends that its property is taken from it without due process of law.

If the Sundays alone are deducted from the 1033 days for which plaintiff-in-error was convicted of violating the Anti-Trust Act of 1899, this would make a difference of 147 days, amounting to a difference in the verdict of the jury of $220,500.-00, and if Sundays only are deducted from the 1488 days for which plaintiff-in-error was convicted of violating the Anti-Trust Act of 1903, it amounts to a difference of 213 days, making a difference of $10,650.00 In other words, if the jury had excluded Sundays only from its computation, the total verdict as assessed against plaintiff-in-error would have been less by $231,150. Argument to sustain this proposition would seem unnecessary, for in the absence of any proof showing that plaintiff-in-error actually did do business on Sundays and in view of the fact that Sunday is *dies non* in law it seems uncontrovertible that these days ought to have been excluded in computing any penalty to be assessed. The presumption that plaintiff-in-error did not do business on Sundays would seem to be conclusive in the absence of proof to the contrary. Supposing it had been shown that plaintiff-in-error stopped business altogether for a period of one month at a time and of two months at another time and otherwise conducted its business

in an irregular way, transacting business part of the time and doing absolutely none at other times, it certainly would not be contended that a verdict against the defendant for the full number of days between May 31, 1900, and April 29, 1907, would have been justified or authorized. In further support of the contention that it must be presumed that plaintiff-in-error did not do business on Sundays, in the absence of proof, we submit the further fact that under the law of Texas it is unlawful to transact business on Sunday and certainly it cannot be presumed that plaintiff-in-error violated the law in order that the verdict of the jury may be sustained upon such presumption.

## VIII.

**THE TEXAS ANTI-TRUST ACTS OF 1899 AND 1903, ARE SO VAGUE, INDEFINITE, AMBIGUOUS AND UNCERTAIN IN TERMS AS TO FAIL TO DESIGNATE ANY OFFENSE WITH SUCH CERTAINTY AS TO INFORM THE PUBLIC IN ADVANCE OF THE CONSTITUENTS OF THE OFFENSE SOUGHT TO BE DEFINED AND PUNISHED, AND THE PUNISHMENT OF THIS PLAINTIFF-IN-ERROR UNDER SAID STATUTES DEPRIVES IT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.**

Referring first to the Anti-Trust Act of May 25, 1899, it will be seen that the purported definition of a monopoly as contained in the second section of the act has reference to "any union, combination, etc., of capital, etc. between persons, firms, corporations, etc., whereby any one of the purposes or objects mentioned in the act is accomplished or sought to be accomplished or whereby any one or more of said purposes are promoted or attempted to be executed or carried out or whereby the several results described in the act are reasonably calculated to be produced." Section 6 of the same act prescribes that "if two or more persons or corporations who are

engaged in buying or selling any article of commerce, manufacture, etc., shall enter into any pool, trust, agreement, etc., to control or limit the trade in any such article or thing they shall be guilty of a conspiracty to defraud."

We contend that section 2 of the Act of 1899 above referred to is not a sufficient definition of an offense either under the general rules as laid down by sections 3, 6 and 9 of the Penal Code of the State of Texas or under the general rules of law applicable to the definition of any and every penal offense as the same is described and forbidden by statute. We refer particularly to that portion of the section which prohibits as a monopoly any union, combination, etc., of capital, etc., between persons, corporations, etc., "whereby the several results described herein are reasonably calculated to be produced."

One of the things prohibited by the first section of the Act is any trust, agreement, etc., to regulate or fix the price of any article of manufacture, etc. It may be conceded that that portion of Section 1, sufficiently defines an offense against the laws but we do not concede that the language "Whereby the several results described herein are reasonably calculated to be produced" refers with certainty to a trust or agreement to regulate or fix the price of any article. The generality of the language is rendered still more obscure when we look to the preceding clause of the sentence in which is found "Whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished" or "whereby any one or more of said purposes are promoted or attempted to be executed or carried out." In view of these clauses which seem to cover the entire field so far as any combination having for its purpose or object the regulating or fixing of prices is concerned, it is impossible to determine what is meant by the clause, "Whereby the several results described herein are reasonably calculated to be produced."

In the 8th paragraph of the court's charge to the jury, one of the issues submitted was whether there had existed within the period mentioned in the petition a combination or union between plaintiff-in-error and the Standard Oil Company of New

Jersey, "whereby the price in Texas of such oil will be reasonably calculated to be fixed or regulated." We submit that this construction of the language of the statute is not justifiable. Let it be granted, however, that the expression "Whereby the several results described herein are reasonably calculated to be produced" embraces all means by which the price of an article is reasonably calculated to be regulated or fixed, we are even then not rid of the serious difficulty as to the meaning of the words, "are reasonably calculated to be produced." We must remember that we are dealing here with a penal law and with the definition which it purports to give to an offense, and that under the provisions of the Penal Code of Texas and under the provisions of generally well known and uniformly recognized principles of law, a law which does not designate an offense with such certainty as to apprise the public of what are crimes under the law so that people may avoid the unwitting commission of offenses is inoperative.

This same objection may be made to the law when it is sought to apply the language, "Whereby the several results described herein are reasonably calculated to be produced" to section 6 of the Act of 1899, which forbids any two or more persons engaged in buying or selling any article of commerce to enter any pool or trust to control or limit the trade in any such article or thing. The trial court, however, in paragraph 2 of its charge (Record, p. 1142), informed the jury that any union or combination of its capital, property, etc., by a corporation, with the capital, property, etc., of any other person whereby the trade in any article of manufacture or merchandise in Texas would be reasonably calculated to be controlled or limited was forbidden by the Anti-Trust Act of May, 25, 1899. We submit that unless people can know in advance what is meant by this language it cannot be treated as creating or defining a crime.

Section 6 of the Act of 1899, under consideration, declares it to be a conspiracy to defraud if two or more persons or corporations who are engaged in buying or selling any article of commerce, etc., enter into any pool, trust or agreement, etc.

to control or limit the "trade" in any such article or thing. In order that people may understand what this means, they must of necessity first know what the word "trade" signifies. In the case of **Queen Insurancne Co. v. State,** (86 Texas, 250; 24 S. W., 397), it was said that the word "trade" is employed in three different senses: first, in that of the business of buying and selling; second, in that of an occupation generally; and third, in that of a mechanical employment, in contra-distinction to agriculture and the liberal arts. Applying this language of the highest court in Texas, we are of necessity left wholly in the dark as to which one of these three meanings of the word "trade" was intended by the said Act. If the word "trade" was intended to signify the business of buying and selling, what then is meant by "controlling" and "limiting" such trade? If we understand the word "control" as equivalent to "monopolize" —and it is only by conjecture that this signification can be attached to it—what meaning shall we then attach to the word "limit?" Each of these words must be supposed to have a meaning of its own. If, then, "control" is synonymous with "monopolize," the word "limit" must mean something else, and what else? Does it relate to the territory within which the trade is conducted? Or does it relate to the amount or quantity of the trade that shall be carried on? This obscurity, we contend, is sufficient to condemn the expression "limit the trade" as being wholly lacking in that precision and certainty necessary in the definition of offenses punishable under penal statutes.

In the case of **Augustine v. State,** (52 S. W. 77), the question was presented whether a statute making murder, by "mob violence," an offense, sufficiently defines such offense within the rule prescribed by the Texas Penal Code as to the certainty requisite and necessary in stating the elements of a crime. The Texas Court of Criminal Appeals in an elaborate opinion held that the statute did not sufficiently define an offense within the provisions of the Penal Code. These provisions directly laid down in the law of Texas are no more than the concrete and local expression of general rules and principles

of law uniformly recognized and approved as a part of the law generally obtaining throughout these United States. They may well be considered as much a part of the "law of the land" as that which prohibits a conviction without trial.

In the case of **Queen Insurance Company v. State,** (86 Texas, 250), the Supreme Court of Texas, in construing the words, "restriction in trade," contained in the Anti-Trust Act of 1889, strongly intimated, if it did not indeed hold, that these words were insufficient to designate any offense with that certainty necessary to make it punishable.

We repeat that it is a general and uniformly recognized principle of criminal law of this country that, unless the law upon the subject of crime designates the offense with such certainty as to inform the public in advance of that which constitutes the offense, the law is inoperative and void, and any person who is deprived of life, liberty or property under and by virtue of such Act may well complain that his rights under the XIV Amendment to the Federal Constitution are being violated.

The recent case of the **M. K. T. Ry. Co. v. State,** (100 S. W. 766, Texas), is a direct and valuable authority upon this proposition. In that case, the R. R. Company was prosecuted by an action, civil in form, for violating an act passed in 1905, requiring railroad companies to erect water closets at all stations and imposing a penalty of $100.00 for each week that any railroad company should fail to comply with the statute. The question was fairly presented to the Supreme Court of Texas whether, within the provisions of the Fourteenth Amendment to the United States Constitution that no state shall deprive any person of property without due process of law, the statute in question not having fixed any time with which such water closets should be erected, was a valid penal law. The court held that the statute was not valid and in the course of its opinion said:

> "It is a well established principle of statutory construction that penal statutes must be strictly construed in determining the liability of the person upon whom the penalty is imposed and that the more severe the penalty

and the more disastrous the consequence to the person subjected to the provisions of the statute the more rigid will be the construction of its provisions in favor of such persons and against the enforcement of such law (citing Sutherland's Statutory Construction, 322, and Potter's Dwarris, 244). A penal statute such as now before us, must be couched in such explicit terms that the party upon whom it is to operate may with reasonable certainty ascertain what the statute requires to be done and when it must be done; otherwise there would be no opportunity for a person charged with the duty to protect himself by performance of it according to law. (Citing Sutherland's Statutory Construction, 324, Potter's Dwarris, 246-251; Tozier v. U. S. 52 Fed. Rep., 917.) In the case last cited, Judge Brewer said: 'But in order to constitute a crime, the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act cannot depend upon whether the jury may think it reasonable or unreasonable.' Looking at this statute in the light of the above rule of construction, we find that it denounces against the railroad company a penalty of $100.00 a week for each county through which it operates its passenger trains and in which it maintains passenger stations for a failure to perform any one of several things which is enjoined upon it by the terms of the Act. The court judicially knows (which is a matter of common knowledge) that the railroad of plaintiff-in-error extends through a large number of counties in which are many stations. The statute provides that the penalties shall be inflicted for each week that the railroad shall fail or refuse or neglect to perform the duty therein prescribed in each county and at each station, and the question arises: When shall the railroad company be liable for the first weeks' penalties? Does the week begin to run from the first day when the law took effect? And if so, how can the railroad company protect itself? Since it would be required within the one week's time, according to that construction, to place in all the counties through which it runs, and at every depot in each county a closet or closets with all the equipments therein prescribed? That this would be practically impossible is evident, and such a requirement would be so oppressive and arbitrary that by no authority could it be held to be "due process of law." If it did not run from the first day upon which the statute took effect,

what time did the railroad have in which to comply with the statute before the penalties would be inflicted upon it? There is not a sentence in the law from which the railroad companies of the state could determine the time allowed for the completion of the work required except under the construction that all must have been completed within one week from July 14, 1905; surely such a law if enforced would take from the railroad company its property in the penalties exacted by the statute without due process of law, in violation of the principles of right."

In the case of **Tozier v. U. S.**, (52 Fed. Rep., 917), cited in the above case by the Supreme Court of Texas, the defendant was indicted for having given an undue and unreasonable preference and advantage to one shipper over another in violation of section 2 of the Interstate Commerce Act. The question was presented to the court whether the prohibition against the giving of undue and unreasonable preference and advantage in rates is such a characterization of the element of a crime as to justify the prosecution and conviction of a person charged with violating the law. The Court, speaking through Mr. Justice Brewer, decided that the language was not sufficiently definite to designate the offense, and in reaching this conclusion he said:

"But in order to constitute a crime, the act must be one which the party is able to know in advance whether it is criminal or not. Criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. There must be definiteness and certainty."

While the Supreme Court of Texas in the **M. K. & T.** case predicates its decision upon the proposition that unless a penal law defines a crime with definiteness and certainty it violates the Fourteenth Amendment to the Federal Constitution, yet in the **Tozier** case, Mr. Justice Brewer goes even further and distinctly recognizes and applies the rule as one of general application in criminal jurisprudence, irrespective of the provisions of the Fourteenth Amendment. It is of course immaterial whether the necessity that a definite and certain statement of the constituents of an offense arises from a general principle of criminal law or from the provisions of the Four-

teenth Amendment, since in either case the rule embodying, as it does, a recognized legal principle as applicable, is binding upon all the courts of the land.

In the case of the **L. & N. Ry. Co. v. Commonwealth** (Kentucky), (35 S. W. 129), the Railway Company was indicted for violating a statute of Kentucky prohibiting extortion in rates upon the part of railroad companies. The defendant was convicted in the trial court and the case taken on appeal to the Supreme Court of Kentucky, which reversed the judgment below in an elaborate and learned opinion, in the course of which it uses the following language:

> "That this statute leaves uncertain what shall be deemed a 'just and reasonable rate of toll or compensation' cannot be denied; and that different juries might reach different conclusions on the same testimony as to whether or not an offense has been committed must also be conceded. The criminality of the carrier's act, therefore, depends upon the jury's view of the reasonableness of the rate charged. And this latter depends upon many uncertain and complicated elements. That the corporation has fixed a rate which it considers will bring it only a fair return for its investments does not alter the nature of the act. Under this statute it is still a crime, though it cannot be known to be such until after an investigation by a jury, and then only in that particular case, as another jury may take a different view and holding the rate reasonable find the same act not to constitute an offense. There is no standard whatever fixed by the statute or attempted to be fixed by which the carrier may regulate its conduct. And it seems clear to us to be utterly repugnant to our system of laws to punish a person for an act, the criminality of which depends, not on any standard erected by the law, which may be known in advance, but on one erected by a jury; and especially so as that standard must be as variable and uncertain as the view of different juries may suggest, and as to which nothing can be known until after the commission of the crime."

In another portion of the same opinion the Court says:

> "When we look to the other side of the question, we find the contention of the state supported by neither

reason nor authority. No case can be found, we believe, where such indefinite legislation has been up-held by any court when a crime is sought to be imputed to the accused.'

The above authority would seem to show conclusively that in the opinion of the Supreme Court of Kentucky definiteness and certainty in the definition of an offense is necessary under the general principles of criminal law. The court, however, went further and held that an attempted definition of an offense, the same not possessing the requisite definiteness and certainty, is distinctly violative of the Fourteenth Amendment to the United States Constitution. This is clearly shown by the following language of the court:

> "If the infliction of penalities prescribed by this statute would not be the taking of property without due process of law, and in violation of both state and federal constitutions, we are not able to comprehend the force of our organic law."

The court quoted the same portion of the opinion of Judge Brewer in the **Tozier** case that was quoted by the Supreme Court of Texas, in the **M. K. & T.** case, and also refers to the provisions of the law of the Chinese Penal Code, referred to by Judge Brewer in the **Tozier** case, which reads as follows:

> "Whoever is guilty of improper conduct and of such as is contrary to the spirit of the laws, though not a breach of any specific part of it, shall be punished at least forty blows, and when the impropriety is of a serious nature with eighty blows."

The above was quoted by Judge Brewer to illustrate the proposition that there is very little difference between the Chinese law and a law which would make it an offense to charge more than a reasonable rate. The illustration is not without force in its application to the case at bar.

If we apply the legal principle, which was recognized and applied in the cases above cited, to the language, "whereby the several results described herein are reasonably calculated to be produced," and also the language, "to limit the trade in any such article or thing," it is apparent that the words convey no definite meaning, and that of necessity it must be left

to the jury to affix a meaning to them. As is clearly pointed out by the Supreme Court of Kentucky, different juries might then reach different conclusions upon precisely the same testimony, as to whether an offense had been committed or not within the meaning of such language, and the results must be as variable and uncertain as the views of different juries might suggest.

In this connection the following language used in the opinion in the case of the **Queen Insurance Company v. State,** above cited, is peculiarly apposite:

> "There is a maxim, that ignorance of the law excuses no one, which is not true as applied to every case. For a man is not guilty of theft who honestly takes property under an honest claim of right, though he may be mistaken as to the law. But it is true in the sense that no one can allege his ignorance of the law, which makes a certain act penal in justification of his commission of that act. If he be held bound to know the law, he should have the means of knowing it, and hence he should not be punished for the infringement of a statute unless it designates, with a fair degree of clearness and precision, the act or omission which is forbidden by it. The offense need not be defined in the logical or legal sense of that word, for general terms may be used which in themselves require to be defined. But the terms employed should be sufficiently definite in their meaning as plainly to designate the very act which is sought to be made punishable by law."

In discussing this same point, Mr. Hughes, in his recent scholarly work on Criminal Law, Sec. 2429, says:

> "The legal maxim '*ignorantia legis neminem excusat*' in its application to the law of crimes is subject, as it is sometimes in respect to civil rights, to certain important exceptions. Where the act done is *malum in se*, **or where the law is well settled and plain,** the maxim, ignorance of the law excuses no one, in its rigor will be applied, but where the **law is not settled, but is obscure,** and where the guilty intention being a necessary constituent of the offense is dependent upon the knowledge of the law, this rule, if enforced, would be misapplied."

In **Cutter v. State** (36 N. J. Law, 125), defendant, a Justice of the Peace, was indicted for extortion in taking fees to which he was not entitled. The defense set up was uncertainty in the language of the statute, and that the defendant had taken the monies innocently and under the belief that he had a right to take them. The court uses the exact language above quoted from Hughes on Criminal Law, and adds:

> "To give the maxim any force in such instances would be to turn it aside from its rational and original purpose, and to convert it into an instrument of injustice."

The same construction is recognized and applied in **Rex v. Hall,** 3 Car. P. 409 (Eng.), and in **State v. Brown,** 38 Kan. 390; 16 Pac. 259.

Turning now to the Act of 1903, we contend that the same obscurity is presented here as in the Act of 1899. In the first subdivision of Section 1 of the Anti-Trust Act of March 31, 1903, a trust is declared to result from the combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons "which create, or may tend to create or carry out restrictions in the free pursuit of a business authorized or permitted by the laws of this state (Texas)." This section is the basis of the 9th paragraph of the trial court's charge to the jury (Record, P. 1146), wherein the issue was submitted whether the defendant (plaintiff-in-error) had entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas or carry out in Texas, restrictions in the free pursuit in that state of the business of selling oil refined from petroleum.

If we grant for the purpose of argument that the term "restriction in the free pursuit of a business" is sufficiently definite to constitute an offense—which, however, we expressly do not concede—the difficulty remains of attaching any definite meaning to the expression "tending to create restrictions in the free pursuit of a business." The obscurity in the above language is the same as that which we have heretofore discussed in the

language of the second section of the Act of 1899, "whereby the several results described herein are reasonably calculated to be produced." Even if it were possible to form an adequate conception of a restriction in the pursuit of a lawful business, it is not possible to do so in respect to what may "tend" to accomplish that result. The only limitation upon "tendencies" is the fertility of the human mind in tracing the association or connection of events. An astute metaphysician, a profound logician, a skilled scientific thinker, all these may well perceive a tendency, which persons of ordinary mental capacity, minds not trained to such a high degree of scientific accuracy in perception and reasoning, would certainly not be so keen to discover, or probably never discover. What shall be the test or criterion by which to determine whether or when one thing "tends" to produce another? We submit that it is hard to imagine a case in which indefiniteness could be more indefinite, uncertainty more uncertain.

We desire further, to call the attention of the court to the fact that, while the trial court failed entirely to make any concrete application of that portion of Section 1 of the Act of 1903, which purports to define a trust as "a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons to create, or which may tend to create, or carry out restrictions in trade," yet it included such purported definition in that portion of its charge in the second paragraph (Record, p. 1143), wherein the court sought to inform the jury what things constitute a trust under the Anti-Trust Act of 1903. Consequently, if the jury considered at all—and we must assume that it did—the abstract definition given by the court of a trust under the Anti-Trust Act of 1903, we must conclude that the jury attached enough importance to the charge given by the court upon the subject, to attempt to apply the same to the facts presented in evidence. This same expression "restriction in trade," was the very expression so emphatically condemned by the Supreme Court of Texas in the case of the **Queen Insurance Company v. State,** *supra*, as being wholly insufficient to designate an offense. If, then, the

term "restriction in trade," possesses no definite meaning, how much more uncertain, ambiguous and indefinite must be the statement "which may tend to create restrictions in trade."

Section 2 of the Anti-Trust Act of 1903 defines a monopoly as a combination or consolidation of two or more corporations affected by the direction of the affairs of such two or more corporations being in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust, as defined in the first section of the Act. In the tenth paragraph of the trial court's charge to the jury (Record, p. 1147), it submitted as an issue the bringing of the affairs of plaintiff-in-error and the affairs of the Standard Oil Company of New Jersey under the same management or control under such circumstances that such management or control created or tended to create or carry out restrictions in the sale in Texas of oil, in contravention of the above prohibition.

The argument above submitted, as to the uncertainty and indefiniteness of the words "which tends to create a restriction in trade," applies with equal force to this section, we deem it unnecessary to repeat it. This indefiniteness and uncertainty which we contend characterizes both the Acts of 1899 and 1903, for the alleged violation of which this plaintiff-in-error stands convicted, are of importance enough to demand further discussion than we have hitherto indulged in, even at the risk of becoming tedious.

If the designation "whereby the several results described herein are reasonably calculated to be produced," as the same is used in the Act of 1899, should be applied to offenses generally, its inadequacy as a definition would be recognized at a glance. For example, if after defining the elements of murder, the statute should further conclude by denouncing as an offense anything "whereby murder is reasonably calculated to be produced," there would be no hesitation in pronouncing the so-called definition utterly insufficient to describe a crime. Let it be supposed that such a statute should provide that anything reasonably calculated to produce the crime of murder

should constitute an offense. What information would be furnished to the public in respect to what was intended to be forbidden? Would the purchase, loading or carrying of a revolver be reasonably calculated to produce the crime of murder? Would the conversation between two men in which they agreed that a certain individual was such a bad citizen that his assassination would be justifiable be reasonably calculated to produce the crime of murder? Would the use of denunciatory and defamatory language which, if it reached the ears of its object, would doubtless so incense him as to provoke his resentment be reasonably calculated to produce the crime of murder? Would the bearing of personal malice toward an individual be reasonably calculated to produce the crime of murder? If these or any of these things should be deemed reasonably calculated to produce crime, what assurance have we that different men would agree in the conclusion as to the probable result? We might certainly expect as many different verdicts as there would be different juries in respect to these or any of these questions. If it should be left to the discretion of a jury to determine that a person whose words, acts or purposes brought him within any of these hypotheses, according to which conceivably a jury may consider him guilty of that which was reasonably calculated to produce murder, what safety would there be for any man in society? His life or his liberty would ever depend upon what some particular jury might think as constituting a violation of the law, and, in advance of a verdict in his particular case, he would have no means of determining whether what he had regarded as harmless would be considered by the jury as criminal. Surely, in a civilized country whose proudest boast is that it is governed by law and not by men, no person should be condemned as a criminal upon such uncertainties as these.

Let us finally apply the idea we are seeking to emphasize to a supposed case having a direct relation to the statute under consideration. Suppose that two merchants, residing in a town not reached by any railroad, should agree that they were to oppose a proposition for a railroad company to con-

struct its line into and through the town in consideration of the donation of a certain amount of right-of-way and depot grounds in the town, and a certain amount of money. These merchants might honestly think that the building of a railroad through their town would cut off a certain amount of trade by inducing the building of other towns in the vicinity, and, upon this idea alone, base their opposition. Would the combination of their acts in opposition to the building of this railroad line be reasonably calculated to limit the trade in the goods sold by them in their community—would it tend to produce a restriction in trade? A jury might well think that such was the object and such was the effect of the combination, and yet, every intelligent man would stand appalled at the proposition that these merchants had violated any law. If it is to be left to a jury to say what is reasonably calculated to produce a certain result, what remedy will a person, deemed by such a jury to be guilty, have after conviction? The very fact that the matter was in the discretion of the jury would necessarily deprive a convicted person of any redress in an appellate tribunal under a system of jurisprudence under which the findings of juries upon a question of fact are conclusive.

From the foregoing, we contend that a distinct federal question is here involved, namely whether the definitions in the Texas Anti-Trust Acts of 1899 and 1903, for the alleged violation of which this plaintiff-in-error stands convicted, are sufficiently certain to afford that due process of law guaranteed by the Fourteenth Amendment to the Federal Constitution.

It does not seem necessary to encumber this argument with any further citation of authorities on what is "due process of law," but it seems advisable to point out at least a few authorities which deal with this point, and which have more or less direct reference to the peculiar question here involved.

In the **C. B. & Q. Ry. Co. v. Chicago** (166 U. S. 226), this court, in discussing the term "due process of law," uses the following language:

> "But a State may not by any of its agencies disregard the prohibitions of the Fourteenth Amendment; its judi-

cial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, **and yet it may be that its final action would be inconsistent with the amendment.** In determining what is "due process of law' regard must be had as to substance and not to form."

Inasmuch as the restraint of the Fourteenth Amendment applies as well to the legislative as to the judicial and the executive departments of the government, it is unnecessary either to cite authorities or argue to establish the proposition that everything that may pass under the form of legislative enactment is not always "due process." If it were, then, the restriction placed upon the legislative department is meaningless and valueless. In the Dartmouth College case (4 Wheaton, 518), Mr. Webster gave the following definition of "due process of law," which has often since been quoted with approval:

> "By the 'law of the land' is most clearly intended the general law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not 'law of the land' "

In **Hagar v. Reclamation District** (111 U. S. 701), this court observed:

> "It is sufficient to observe here that by 'due process of law' is meant one which, following the forms of law, is appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by the law, it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty or property which may result in the deprivation of either without the observance of those general rules established in our system of jurisprudence for the security of private rights."

In the **State v. Loomis** (115 Mo. 307), the Supreme Court of

Missouri declared the constitutional declaration: "That no person shall be deprived of life, liberty or property without 'due process of law.'" was designed to protect and preserve the existing rights of the citizen against arbitrary legislation as well as against arbitrary executive and judicial acts.

In the case of **People v. Gillson,** (109 New York, 389), the court speaking through Judge Peckham, now a member of this Court, said, in passing upon the question of "due process of law,"

> "The legislature cannot without reason and arbitrarily infringe upon the liberty or the property rights of any person within the protection of the constitution of this state. And although every legislature may determine what is proper exercise of its police power, its decision is subject to the scrutiny of the courts."

From these decisions, which might be greatly multiplied, it seems manifest that the Fourteenth Amendment, in providing that no person shall be deprived of life, liberty or property without due process of law, was not only designed to prevent the state from depriving any person of a trial in some regular form of judicial proceeding, but was also intended to prevent the states from enacting arbitrary, capricious and uncertain laws which would necessarily have the effect of depriving persons of their life, liberty or property. It is true that, under all the authorities, it is necessary that the law shall proceed upon inquiry, shall give the accused the right to be heard in his own defense and shall condemn only after hearing. More than once it has been decided that a personal judgment cannot be rendered without personal service. But of what avail would notice or hearing or trial be, if that of which notice is given has no meaning or, what is equivalent to the same thing, is so uncertain and indefinite that its meaning cannot be ascertained? In the **M. K. & T. Ry. Co.** case, (100 S. W. 766, Texas), and in the **L. & N. Ry. Co.** case, (35 S. W. 129, Kentucky), it is expressly decided that a penal statute, to use the language of Judge Brown in the former case:

> "Must be couched in such explicit terms that the parties upon whom it is to operate may with reasonable certainty

ascertain what the statute requires to be done and when it must be done, otherwise there would be no opportunity for a person charged with the duty to protect himself by the performance of that according to law."

In each of these cases the statute was condemned as unconstitutional and void, by reason of its conflict with the "due process of law" clause in the Fourteenth Amendment in that it failed to define the thing forbidden with such certainty and definiteness as to inform persons in advance of the constituents of the offenses attempted to be defined. We submit that under all the authorities the above statutes fall within this forbidden class and that thereby this plaintiff-in-error, against whom an enormous fine has been assessed by reason of an alleged violation of these acts, is deprived of its property without "due process of law," contrary to the XIV Amendment to the Federal Constitution.

## IX.

## THE DENIAL OF ANY PERIOD OF LIMITATION IN BAR OF A SUIT AGAINST PLAINTIFF-IN-ERROR TO RECOVER FINES OR PENALTIES OR FORFEIT ITS PERMIT TO DO BUSINESS, IS A DENIAL OF THE EQUAL PROTECTION OF THE LAWS AND DEPRIVES PLAINTIFF-IN-ERROR OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

From the time our forefathers declared in the Declaration of Independence that all men are created equal, if there has been any one principle that has been more sacred to the American citizen than any other, it has been that the laws of the country shall operate with equality and uniformity upon all persons subject thereto and that the laws shall be administered with such fairness and impartiality that all litigants shall be treated alike by the courts. This fundamental principle was expressly embodied in our constitutional law when the Fourteenth Amendment was adopted, but even before that time its recognition had been universal, so much so, in fact, that it had

not even been deemed necessary to make express provision for its preservation in the Federal Constitution as originally written.

In answer to the suit of the State of Texas herein, plaintiff-in-error specially pleaded the statute of limitations as found in Article 219, of the Texas Code of Criminal Procedure, and Articles 3354 and 3358 of the Revised Civil Statutes of Texas, being all the statutes of that State in anywise bearing upon the facts presented by the petition of the State. The exceptions of this plaintiff-in-error to the petition of the State of Texas, objecting that the cause of action of the State, if it had any, was barred either under one or all of these statutes, were respectively overruled, thereby denying this plaintiff-in-error the equal protection of the laws, contrary to the provisions of the federal constitution and denying it the "Due Process of Law" guaranteed by the same constitution.

(*a.*) BAR OF STATUTE OF LIMITATION UNDER ARTICLE 219, TEXAS CODE OF CRIMINAL PROCEDURE.

It will be remembered that plaintiff's original petition herein was not filed until the 22nd day of September, 1906, and on the face of plaintiff's pleadings, plaintiff's cause of action, if any it ever had, as to the fines and penalties sought to be recovered, accrued more than two years before the filing of the suit. For this reason it was objected that plaintiff's cause of action, if any it had, was barred by the statute of limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas.

In the argument under Section *a* of Paragraph 2 herein, in support of the proposition that the *ex post facto* effect of a law cannot be evaded by giving it a civil form, we have already quite fully discussed the proposition that the respective Anti-Trust Acts of 1899 and 1903, for the violation of which this plaintiff-in-error stands convicted, must be treated as penal laws, notwithstanding the civil form of the action by which the State of Texas has sought to enforce the same and punish the

violation thereof. In this connection we beg to refer the court to the argument and authorities above cited.

If we are correct in the position that the state's cause of action is criminal in its nature, it logically follows that the limitation applicable is that prescribed by Article 219, of the Code of Criminal Procedure of Texas, which is as follows:

> "For all misdemeanors an indictment or information may be presented within two years from the commission of the offense and not afterward."

Our conclusion here must be correct, unless it be that the offense with which plaintiff-in-error is charged is not a misdemeanor or because the prosecution is not by indictment or information.

It is true that neither of the Anti-Trust Acts above mentioned characterizes the violations thereof as misdemeanors, but since each statute denounces such violations as an offense and prescribes penalties for the wrong done to the public, such offense, under the Texas Penal Code (Article 55) must either be a felony or misdemeanor, a classification well recognized in our general criminal jurisprudence. The article referred to, prescribes that every offense which is punishable by death or by imprisonment in the penitentiary, either absolutely or as an alternative, is a felony, and every other offense is a misdemeanor.

If it be contended that in order to constitute an offense or misdemeanor, it is necessary that it shall be so denominated, we submit that, in view of the express provisions of the Penal Code declaring what offenses constitute felonies and what offenses constitute misdemeanors, it is superfluous in any case to state expressly whether the offense is one or the other. The penalty prescribed must, of necessity, give it the character of one or the other; furthermore, an examination of the Penal Code of the State of Texas, as well as that of other states in the Union, will show that a large majority of offenses therein described are not characterized expressly either as felonies or misdemeanors, but their character is left to be determined entirely by some such statute as the above one quoted from the

Texas Penal Code, describing what penalty attaching to an offense shall constitute it a felony and declaring that all others shall be misdemeanors. Occasionally a forbidden thing is called a felony and occasionally a forbidden thing is called a misdemeanor. But in the great majority of instances the elements of the offense are given and the penalties prescribed, without stating what it is, without stating whether it be a felony or misdemeanor. It seems incontrovertible that, whereas the punishment under the Anti-Trust Acts of 1899 and 1903, (certainly in so far as they are possible of application to this plaintiff-in-error under the latter act) consist of pecuniary fines, the offenses therein described of necessity fall within the class of misdemeanors.

If it be objected that Article 219, of the Code of Criminal Procedure is not applicable because the prosecution in this case was neither commenced by indictment or information, we answer that, while technically neither an indictment nor information was presented against this plaintiff-in-error, yet, the proceedings instituted by the Attorney-General of the State of Texas, and the county attorney of Travis County in the District Court of said County against this plaintiff-in-error, constituted an information within the strict legal meaning of that word.

In the case of **Klepper v. State,** (4 Texas, 242), it was contended that in view of the provisions of the constitution then in force that no person should be holden to answer for any criminal charge but on indictment or information, a prosecution commenced by complaint, sworn before a Justice of the Peace, was unconstitutional and void. The Supreme Court of Texas, disposed of the contention in this language:

> "The word information implies no particular form. It requires nothing more than that the accused shall be informed thereunder of the nature of the offense with which he is charged and put on trial. And this requisition is fully answered by the warrant on which he is brought before the Justice for trial."

This statement of the law is in harmony with the general

rule well-recognized, a careful statement of which is found in Cyc. Vol. 22, p. 186:

> "An information is a written accusation of crime preferred by the District Attorney, or other public prosecuting officer without the intervention of a grand jury."

It is pertinent to observe here that unless the word "information" is given the broad signification for which we contend, a prosecution commenced at the present time by a complaint before a Justice of the Peace and by the issuance of a warrant by him, would never be barred by the statute of limitation; and certainly it will not be contended that offenses cognizable before a Justice of the Peace are not subject to limitation, yet the only statute under which such limitation could be asserted in such cases is the one upon which we here rely, namely, Article 219, of the Code of Criminal Procedure.

We wholly fail to appreciate the idea that there is an insurmountable and impenetrable barrier between the Penal Code and the Code of Criminal Procedure and the provisions of the Revised Civil Statutes, whatever may be their nature, so that in no case can the provisions of the criminal law be looked to and applied in actions which are civil in form. We apprehend that our system of jurisprudence is a unit and not a series of isolated things, and that the provisions of the Civil Statutes may be invoked in prosecutions criminal in form and that the provisions of the Penal Code and Code of Criminal Procedure may be invoked in actions civil in form, whenever the nature of the cause of action is criminal. If the provisions of the civil statutes cannot be looked to at all in criminal prosecutions, then there is no way by which a jury may be obtained in criminal cases, since the only provisions covering the selection of juries are to be found in the Civil Statutes. So, again, we find as a general law obtaining in practically every state of the Union that when a defendant in a criminal cause seeks to obtain the testimony of a witness by taking his deposition, he does so by virtue of the Civil Statute prescribing the form and means for taking such deposition.

The contention herein is supported by decisions in the State

of Texas, and it would seem unnecessary to go beyond these for authorities.

In the case of **Stucksbury v. Swan,** (85 Texas, 563), the Supreme Court resorted both to the Penal Code and the Code of Criminal Procedure to determine the law with reference to the propriety of the Court in a civil case charging upon presumptions and the burden of proof.

In the case of the **Queen Insurance Company v. State,** (86 Texas, 250; 24 S. W. 397), a suit more closely applicable to the facts herein, a civil action was brought against a number of insurance companies to enjoin them from carrying out an agreement with respect to agents' commissions and for the forfeiture of the several defendants' permits to do business in Texas. The gravamen of the complaint of the State in that case was that the alleged agreement among the insurance companies was in violation of the Anti-Trust Act of 1889, which was then in existence. The Supreme Court, however, held that the words, "restrictions in trade," used in the Anti-Trust Act of 1889, did not sufficiently define an offense against the laws, and in determining that question the court quoted and discussed articles 3, 6 and 9 of the general provisions of the Penal Code, together with the decisions of the Court of Criminal Appeals construing those provisions. From this, we have no hesitation in suggesting that if the provisions of the Penal Code are applicable to the Anti-Trust Act of 1889, they are equally applicable to the Anti-Trust Act of 1899.

We have already referred in argument, under a foregoing section, to the recent case of the **M. K. & T. Ry. Company v. the State,** (100 S. W. Rep., 766), wherein the Supreme Court of Texas had occasion to pass upon an Act of the 29th Legislature of Texas, requiring railroad companies under penalties to provide and keep separate water-closets at each passenger station on their lines of railway. In the course of that decision, the court repeatedly spoke of the statute as a penal statute, and in referring to the necessity of a penal statute defining the

forbidden thing with reasonable certainty, the court referred with approbation to the language of Judge Brewer in a Federal Court case, in which he declared that in order to constitute a crime, the act must be one which the party could be able to know in advance whether it was criminal or not. The suit in the **M. K. & T. Ry. Co.** case was civil in form, for the recovery of penalties against the railroad company, yet the Supreme Court of Texas clearly recognized that the thing charged was a crime, and invoked a well recognized rule of criminal law in deciding the case.

The case of the **Commonwealth v. The Equitable Life Assurance Co.,** (38 S. W. 491), bears closely upon the question under discussion. In that case a suit, civil in form, was instituted by the State of Kentucky against the Insurance Company to recover a fine from the defendant for the violation of the provisions of the Kentucky Statute forbidding rebates of premiums, payable on policies issued by the defendant. After holding that a demurrer filed by the defendant to plaintiff's petition must be sustained, the Supreme Court observed:

> "The only question presented by the demurrer aforesaid is whether said action at the date of its institution was barred by the statute of limitations in such cases made and provided. It is contended by appellant's counsel that the limitations provided by section 2515 of the Kentucky Statutes, which is fixed at five years, applies to actions brought under section 656 of the Kentucky Statutes and in support of his contention he makes a very ingenious argument. On the other hand, it is contended by appellee that the limitation upon actions under this section is fixed by the provisions of section 1138, and expires in one year from the date of their violation. In our opinion, these sections of the Kentucky Statutes are intended to relate to two entirely different causes of actions and are in no sense repugnant to each other, although they both apply to actions to recover penalties. Section 2515, is found in Chapter 80, a chapter devoted entirely to fixing limitations upon all causes of civil actions, while section 1138 is found in chapter 36, which is entirely devoted to the subject of crimes and their punishment. This is certainly a penal action brought to

recover a penalty for the violation of a penal statute, which is imposed as a punishment for a public offense; and, in our opinion, the limitation upon the same is one year from the date when said cause of action accrued. Section 2515 was intended to apply to civil actions where damages in the nature of a penalty are annexed. The distinction between these two sections was pointed out by this court in the case of Brown v. Commonwealth, 91 Ky. 480; the judgment of the lower court is affirmed."

It is true, as shown by the case of **Boyd v. Randolph,** (16 S. W. 133), referred to by the Court, that under the head of "Crimes and Punishments," in the statutes of Kentucky, it is provided that "prosecution for the recovery of a penalty for the violation of any statute or penal law and any action or procedure at the instance of any person to recover any such penalty shall be commenced within one year." This statute evidently applies both to prosecutions by the state to recover penalties for the violation of the penal statutes and also *qui tam* actions brought by informers, and it is to the latter cause of actions that the latter portion of the provision relating to an action or procedure refers. Since the action in the Equitable Life Assurance Company was not *qui tam*, but was brought directly by the state, for its sole benefit, it is evident that the court in that cause applied the provisions contained in the criminal statutes for the bringing of prosecutions within one year, to an action civil in form to recover penalties in favor of the state for the violation of a public statute. If we do not misconstrue this case, it is an authority directly upon the point herein presented to the court.

We cannot help observing that if the object of a suit is to recover penalties for a public wrong, to sanction the proposition that the rules of the civil statutes are to apply whenever the action is civil in form, but that the rules of the criminal statutes are alone to apply whenever the action is criminal in form, even though the object in each case is one and the same, and each is designed to punish a violation of the law, is as clear a case as can be conceived, in which the substance is sacrificed to the form. We cannot believe that our courts will countenance any

such distinction, when the result would be to produce the most serious inequalities in the administration of justice by virtue of, not what an accused person has done, but by virtue of the method in proceeding against him. We cannot concede that this is that "due process of law" which is guaranteed by the Federal Constitution.

It is true that the Court of Civil Appeals of Texas, in the case of the **Waters-Pierce Oil Company v. State**, (44 S. W. 936), refused to recognize the rule that in a prosecution in a civil suit to recover penalties for violating the Anti-Trust Laws of 1899, the guilt of the defendant should be established beyond a reasonable doubt. An examination of that case and the facts before the court will show that all that was said by the court on that point must be regarded as *dicta* since it clearly appears from the decision that that particular question was not properly raised. We wish to state further that it is very probable that the attention of the court was not called to the point that the suit, through civil in form, was based upon a cause of action criminal in its nature. This would seem to be indicated by the following language used by the court in its opinion in the case:

> "This is a **civil** controversy and, as has been previously said by this court in an opinion in which a number of cases were cited, in no controversy of a civil nature would it be proper for the courts of this state to give such a charge."

The authority referred to by the court was the case of **Pace v. The Land and Mortgage Co.,** (43 S. W. 36), in which the question decided was whether in a case in which it is sought to prove by parol evidence mutual mistake or fraud in a written contract for the purpose of having such written contract changed, the law required proof of that fact to be made beyond a reasonable doubt. It is very probable that in repudiating the doctrine of reasonable doubt as applied to the case before the court, the court had in mind the law, which is so well stated by Judge Sanborn, in the case of **U. S. v. Shapleigh,** (54 Fed. Rep., 134), as follows:

> "It is now settled by the great current of the authorities in this country that where a criminal act is alleged in a civil suit—in a suit that is civil not in form merely, but in its nature and purpose—proof of the criminal act beyond a reasonable doubt is not required to warrant a verdict or decision in favor of the party who makes the allegation."

The force of the **Pace** case, above referred to, is further weakened by the fact that Chief Justice Fisher, who wrote the opinion in that case, expressed in a separate opinion in the case of the **State v. Waters-Pierce Oil Company,** *supra*, serious doubt as to whether the latter case was a criminal case, in view of the overwhelming weight of authority to the effect that it was. The court of Civil Appeals of Texas, in the Waters-Pierce Oil Company suit, above referred to, further held that a suit, civil in form, brought by the state to recover penalties for violations of the Anti-Trust Act of 1899, was not a criminal case within the meaning of Section 26, Article 5, of the Constitution of Texas, providing that the state shall have no right of appeal in criminal cases. The decision of the Court of Civil Appeals was based upon its construction of Section 8 of Article 5, of the constitution of Texas, defining the jurisdiction of the District Court. We do not question that the court reached the correct conclusion in that case when it held that a suit to recover penalties is not a criminal case within the meaning of the section of the constitution defining the jurisdiction of district courts. There were, probably, however, some expressions in the opinion of the court which were not at all necessary to the proper disposition of the case. The court held that the overwhelming weight of authority seemed to support the proposition that the term term, "criminal case," when other language is not used indicating a restricted meaning, includes every proceeding on behalf of the state for the enforcement of a penalty prescribed for the violation of a statute. The court, however felt constrained, on account of the apparent meaning of the words, "criminal cases," used in defining the jurisdiction of district courts, to hold that the suit to recover penalties for the violation of the statute is not a "criminal case," as that term is used in the constitution of Texas, de-

fining the jurisdiction of the courts. The real question before the court was what is meant by the term, "criminal case" in the constitution, in respect to the question of jurisdiction. The court had in mind that the provisions of the constitution, which were considered in that case, had relation only to the matter of jurisdiction, viewed with respect to the form of proceeding; for the constitution, employing the term, "criminal cases," evidently has reference to the form in which said proceedings are instituted.

Without stopping to draw nice distinctions or split hairs between causes of action of a civil and those of a criminal nature, the design of the Court of Appeals was to make it clear that the district court should have jurisdiction in all criminal cases of the grade of felony prosecuted by indictment and in all suits, civil in form, brought on behalf of the state to recover penalties for forfeitures and escheats. We must proceed upon the assumption that the makers of the constitution were familiar with the universal rule of law that a suit by the state to recover penalties for the violation of a statute is founded upon a cause of action, criminal in its character. If there had been occasion for them to express themselves on the subject, they would have so declared; but for the purposes of their work—for the purpose of defining and limiting the jurisdiction of the courts of the state— there was no occasion for them to make any declaration upon the subject.

It seems apparent that the words, "criminal case," as employed in the Texas Constitution, and as used by the court in the **Waters-Pierce Oil Company** case, have a somewhat more restricted meaning than is attached to them in most of the cases of actions for the recovery of penalties; as already pointed out, this limited meaning was affixed solely with reference to the question of jurisdiction of inferior courts. It may be that, as a general proposition, the term, "criminal case," indicates merely the form of proceeding. If this is true, then when the courts have spoken of a suit by the state to recover penalties for the violation of a statute as a "criminal case," they have clearly fallen into an inaccuracy.

In the case of **Wisconsin v. Pelican Insurance Co.** (127 U. S. 265), which we have already discussed, Mr. Justice Gray, doubtless appreciating the confusion (double meaning) resulting from the meaning of the term, "criminal case," refers throughout the decision to the plaintiff's cause of action as one "criminal in its nature." This method of treating the subject relieves it of the embarrassment produced by the ambiguity of the term, "criminal case." In short, if we consider that term as relating to the form of proceeding as distinguished from the cause upon which the proceeding is founded, we get a clearer view of the subject. The distinction drawn is a sound one, because we readily appreciate the distinction between the form in which a case is brought and the cause of action which constitutes the foundation of the suit. It is evident that the attention of the Court of Civil Appeals of Texas was not directed to this distinction when discussing the **Waters-Pierce Oil Company** case, nor was it necessary that it should be, in the light of the facts which were then before the court and concerning which a decision was sought. It is to be noted in passing that the **Waters-Pierce Oil Company** case, which went on writ of error to this Court, (177 U. S. 28), was decided by this Court in a brief opinion which did not in any wise touch upon the question here under discussion.

We submit that the value of the decision in the case of the **State v. The Waters-Pierce Oil Company,** by the Court of Civil Appeals of Texas, as constituting a precedent, must be limited to the one great question which was before the court and which was no doubt correctly decided. Mr. Chief Justice Fisher, in a separate opinion stated that, in view of the overwhelming weight of authority on the subject, he was not prepared at that time to assent to the view that the case was not a criminal case, although he said that he did not intend his statement to be considered as an express dissent from the view of the majority of the court. He evidently had in mind the unbroken line of authorities holding that the fact that the suit for penalties is civil in form, does not change the character of the cause of action, which is criminal in its nature. Like Judge

Bradley in the **Boyd** case, and Judge Sanborn in the **Shapleigh** case, he looked upon the term, "criminal case" as including that upon which the cause of action itself is founded.

In further argument on this point, we desire to call the attention of the Court to the term, "criminal case" as used in the Fifth Amendment to the Constitution of the United States, which declares that no person shall be compelled in a "criminal case" to be a witness against himself. It is uniformly recognized that the phrase as used here is used in its most comprehensive sense, as indicating not merely the form but the substance of the action. We have already shown that the use of this phrase in the Texas Constitution, in prescribing the jurisdiction of courts, relates to the form of the proceeding only; the same expression used in the Fifth Amendment to the Federal Constitution refers to both form and substance. There is no conflict here with respect to the use of the term. Definite objects were in view. The phrase, as used in the Constitution of Texas, regarded merely the form of the proceeding, since nothing further was necessary in determining the jurisdiction of the different courts of the state; but in the Fifth Amendment to the Federal Constitution, in view of the fact that the same injustice would be done the defendant if he should be required to be a witness against himself in a civil proceeding based upon a criminal cause of action that would be inflicted upon him if he should be prosecuted by indictment or information, the phrase was employed in such a sense that it serves as a shield to any person charged with the violation of a penal law, irrespective of the method or form adopted or employed to enforce such law.

That offenses should be subject to the law of limitation is universally recognized in the legislation of every state in the Federal Union. And so important is the protection of limitation that the universal rule appears to be that the defendant accused of an offense is not even required to set up specifically the bar of the statute; in other words, the prosecution for an offense cannot be sucessfully maintained after the lapse of the statutory time for its institution. In this cause, in which

under the Anti-Trust Act of May 25, 1899, the penalty for each violation of the Act is any sum not less than $200.00 nor more than $5,000.00 per day, and in which the jury for the alleged violation of the act imposed penalties upon plaintiff-in-error at the rate of $1,500.00 per day for a period of 1033 days, the value of the limitation to this plaintiff-in-error cannot be overestimated. If the State of Texas, in its prosecution under the above act is subject to no limitation, then it can wait any indefinite period of time until penalties have accumulated to such an extent that their enforcement will wipe out every vestige of property owned by any defendant. We have already pointed out that this case, though civil in form, by virtue of the fact that the cause of action upon which it is predicated is criminal in its nature, must be held to come within the meaning of the terms of the statute of limitation prescribed by Article 219, of the Code of Criminal Procedure, above quoted. If it be contended that the terms of that statute do not literally embrace this case, we submit that since in construing the statute of limitation as well as other statutes, the primary rule of construction is to ascertain the legislative intent, there can be no reasonable doubt that Article 219, was intended to apply to this class of cases as well as to cases prosecuted by proceedings distinctly criminal in form. We apprehend that the court will find much less difficulty in bringing this case within the application of the above statute of limitation than was experienced by the courts in deciding that the English Statute of James I., prescribing periods of limitation, applied to and included the action of *assumpsit*. In referring to the Statute of James I. and its construction by the courts, Mr. Wood, in section 16, of his scholarly work on Limitations observes:

> "Although there is no express mention of the action of *assumpsit* which was at the period of its enactment the most important of all actions, yet, as it was clear that this omission was unintentional, it was construed as embracing that action by fair intendment, and as coming within the reason of the statutes, and also coming under the head of trespass on the case."

We further apprehend that the court will find less difficulty in bringing this case within the application of Article 219 of the Texas Code of Criminal Procedure than did this court in the cases of *ex parte* **Lange** (18 Wallace, 163), wherein it is held that the provision of the Fifth Amendment to the Constitution of the United States that no person shall be twice put in jeopardy of life or limb includes all criminal cases whether felonies or misdemeanors and whether punishable by death, confinement in the penitentiary or **pecuniary fines.** The ground upon which this Court based its interpretation of the Fifth Amendment is clearly indicated in the following extract from the opinion in that case:

> "It is very clearly the spirit of the instrument to prevent a second punishment under judicial proceedings for the same crime, so far as the common law gave protection."

If the Court in this case shall look to the spirit of the law as it did in the **Lange** case, and as it did the English Courts in construing the statute of James I., it would seem that there can be no doubt that even if difficulty should be found in including this case within the literal language of Article 219 of the Texas Code of Criminal Procedure, it must be true that the case falls within the true purpose, intent and spirit of that article. We submit, however, that there can be no reasonable doubt that this case properly comes within the language of the above statute of limitation, when the same is properly interpreted.

If it be insisted that the form of a proceeding is to be held final in determining whether or not the action is subject to the bar of the statute of limitation, it would leave every defendant at the complete mercy of the prosecutor, who, by choosing the form of his action, civil or criminal, makes himself wholly master of the situation. Such a conclusion violates every sense and spirit of fairness and justice, and is contrary to every principle of equality before the law, and of uniform application of the law. Every citizen of this country, however little he may know of the intricacies of the administration of government, however little he may know of the technicalities of law, has a pretty clear conception in his mind of what is meant by

the saying "equal rights to all and special privileges to none." That phrase to him sums up his conception of justice fairly and equally administered—not according to the caprice, the good-will or prejudice of some executive officer, but according to recognized and established rules of law under which he feels himself safe in the assurance that whatever he may do to bring himself in contact with the machinery of the law, that machinery will operate against him no differently that it does against another under the same facts and circumstances.

Conceding that a large discretion is left to the legislature in classifying persons and things for the purpose of regulation and control, it is at the same time too clear for controversy that any classification so made must be reasonable and rest upon substantial differences if it would be sustained. Time and time again this tribunal has set the seal of its disapproval and condemnation upon arbitrary distinctions in legislation. Out of the many cases which may be cited in support of this proposition, we refer particularly to the case of the **G. C. & S. F. Ry. Co. v. Ellis** (165 U. S. 150), in which this Court, speaking through Mr. Justice Brewer, says:

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground —some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.

Let us suppose two wrongs, each statutory offenses, *mala prohibita*, and each punishable by a pecuniary fine of, say, $100.00, imposed in the one case at the end of a prosecution criminal in form, and based upon an indictment or information. and imposed in the other case at the end of a prosecution civil in form, to recover penalties for the violation of statute. It is perfectly apparent that the object of each proceeding is precisely the same; each is designed and instituted by the government to punish a public wrong, and each falls within the class of misdemeanors. But one of these proceedings, by

reason of its form, is barred in two years, while the other, if it is contended that the statute of limitation does not apply, being an action civil in form, is never barred. Will anyone argue that this is the equal protection of the law of which we so proudly boast? If it is, then the Fourteenth Amendment is a sham and mockery, in that it sacrifices substance to form. But the Fourteenth Amendment is not a mockery for it furnishes a guarantee against just such injustice and inequality as this, and such is the meaning of Chief Justice Fuller when in *ex parte* converse (137 U. S. 624), he emphatically declared:

> "We repeat, as has so often been said before, that the Fourteenth Amendment undoubtedly forbids any arbitrary deprivation of life, liberty or property, and in the administration of criminal justice, requires that no different or higher punishment shall be imposed on one than is imposed on all for like offenses."

In the supposititious case above, it is seen that the legislature has deemed the pecuniary fine $100.00 as an adequate penalty for the wrong done to the public. To make the injustice and inequality even more glaring, let us suppose that the statute, as it would be competent for the State to enact, should provide that the forbidden act may be punished, either through a civil suit to recover the penalty, or by a criminal prosecution, to inflict the penalty. Will anyone contend that if one person prosecuted in a criminal proceeding for such offense should be entitled to the bar of the statute of limitation of two years, and if the other prosecuted in a proceeding civil in form should not be entitled to the benefit of the same limitation, that there could be a more monstrous and shocking case of the unequal protection of the laws than this? Does it make any difference, either in principle or in substance, if the two offenses are for different acts when the legislature has decided that they are of equal gravity, that the public has been equally wronged, and that the same punishment shall be inflicted in the civil as in the criminal proceeding? The answer would seem obvious unless the guaranty of equal protection is limited solely to form and does not extend to the substance of things.

The operation of inequality in this case is to cause the infliction upon this plaintiff-in-error of a very much higher punishment than is imposed upon other persons for offenses of the same or greater gravity, though the legislature has declared that the same or a higher punishment shall not be inflicted upon the violators of other laws for each offense than is imposed for each offense in this case. In substance and in fact, a person subject to penalties at the rate of say, $200 or $5,000 per day for an unlimited period of time, is liable to much more serious punishment than is another person guilty of violating a law which denounces the same penalty, but who is not subject to prosecution for any time prior to two years before the commencement of the prosecution.

(*b.*) BAR OF STATUTE OF LIMITATION UNDER ARTICLE 3354, REVISED CIVIL STATUTES OF TEXAS.

Plaintiff-in-error further specifically excepted to the petition in this cause in so far as it was sought thereby to recover fines or penalties by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25, 1899, for the reason that since the original petition herein was not filed until the 22nd day of September, 1906, it appears from the face of the pleadings that plaintiff's cause of action, if any it ever had, as to such fines and penalties accrued more than two years before the filing of this suit; and was, therefore, barred by the statute of limitation of two years, as prescribed in Article 3354 of the Revised Civil Statutes of the State of Texas, which this plaintiff-in-error invoked by way of exception to defeat a recovery of such fines and penalties. This exception of plaintiff-in-error was like the former one, overruled by the trial court, and such ruling sustained by the appellate court ,all over the exception and objection of this plaintiff-in-error.

Continuing our argument upon this proposition, that the denial of the application of the statutes of limitation in this case constitutes a denial of the equal protection of the laws, and by reason thereof this plaintiff-in-error is deprived of its

property without due process of law, we further point out other statutes of limitation, as provided by the Texas Legislature, in so far as the same seem to have bearing upon the facts in this case.

We contend that if plaintiff's cause of action was not barred by Article 219 of the Texas Code of Criminal Procedure, as urged above, it was barred by this section of the Texas Code, to-wit: Article 3354 of the Revised Civil Statutes of Texas.

Article 3354 of the Revised Civil Statutes of the State of Texas reads as follows:

> "There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:
>
> 1. * * * * * *.
> 2. * * * * * *.
> 3. * * * * * *.
> 4. Actions for debt where the indebtedness is not evidenced by a contract in writing.
> 5. * * * * * *.
> 6. * * * * * *.
> 7. * * * * * *."

The first question to be determined in discussing the proposition under the above quoted statute is whether the suit herein brought by the State can be regarded as an action of debt falling within the meaning and term of the above statute which provides that no action for debt shall be brought save within two years after the accrual thereof, when such indebtedness is not evidenced by a contract in writing.

The authorities upon this subject appear to be perfectly clear.

In the case of **Stockwell v. U. S.** (13 Wallace, 531), the United States brought an action of debt against Stockwell to recover double the value of certain importations of shingles, alleged to have been illegally made and received and concealed or bought by the defendant with the knowledge that the shingles had been illegally imported into the United States. There

was absolutely no contract relation between the government and the defendant, and the amount sought to be recovered was strictly, and in every sense, in the nature of a penalty. The question raised in that case was whether a civil action of debt would lie at the suit of the United States to recover the penalties incurred under the Act of Congress which defendant was charged with violating, and one of the errors assigned in this Court was, that the trial court erred in holding that such an action might be maintained. In refusing to sustain this assignment of error, this Court said:

> "The first error assigned is, that a civil action of debt will not lie at the suit of the United States to recover the forfeitures or penalties incurred under this Act of Congress, and that the court below erred in holding that such an action might be maintained. It is not contended that an action of debt will not lie to recover duties if the defendant be the owner or importer of the goods imported, for it is conceded that, by the act of importing, an obligation to pay the duties is incurred. The obligation springs out of the statutes which impose duties nor is it doubted that when a statute gives to a private person a right to recover a penalty for a violation of law, he may maintain an action of debt, but it is insisted that when the government proceeds for a penalty based on an offense against the law, it must be by indictment or by information. No authority has been adduced in support of this position, and it is believed that none exists. It cannot be that whether an action of debt is maintainable or not depends upon the question: Who is the plaintiff? Debt lies whenever a sum certain is due to the plaintiff, a sum which can be readily reduced to a certainty—a sum requiring no future valuation to settle the amount. It is not necessarily founded upon contract. It is immaterial in what manner the obligation was incurred or by what it is evidenced, if the sum owing is capable of being definitely ascertained. The Act of 1823 fixed the amount of the liability at double the value of the goods received, concealed or purchased, and the only party injured by the illegal acts which subject the proprietors to the liability is the United States. It would seem, therefore, that whether the liability incurred is to be regarded as a penalty, or as liquidated damages for an injury done to the United States, it is a debt, and as such it may be recoverable in a civil action."

In **Davidson v. Missouri Pac. Ry. Co.** (3 Willson's Cases, p. 216), plaintiff sued to recover a penalty of $500.00 against the defendant for an overcharge on freight. The Court of Civil Appeals, speaking through Judge White, reviewed the authorities on this point and announced the following result:

> "This doctrine establishes that at common law the action to recover a penalty or forfeiture is an action of debt, and the same rules and principles should be held to apply under our liberal system; and though we have abolished the common law forms of action, we may still properly call this an action of debt. We are clearly of the opinion that this is an action of debt, which debt is not evidenced by a contract in writing, and that the statute of limitation of two years is a bar to it."

In **Rockwell v. Ohio** (11 Ohio, 130), the State sued to recover a penalty from a bank cashier under a statute which prescribed that if such cashier should fail to endorse bills issued by the bank under certain circumstances, he should forfeit and pay a fine of not less than $5.00 nor more than $50.00 for each such bill refused to be endorsed by him, to be recovered before any court having jurisdiction, in the name of the State of Ohio, for the use of the person aggrieved. The action having been brought in the form of an action of debt, the objection was made that debt was not maintainable for a recovery of penalties. In overruling this contention, the Supreme Court of Ohio held that debt was the proper remedy in the case, notwithstanding even that the penalty was uncertain, to the extent that it rested in the discretion of the court to inflict a fine in any sum within the minimum of $5.00 and maximum of $50.00 for each offense.

Many additional authorities might be cited from the books and from the decisions to support the proposition that an action of debt lies for the recovery of statutory penalties, either by an individual or by the State, as the case may be, but such additional authority would seem to be wholly unnecessary in the face of the universal recognition which is accorded this rule.

Having then shown that the cause of action of the State of

Texas, if any it has, if it is of a civil nature, properly comes within the statutes above quoted, prescribing the period of two years within which actions for debt shall be commenced and prosecuted when the same do not arise out of contract, the only other question which it seems necessary to discuss is: Is this statute applicable when the State appears as plaintiff?

We recognize the fact that in the State of Texas, as in most other States, the doctrine, well-known at common law, that time does not run against the government, prevails. The question we have to face, however, is: Is this doctrine of unlimited application? That it is not, we think is clear from the following quotation from Section 97 of Buswell on Limitation:

> "The maxim '*nullum tempus occurrit regi*' is said to be founded upon the legal fiction that the king is always busied for the public good and, therefore, has no leisure to assert his right within the time limited to his subjects. The sound reason for it, however, rests in the public policy of preserving public rights, revenues and property from injury and loss by the negligence of public officials. And the prerogative right of the King of England in relation to acts of limitation is in fact nothing more than a reservation or exception introduced for the public benefit, and so exists equally in favor of all government. But independently of any doctrine founded upon the notion of prerogative, statutes of limitation are to be applied according to the established rules of construction. Where the government is not expressly or by necessary implication included, it ought to be clear from the nature of the mischiefs to be redressed or the language of the act, that the government was intended to be included in the operation of the statute before a court of law will be authorized so to interpret it. Upon this ground it is held that the general words of a statute should not be taken to include the government or affect its rights unless such construction be indisputable."

This admirable statement of the reason upon which the doctrine is founded does not need any elaboration by way of argument, and it is only necessary that we make application of the reasons therein given to the case hereunder discussion. As shown by the learned writer of the above, the foundation

of the doctrine is the preservation of the public rights, revenue and property. It necessarily follows that if a case arises in which the exercise of the sovereignty of the State is necessary, and the State wishes to assert its prerogative in some manner purely governmental, or in which the property of the State is in controversy, or in which an officer of the State has misappropriated the funds or property of the State, and the State wishes to recover judgment for the amount, or in which there has been a trespass committed upon State property, or in which a contract has been made to pay the State money and the State seeks to enforce such contract—in any and all of these cases and cases of like character—there can be no doubt that the statute of limitation does not bar the right of the State to sue.

A number of cases have been decided by the appellate court of Texas in which those courts have held that the State is not barred. But a careful examination of these cases leads us to make the assertion that in every case in Texas in which the decision has been to this effect, the facts showed either that the State was seeking to assert its governmental power in some matter relating to its sovereignty, or was seeking to recover land belonging to it, or was seeking to recover money from some perso.. who had misappropriated its funds or was under contract obligation to pay the State. Not a single case decided in Texas can be found in which it is held that a suit for penalties for violating the law comes within the doctrine that time does not run against the State.

Referring again to the foundation upon which the doctrine rests, as announced by Mr. Buswell, it seems manifest that a suit to recover penalties for violating a statute is not embraced within the reason. When we consider the further statement above quoted that the State is not to be held included within such statutes of limitation unless it is expressly mentioned, or the mischiefs to be remedied are of such a nature that the State must necessarily be included, additional light is thrown upon the subject.

Undoubtedly, when the only interests which the State pos-

sesses is to enforce its penal laws in the light of the fact that all crimes against the State are subject to the bar of limitation except the one single crime of murder, a suit to recover penalties, though civil in form for a cause of action criminal in its character, seems clearly within the mischiefs to be remedied within the statute of limitation. This statute seems to be so entirely clear in its application to the case at bar, as not to require amplification of statement. Why the hundreds of offenses defined in the penal code, as well as a large number of offenses since created by statute, should be barred by limitation, and yet the one single offense with which this plaintiff-in-error stands charged should not be, is beyond comprehension. That offense rests upon the same basis as all other offenses, an alleged wrong done to the public, and the same reason applies to this as to all other cases. As evidence that the spirit of the maxim that time does not run against the king does not embrace penal actions, we refer to the fact that as long ago as the 31st year of Elizabeth the Parliament of Great Britain, from whose system of law we have borrowed this maxim, enacted a distinct statute, making all penal actions subject to the statute of limitation, ordinary actions being barred within two years and a *qui tam* action being barred within one year. A copy of this statute will be found in a note to the case of **State v. Moore** (19 Meigs. [Tenn.] 476). Certainly, if England three hundred and fifty years ago definitely recognized that this maxim has no application to penal actions, there can be no justification in law or in reason for the courts of this country to apply the maxim to such actions in this present day.

(*c.*) BAR OF LIMITATION UNDER ARTICLE 3358.

The above article reads as follows:

> "Every action, other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued, and not afterward."

As before stated, plaintiff's petition was filed September 22,

1906. To said petition plaintiff-in-error specially excepted and pleaded the above statute if the foregoing statute, to-wit: Article 3354 of the Revised Civil Statutes of Texas, and Article 219 of the Texas Code of Criminal Procedure, should be held not to apply; which said exception of plaintiff-in-error was overruled, over its exception and objection.

In spite of the fact that by the above section a period of limitation is distinctly provided for every cause of action for which some special period of limitation is **not otherwise expressly provided,** the benefit of this statute was denied plaintiff-in-error. It is not necessary to repeat the argument already made with reference to the bar of limitation being applicable to suits of this sort when brought by the State. All that we have already said upon this point applies with full force to the proposition herein submitted. As indicating the spirit in which the courts apply such statutes, the following quotation from the case of **Buswell v. Robinson** (33 N. J. Law, 273), is so strikingly in point that we include it herein as specially bearing upon our contention that the statute above quoted applies, even if no other applies. Says the Supreme Court of New Jersey, in the Buswell case:

> "Courts are very reluctant to hold a person may be subjected to a suit for a penalty for an indefinite time. Such indefinite liability is unjust and should not be so held unless the imperfections or the deficiencies of the law imperatively require it."

The broadest and most liberal construction has been given to the above Act by the courts of Texas in numerous decisions. So it has been held to apply to an action for the recision of a contract consummated by fraud (Cooper v. Lee, 75 Texas, 114; 12 S. W. 483; Evan v. Goggan, 23 S.W. 854), to a suit brought to correct a misdescription in a decree of partition (Tevis v. Armstrong, 71 Texas, 59; 9 S. W. 134), to a suit to avoid a deed for fraud, (Ry. Co. v. Titterington 84 Texas, 218; 19 S. W. 472), and in Blount v. Bleker, 35 S. W. 863 (Tex.), it was held the provisions of this article were applicable to equitable as well as legal actions for which no other provision had been made.

We submit that in view of the fact that the obvious intent of the Legislature of Texas is to provide a period of limitation for every cause of action, civil or criminal, as is indicated by the above section cited with respect to criminal actions and by Article 219 of the Code of Criminal Procedure, which provides for the limitation in bar of criminal actions in all cases except murder, that in denying this plaintiff-in-error the application of either one or the other of such statutes of limitation—in holding that no limitation exists with respect to suits of this character—but that the same may be brought at any time, even long after the defendant has ceased to do business and has perhaps entirely removed from the jurisdiction of the State (for such must be the logical result of such interpretation) this plaintiff-in-error is singled out from among all other alleged offenders and thereby is denied the equal protection of the laws.

## X.

**THE APPOINTMENT OF A RECEIVER AND TRANSFER TO HIM OF THE PROPERTY OF PLAINTIFF-IN-ERROR PENDING PROCEEDINGS BY WAY OF APPEAL WAS WHOLLY WITHOUT AUTHORITY AND DEPRIVED PLAINTIFF-IN-ERROR OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW AND DENIED IT THE EQUAL PROTECTION OF THE LAWS.**

Judgment in the trial court in this cause was rendered in favor of plaintiff, the State of Texas, on June 1st, 1907. On the same day, to-wit, June 1st, 1907, the State of Texas filed in the District Court of Travis County, Texas, an application for a receiver, which said application recited the rendition of the aforesaid judgment and alleged that a suit was then pending in the State of Missouri wherein said State of Missouri was plaintiff and this plaintiff-in-error defendant, for the purpose of forfeiting the charter of this plaintiff-in-error, and further alleging that the penalties to be recovered under the

aforesaid judgment could not be collected outside the State of Texas, and that the property of plaintiff-in-error situate in said State of Texas was inadequate to pay the judgment, and that the great bulk of said property was of a personal nature and movable and capable of being carried beyond the limits of the State of Texas, and if so removed said State of Texas would have no means of collecting the aforesaid judgment. Said application further alleged that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, said State of Texas had a lien upon all of said property of plaintiff-in-error to secure payment of the aforesaid judgment; that by virtue of said judgment plaintiff-in-error had no further right to do business in the State of Texas, and that to preserve and protect the rights of the State of Texas the business of plaintiff-in-error must be conducted and carried on, at least temporarily, and be kept a going concern in said State; wherefore it was prayed in said application that the court appoint a receiver to take charge of all the property and assets belonging to said plaintiff-in-error and situate within the State of Texas and enjoin the removal of any portion of said property or assets from the State of Texas. In accordance with the prayer in the aforesaid application, the Court, on June 1, 1907, made an order granting a temporary injunction as prayed for.

To the above application plaintiff-in-error made answer filed June 10, 1907, and on the same date said Court made an order making the aforesaid temporary injunction permanent, and on June 13 appointed a receiver according to the prayer in the aforesaid application.

Plaintiff-in-error in the main case duly filed its motion for a new trial which said motion was by the Court overruled and refused by order and judgment entered on the 7th day of June, 1907, to which said plaintiff-in-error then and there, in open court, duly excepted and gave notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas. And on the 7th day of June, 1907, plaintiff-in-error duly filed its appeal bond for the purpose of superseding any

proceedings under the aforesaid judgment, said bond being duly executed by plaintiff-in-error, as principal and the American Surety Company of New York, as surety. Objections being raised to said appeal bond because of the fact that said surety was a foreign corporation, plaintiff-in-error, on the 15th day of June, 1907, tendered another *supersedeas* appeal bond on the main judgment, with the American Surety Company of New York and John H. Kirby, a citizen and resident of Texas, as sureties thereon.

When the above appeal bond filed by plaintiff-in-error was accepted and approved on June 15, 1907, superseding thereby the judgment recovered against plaintiff-in-error by the State of Texas on June 1, 1907, we submit that the appointment of the receiver by said court and all orders and proceedings in connnection therewith, were thereby vacated and, pending said appeal, set aside.

We further submit that it is the settled practice in the State of Texas as well as other States to look to the petition alone for all the necessary facts upon which to predicate a judgment, and that where the judgment goes beyond the petition and undertakes to decide issues which are not raised, and to make orders upon matters not alleged, the action of the court is not merely irregular, but is wholly void as being in excess of the jurisdiction of the court in the particular case.

No prayer for the appointment of a receiver appearing in the petition of the State of Texas in the original suit, we contend that, in entertaining the aforesaid application of the State of Texas and appointing a receiver thereon, the court acted wholly without its jurisdiction.

As is said by the well-known Texas authority, Judge Townes, in his work on Pleading (pp. 23 and 24), in defining the word "jurisdiction," in which he speaks of it as "potential" and "active."

> "The active jurisdiction cannot go beyond the potential and it may be much less extensive. Thus, each district court in the State of Texas has potential jurisdiction over all questions involving titles to land situated in the State, but no one of these courts can, of its own motion, deter-

> mine any abstract proposition of law affecting any such title. Its power lies in abeyance waiting action by some party in interest by which he shall invoke its exercise in his behalf. But upon such application by him, this power goes into actual operation as to the particular tract of land subject to it. If, however, the party should own another tract of land which was also being trespassed upon in the same manner as the first, invoking that jurisdiction as to the first, would in nowise affect the second; as to it, potential jurisdiction would continue to lie dormant until by some appropriate means the exercise of this power should be requested as to it."

The above rule announced is so generally recognized and accepted that citation of authorities thereon would seem superfluous, and we hardly think that it will be questioned that when the judgment in a cause goes beyond the petition and undertakes to decide issues not raised therein, plaintiff or defendant in such cause may well complain, if he is affected by such judgment, that he is deprived of his property without due process of law.

The amended petition in this cause, on which the State of Texas went to trial, was filed April 29, 1907, eighteen days after the passage of the Act of April 11, 1907, under and by virtue of which the State of Texas claims its lien and the right to have a receiver appointed. Reference to that petition will show that in no portion of it is any mention made of a lien, and the sole prayer of relief is limited to the judgment rendered in the cause, to-wit: cancelling the permit issued to this plaintiff-in-error on the 31st day of May, 1900, and an injunction restraining it from doing business in the State of Texas, and that said State have judgment for the sum of $5,239,000.00 penalties. The application for the appointment of a receiver was filed in the form of a strictly personal action after the trial of said cause and recites the judgment which was rendered against this plaintiff-in-error. We submit that under Article 1337 of the Revised Statutes of Texas which provides that "only one final judgment shall be rendered in any case except where it is otherwise specially provided by law," that it was not permissible for the State of Texas in the same cause, after fail-

ing to set up its claim to a lien upon the property of plaintiff-in-error in the petition on which it went to trial, by a new motion filed after the verdict and judgment therein, to inject this new issue into the case.

If it should be contended that when the State did not see fit to set up its lien upon the property of plaintiff-in-error it did not thereby waive its statutory lien, but would have the right in some subsequent proceeding based upon the judgment to assert such lien and ask for its foreclosure, we submit in answer to such contention that, under the settled rules of practice in the State of Texas and everywhere, it would be necessary for the State to file a new suit by petition answering all the requirements of law and brought to some subsequent regular term of court with a proper prayer or citation for foreclosure of the lien and with a proper description of the property so that the judgment affecting the same might be effective.

The cases of **May v. Taylor** (22 Tex. 348); **Bledsoe v. Wills** (22 Tex. 650); and **McConkey v. Henderson** (24 Tex. 212), conclusively settle the proposition that it is beyond the power of the court, even where a lien is set up in the pleading and the verdict of the jury does not find in favor of the lien, to cure the omission in the judgment. We submit that these decisions are conclusive in supporting our contention. For, if the verdict of a jury omitting a finding in favor of a lien expressly set up in the pleading cannot be cured by the court in its judgment, the conclusion seems irresistible that much less has the court such power when no mention of the lien is found in the pleading and equally none in the verdict of the jury.

What is then the nature and purpose of appointing a receiver in any case? Mr. Pomeroy, in his work on Equity Jurisprudence, Sec. 1330, and again in his more recent work, Equitable Remedies, Sec. 62, declares:

> "A receiver is a person standing indifferent between the parties appointed by the court as a *quasi*-officer or representative of the court, to hold, manage, control and deal with the property which is the subject matter of or involved in the controversy under the direction of the court **during the continuance of the litigation.**"

In Sec. 118 of his work on Equitable Remedies, he further declares:

> "Unless authorized by statute, there is no such thing as an action being distinctively for the mere appointment of a receiver; to justify the appointment, it is essential that some proper final relief in equity be asked for in the bill which will justify the court in proceeding with the case."

Relying upon the above from this learned and acknowledged authority on Equity Jurisprudence, we submit that the appointment of a receiver is a provisional or ancillary remedy in aid of a pending suit; and, therefore, that in this case if the State of Texas thought that the appointment of a receiver was necessary to protect its claim to a lien upon the property of plaintiff-in-error, after it had failed to set up such lien and have the same adjudicated in the original suit, it was necessary to institute a new suit asking for such appropriate final relief with respect to the property, and make the application for a receiver as an incident to such suit.

Upon this point Mr. Pomeroy, in his Equitable Remedies, Sec. 71, declares:

> "The appointment of a receiver being made merely to assist in the ultimate disposition of the property in controversy, a receiver will not ordinarily be appointed unless there is a suit pending concerning the subject matter in regard to which the receiver is sought."

The only exceptions mentioned in connection with this proposition are the usual ones of receivers appointed for the estates of lunatics and infants, as authorized by the various guardianship statutes.

The instances mentioned in Sections 106 and 110 of Pomeroy's Equitable Remedies, where a receiver may be appointed to assist in the collection of a judgment will, in every case, be found to rest upon the general rule that, before a judgment creditor is permitted to resort to this form of supplemental proceeding, he must have had execution issued on his judgment and the same returned unsatisfied which, of course, presupposes the right to an execution and the failure to collect the judg-

ment through this legal process, so that these instances will furnish no support to the contention that the legislature intended to sanction the appointment of a receiver after judgment in such cases as this, and we submit that the sole basis for any such claim rests upon the lien which is attempted to be created by Section 1 of the Act of April 11, 1907. Since there is nothing in that statute **expressly providing that a receiver may be appointed after judgment has been rendered in the case** without any mention of the lien being made in the petition upon which the State goes to trial, we submit that it is a clear violation of law and of the express provisions of Article 1337 of the Revised Statutes of Texas, above referred to, to permit the application for the appointment of a receiver to be made in the same case.

It will hardly be contended that the paper filed by the State and entitled "Application for a Receiver" can be dignified by the appellation "Petition." An examination of that motion or application will disclose that it is lacking in nearly all of the essentials of a petition; that it was not intended as a new or independent suit, and that it wholly fails to contain any prayer for final relief. The whole theory upon which the paper is based is the idea that a receiver is desired as a means of aiding in the collection of a judgment, supplemented in the fourth paragraph thereof with the idea that the interests of the State require that the business of plaintiff-in-error should be conducted and carried on and kept as a going concern in the State of Texas—a most novel suggestion, unless construed to mean that the value of the property as a means of satisfying the judgment would be enhanced by selling it as a going concern.

Since the State of Texas was not entitled to the appointment of a receiver to aid in the collection of its judgment until after an execution thereon had been issued and returned unsatisfied, independent of the lien claimed upon the property of plaintiff-in-error under the Act of April 11, 1907, it would necessarily seem to follow that, treating the application as a supplementary proceeding, it was wholly insufficient to confer jurisdiction upon the court because it was filed on the same day that judgment was rendered and before any execution could issue upon the

judgment, to say nothing of the same being returned unsatisfied. Since the paper so filed was insufficiently based upon any claim of a lien on the property of plaintiff-in-error and in that it lacked the essentials of an independent suit and asked and sought for no final relief, it must necessarily follow that it was insufficient to invoke the jurisdiction of the court. We, therefore, submit that all orders made by the court based upon this application were made wholly without jurisdiction and were wholly void. And since, by reason of such orders, the property of this plaintiff-in-error was taken from it and placed in the hands of a receiver so appointed, we submit that the same constituted a violation of the Fourteenth Amendment to the United States Constitution, and that it deprived plaintiff-in-error of its property without due process of law.

As above pointed out, notice of appeal was entered on June 7, 1907, and the right of this plaintiff-in-error to file its *supersedeas* bond under the law of Texas could not expire, within the shortest period, until June 27, 1907. We submit that when the court refused to postpone action upon the application for a receiver until plaintiff-in-error should have a reasonable time in which to file its *supersedeas* bond, it was an abuse of the discretion of the court to appoint such receiver before such time had elapsed for filing an appeal bond under the law. It will not be contended that the appointment of a receiver is, as a general rule, anything other than discretionary. This discretion is not an arbitrary or absolute one, not the result of caprice or prejudice, but is to be a sound and judicial discretion. It should take into account all the circumstances of a cause and should be exercised for the sole purpose of promoting the ends of justice and protecting the rights of all the parties interested in the controversy and in the subject matter, and should be invariably based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding.

It may, perhaps, be contended that the appointment of a receiver in this case was an appropriate means of preventing plaintiff-in-error from continuing to carry on its business, and

to this we reply that the State of Texas did not have the power to prevent plaintiff-in-error from using its property in carrying on an interstate business, and that the judgment in this cause rendered did not and could not operate as a forfeiture or confiscation of the property of plaintiff-in-error as contraband.

In whatever light this application for the appointment of a receiver may be viewed, it seems impossible to escape the conclusion that the *supersedeas* bond in appeal in the main cause was duly filed by this plaintiff-in-error and accepted by the court; it had the effect of superseding all orders made in connection with that suit or having reference to any property involved therein, and such orders should have been immediately vacated. The effect of a *supersedeas* bond upon a judgment of dissolution as against a corporation is fully discussed in the case of **Ry. Co. v. Jackson** (85 Texas, 605), to which we invite special attention.

In concluding the argument upon the proposition that the filing and acceptance of the appeal bond in the main case superseded all further action in that case until the appeal therein was decided, we desire to call the particular attention of the court to the instructive opinion of Mr. Chief Justice Beatty in the case of **Havemeyer v. Superior Court** (84 Calif. 327; 24 Pac. 121, l. c. 134, 135). In that case a judgment of forfeiture was rendered against the American Sugar Refinery Company, a California corporation, upon conviction of having become a party to a trust, etc., and immediately after judgment entered an application was filed for appointment of a receiver under the California statute. Pending hearing upon that application, the defendant corporation filed its appeal bond in the main case; and, thereupon, contended that said appeal superseded and stayed any further action on the part of the trial court and deprived it of jurisdiction in the appointment of a receiver. This contention was overruled by the trial court and a receiver appointed who took charge of the property. The cause came before the Supreme Court of California on a writ of prohibition, and in discussing the above contention, and the effect of an appeal in the main case upon the subsequent appointment of a receiver, the court says:

"But it is held in the face of the statute (referring to the opinion of the trial court), that a stay was not possible, and this again upon the plea of necessity in order to prevent an apprehended abuse. We do not think the reason suggested is sufficient to override the law. The allowance of an appeal in such cases implies the right of the corporation to question the validity of a judgment of forfeiture until it has been affirmed here, and it is not correct to say that a stay of proceedings would operate a rehabilitation of a dissolved corporation, when the sole object of the appeal is to determine the question whether there has been a valid judgment of dissolution. But evidently the respondent was unwilling to stand upon the proposition that a stay was not possible. Waiving that and assuming that the judgment has been stayed, he concludes that the power to appoint a receiver is nevertheless suspended because the order of appointment is not embraced in the judgment, and is not a proceeding upon the judgment. It is true that the order of appointment is not embraced in the judgment, but that is not the test. An execution is not embraced in the judgment, but an appeal duly perfected stays execution. In truth, it is not correct to say that a judgment or matters embraced in a judgment are stayed by the appeal, and the statute does not say so. What it says is, that a proceeding upon the judgment and matters embraced therein are stayed by the perfecting of an appeal; that is to say, the execution—the enforcement—of the judgment is suspended. Now, here it is conceded that no receiver of the corporation could be appointed until after judgment, and that the only purpose of his appointment is to carry the judgment into effect by taking away the property of the corporation and scattering it and dividing it. How, then, is it possible that this is not a proceeding upon the judgment? According to the argument, the things to be done by the receiver constitute the only substantial and effective punishment which it is in the power of the State to inflict; the rest is a mere trifle. But it is, nevertheless, held that this ruinous penalty which follows the judgment and but for the judgment could never be inflicted, is not a proceeding upon the judgment, and, therefore, is not stayed by the appeal; and this conclusion is rested upon the authority of rulings which, it is said, have often been made by our courts. Undoubtedly it has often been held that the appointment

of a receiver is merely ancillary and undoubtedly his appointment often is merely ancillary; that is to say, he is appointed before judgment for the purpose of protecting, pending the litigation, property which is the subject of the litigation, but sometimes he is appointed after judgment for the purpose of carrying the judgment into effect, in which case his appointment and his proceedings thereunder, are not merely ancillary. In the former case his functions are not necessarily suspended during the appeal, and neither is the power of the court to remove him or control him suspended by the appeal; but in the latter case—as for instance, where a receiver has been appointed to sell mortgaged premises under a decree of foreclosure—his proceedings are suspended by the appeal. * * *

We assume for every purpose of this decision that the judgment of forfeiture in this case was not only just but legal—correct not only in substance but in form—free from error. But it does not follow that all similar cases will be equally well decided. It is possible—the constitution and the laws assume the possibility—that some case may arise in which the judgment of forfeiture will not only be erroneous, but unjust, and that it will be reversed on appeal. But the rule applied in this case must also be applied in that case. If this judgment must be executed in the manner indicated, so must that. A receiver must be appointed. He must seize all the property. He must shut up the factories, discharge the employes, prevent the fulfillment of contracts, subject the corporation to every sort of loss and damage that can be inflicted by the stoppage of a great and complicated industry, having its ramifications throughout the business centers of the entire coast; and not only this; for, if he must go to this extent—if nothing the corporation or its stockholders can do will stop him—then nothing but the forbearance of the superior judge will prevent the completion of the process. For this injury caused by an erroneous judgment, a reversal on appeal affords no redress; for no security has been given by the undertaking of a surety or otherwise to indemnify the corporation or its stockholders. The sureties of the receiver merely undertake that he will faithfully execute the orders of the court; and according to the precedent in this case they are bound in a trifling amount. If the receiver obeys orders, they are exonerated; and if his orders contemplate the infliction of punishment by the indirect

and partial destruction of property, the more completely are they exonerated, the greater the damage inflicted for which there is no redress. Unless it is to be assumed that such results as these comport with the justice and policy of a great State, the inevitable consequence of the doctrine contended for **utterly condemn it.** If, therefore, the State could demand the appointment of a receiver upon the ground and for the purposes stated, the appeal operated as a stay of such proceeding, and for that reason the appointment in this case would have been an excess of authority."

Comment upon the above would seem to be superfluous. We submit that the consequences of the doctrine invoked to sustain the appointment of a receiver in the case at bar are in and of themself sufficient to condemn the soundness of such a doctrine.

(*a.*) THE APPOINTMENT OF A RECEIVER OF PLAINTIFF-IN-ERROR'S PROPERTY FOR THE PURPOSE OF DEPRIVING IT OF THE AGENCY FOR FURTHER OR CONTINUED VIOLATION OF THE ANTI-TRUST ACTS OF TEXAS WITHOUT EVIDENCE OF SUCH INTENDED VIOLATION, AND WITHOUT EVIDENCE THAT IT COULD NOT USE ITS PROPERTY IN COMPLIANCE OF LAW, CONSTITUTES A DEPRIVATION OF SAID PROPERTY OF PLAINTIFF-IN-ERROR WITHOUT DUE PROCESS OF LAW.

On page 341 of the transcript in this cause, in the bill of exceptions of plaintiff-in-error, will be found the following, with reference to the hearing on the application of the State of Texas, for the appointment of a receiver; no evidence whatsoever was introduced, the court hearing nothing but argument of counsel:

"After reading the foregoing application, counsel for defendant (plaintiff-in-error) proceeded to argue its said general exception or demurrer to the said application for the appointment of a receiver and at the conclusion of such argument, when counsel for the state started to argue

the same, the court announced that it was unnecessary for counsel for the state to make any argument and the court thereupon proceeded to announce his conclusions with respect to said application and defendant's objections thereto, and stated that the court would take judicial notice of the proceedings in the main case and of the rendition of the judgment against the defendant (plaintiff-in-error) for violating the Anti-Trust laws of the State as charged against it in plaintiff's said second amended original petition and that it had been found guilty of violating the said Anti-Trust Laws on each and every day from the 1st day of June, 1900, to the 29th day of April, 1907, and that its permit to do further business in the state had been forfeited and cancelled by reason of said violations; and that defendant had, since May 31, 1900, been a member of an agreement which had its very existence in Texas in violation of the Civil and Criminal Laws of Texas and that it had been and still is in possession of certain instrumentalities by means of which it, in violation of the public welfare and interests, intended to continue its violation of the law pending appeal from the judgment of conviction, and that the defendant would file its proper *supersedeas* appeal bond from said judgment of conviction but that, notwithstanding defendant's right to so file said *supersedeas* bond within the time provided by law, the court was of the opinion that the legislature had provided as a remedy or means of preventing defendant from the continued violation of the law that a receiver should be appointed to take charge of its property and business and deprive it of the instrumentalities by which it had so violated the law and **would continue to violate the law; and because of such statute and the declared purpose of defendant (plaintiff-in-error), speaking through its general counsel, John D. Johnson, in newspaper interviews which had been brought to the attention of the court, in which said Johnson had discussed the effect of the aforesaid judgment of conviction against defendant (plaintiff-in-error) and had declared the purpose of defendant to appeal from said judgment of conviction and to continue to carry on its business in the same manner it had heretofore done, notwithstanding such judgment of conviction.** And without any **evidence** being submitted to the court in connection with said application, the court thereupon announced that it would grant the said application and appoint a receiver as therein prayed for."

We submit that the action of the court as above set forth is so wholly arbitrary and without foundation in any principle of law or justice that it cannot be treated in any sense as a judicial determination of the right of this plaintiff-in-error, and that it is not entitled to respect in any tribunal. It is difficult to speak with moderation of a decree rendered as this one was; we submit that it was a mere arbitrary edict clothed in the form of a judicial sentence.

Says this Court in **Windsor v. McVeigh,** 93 U. S. 274, speaking through Mr. Justice Field:

> "The doctrine invoked by counsel that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause and its judgment, however erroneous, cannot be collaterally assailed is undoubtedly correct as a general proposition, but like all general propositions, is subject to many qualifications in its application. All courts, even the highest, are more or less limited in their jurisdiction; they are limited to particular causes of actions such as civil or criminal; or to particular modes of administering relief, such as legal or equitable; or to transactions of a special character such as arise on navigable waters or relate to the testamentary disposition of estates; or to the use of particular processes in the enforcement of their judgments. Though the court may possess jurisdiction of a cause, of the subject-matter and of the parties, it is still limited in its mode of procedure and in the extent and character of its judgments. **It must act judiciously in all things and cannot then transcend the power conferred by law.** If, for instance, the action be upon a money demand, the court, notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant. If the action be for libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will. Instances of this kind show that the general doctrine stated by counsel is subject to many qualifications. The judgments mentioned, given in the cases supposed, would not be merely erroneous; they would be absolutely void, because the court in rendering them would trans-

cend the limits of authority in those cases. See the language of Mr. Justice Miller to the same purport in the case of *ex parte* **Lange,** 18 Wallace, 163. So it was held by this court, in Bigelow v. Forrest, 9 Wallace, 351, that a judgment in a confiscation case condemning the fee of the property was void for the remainder after the termination of the life estate of the owner. To the objection that the decree was conclusive that the entire fee was confiscated, Mr. Justice Strong, speaking the unanimous opinion of the Court replied:

'Doubtless a decree of a court having jurisdiction to make the decree cannot be impeached collaterally but under the Act of Congress, the District Court had no power to order a sale which would confer upon the purchaser rights outlasting the life of French Forrest, (the owner). Had it done so, it would have transcended its jurisdiction.'

So a departure from the established modes of procedure will often render the judgment void, thus the sentence of a person charged with felony, upon conviction by the court, without the intervention of a jury, would be invalid for any purpose. The decree of a court of equity upon oral allegations without written pleadings would be an idle act of no force beyond that of an advisory proceeding of the chancellor, and the reason is that courts are not authorized to exert their power in that way.

The doctrine invoked by counsel is only correct when the court proceeds after acquiring jurisdiction of the cause **according to the established modes governing the class to which the case belongs** and does not transcend in the extent or character of its judgment the law which is applicable to it."

In **Hovey v. Elliott** (167 U. S. 409), this Court, in discussing the power of a court to punish for contempt, when the defendant is given no opportunity to be heard in his own behalf, speaking through Mr. Justice White, says:

"The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action **and to render decrees without any hearing whatever** is in the nature of things to convert the court exercising such an authority into an instrument of wrong and oppression

and, hence, to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

We have no desire to argue to any great extent the proposition above laid down, deeming it unnecessary in the light of the authorities above quoted to say anything more than is contained in that portion of the bill of exceptions above quoted, describing the action of the court in the appointment of this receiver. Not one solitary bit of evidence was adduced tending even remotely to show that this plaintiff-in-error intended to violate the Anti-Trust Laws of the State of Texas in any way, shape or form, pending its appeal upon the judgment rendered against it; not a single bit of evidence was offered to show that the property of this plaintiff-in-error could not be used in the State of Texas, except in violation of such Anti-Trust Acts, nothing but the unsupported declaration—if it may be dignified by such a name—of a newspaper alleging that the general counsel of this plaintiff-in-error had declared that the company would continue business in the same way, was before the court and upon this it based its order. If this be equity, we submit that it is equity of a sort wholly new and strange. If this be due process of law, then is the Fourteenth Amendment a hollow mockery and a sham.

## XI.

**THE TEXAS ACT OF APRIL 11, 1907, IS NULL AND VOID.**

1. IN SO FAR AS IT ATTEMPTS TO CREATE A LIEN UPON THE PROPERTY OF PLAINTIFF-IN-ERROR FOR ACTS COMMITTED BEFORE SAID ACT TOOK EFFECT.

2. IN SO FAR AS UNDER IT THE RIGHT TO APPOINT A RECEIVER IS LIMITED TO SUITS AGAINST CORPORATIONS ONLY.

3. IN SO FAR AS IT ATTEMPTS TO CREATE A LIEN UPON THE PROPERTY OF PLAINTIFF-IN-ERROR,

SAID LIEN BEING CREATED, NOT BY THE TERMS OF THE ACT BASED ALONE UPON THE COMMISSION OF THE OFFENSE BUT BEING LEFT TO BE CREATED BY THE ACTION OF THE PROSECUTING OFFICER IN FILING SUIT TO RECOVER PRESCRIBED PENALTIES— THE SAME BEING THEREBY AN UNWARRANTED DELEGATION OF LEGISLATIVE POWER TO AN EXECUTIVE OFFICER.

In so far as it is sought to apply the terms of the Act of April 11, 1907, to this cause and by virtue thereof to assert and enforce a lien upon the property of this plaintiff-in-error, we submit that the Act is within the prohibition of Section 10 of Article 1 of the Constitution of the United States which expressly denies to any state the right to pass an *ex post facto* law. We submit that the act is not only retrospective and retroactive in its operation in so far as it seeks to authorize the appointment of a receiver to take charge and possession of the property of this plaintiff-in-error in aid of the judgment rendered against it in the trial of this cause, but that it has the express effect of inflicting an additional punishment upon this plaintiff-in-error and of increasing the penalties prescribed under the previous laws to-wit, the Anti-Trust Acts of 1899 and 1903, and that for this reason said act, in so far as it applies to this suit, is wholly unconstitutional and void. We further submit that said Act of April 11, 1907, under which the court acted in appointing said receiver is unconstitutional and void in so far as it authorizes the appointment of a receiver in a suit brought to recover a personal judgment in which no lien upon the property of the defendant in that suit (plaintiff-in-error herein) was ever asserted or adjudicated, and the action of the court in the appointment of a receiver in such cause was consequently within the prohibition of Section 1 of the Fourteenth Amendment to the Constitution of the United States which denies the right of any state to deprive a person of property without due process of law, and further prohibits the state from denying a person the equal protection of the laws.

We submit further, that the said Act of April 11, 1903, is in

violation of Section 1 of the Fourteenth Amendment to the United States Constitution, in that it confers a special privilege upon the State, as a litigant in its own courts, in the matter of collecting a personal juudgment recovered by the State, and thereby denies to this plaintiff-in-error the equal protection of the law, the necessary result of which is to deprive plaintiff-in-error of its property without due process of law.

The original suit of the State of Texas against this plaintiff-in-error was filed September 22, 1906. The Act above referred to and by virtue of which the receiver was appointed, was passed and went into effect April 11, 1907.

It would seem unnecessary to repeat or make special reference to the argument and authorities heretofore submitted to the court, in connection with other assignments of error, in support of the proposition that the Anti-Trust Acts of 1899 and 1903, for the alleged violation of which this plaintiff-in-error stands convicted, were statutes which undertook to define offenses and to prescribe punishments for purely public wrongs. We consequently assume that it will not be denied that this is essentially a prosecution for the enforcement of the penal laws of the State of Texas; and we, therefore, insist that every principle of law which enters into the definition or punishment of crime, every presumption in favor of a defendant charged with crime, in short, every rule of the criminal law designed to protect a defendant from arbitrary and unwarranted deprivation of life, liberty or property must he held to apply to this proceeding. We, therefore, invoke the express protection of the *ex post facto* clause of the Federal Constitution with respect to any act of the courts of Texas by virtue of which this plaintiff-in-error is made amenable to the Act of April 11, 1907.

In view of the fact that neither the Anti-Trust Acts nor other laws of the State of Texas prior to the passage of the Act of April 11, 1907, either provided for or authorized the appointment of a receiver for the property of any person standing charged with the commission of a penal offense, and especially of a corporation charged with violating either or both of these Anti-Trust Acts; that no statute existed by virtue of which a

lien was created upon the property of such person or corporation as an incident to the alleged violation of any law, or as an incident to the institution of any suit to enforce the law or to punish for an infringement thereof—in the light of these facts, we submit most earnestly that the creation of such lien and the appointment of a receiver increases the punishment of an alleged past offense and that the application of the act, therefore, to this cause, results in making this plaintiff-in-error amenable to an act distinctly *ex post facto*, thereby invading and infringing its constitutional rights.

We do not wish to burden the court with any lengthy citation of authorities or argument upon the interpretation of the *ex post facto* clause of the Federal Constitution, and we shall endeavor to confine our authorities and argument essentially to the point here under discussion.

The interpretation of the *ex post facto* clause in the Federal Constitution, as given in **Calder v. Bull** (3 Dallas, 388), has never been qualified, and we submit that the two features of lien and receivership, provided for by the Act of April 11, 1907, are essentially an increase of the penalties provided for in the Anti-Trust Acts of 1899 and 1903, and in consequence clearly fall within the second and third definition of an *ex post facto* law as laid down in **Calder v. Bull**:

> "An *ex post facto* law is one which aggravates the crime, makes it greater than when it was committed, changes the punishment and inflicts greater punishment than the law annexed to the crime when committed."

In the later and leading case of **Cummings v. Missouri** (71 U. S. 277), this provision of the Federal Constitution again came up before this court and was fully and carefully discussed. From the opinion in that case, we desire to make the following extracts as bearing directly upon our arguments herein. After referring to the period of excitement which existed in the State of Missouri during and immediately following the close of the Civil War, when the Missouri Constitution was adopted, the provisions whereof were then before this court for consideration, the court uses this language:

"It was against the excited action of the states under such influences as these that the framers of the Federal Constitution intended to guard. In **Fletcher v. Peck** (6 Cranch, 137), Chief Justice Marshall, speaking of such action uses this language:

'Whatever respect might have been felt for the State sovereignty, it is not to be disguised that the framers of the constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment; and that the people of the United States in adopting that instrument, have manifested a determination to shield themselves and their property from the effect of those sudden and strong passions to which men are exposed. The restrictions on the legislative powers of the State are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights for the people of each State.

* * * * * * * * * * *

The constitution (continues the court in discussing Cummings v. Missouri), deals with substance, not shadows. Its inhibition is levelled at the thing, not the name; it intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

The language of the learned court in the above case, the facts under which that case arose and was presented to this Court, bear a very strong and striking analogy to the case at bar. With all due respect and with no design to introduce into this argument anything not shown by the record, we submit that in view of the well-known fact that prior to and during the time that this case was on trial in the courts of Texas, that State and its people were in the midst of an agitation directed at practically everything bearing the name of "corporation" and especially of "trust," and that the excited passions of the people of the State—whether right or wrong, is not for us to say—were levelled particularly at the Standard Oil Company and any person or corporation connected therewith. It is a fact as shown by the record, that in the midst of all this excite-

ment and feeling between the time when this suit was begun against this plaintiff-in-error in the courts of the State of Texas, a suit based almost entirely upon the charge that a union or combination existed between plaintiff-in-error and the aforesaid Standard Oil Company, at the time when nearly every newspaper in said State was spreading broadcast among the people the assertion that the said Standard Oil Company owned a majority of the stock of this plaintiff-in-error, at a time when the State of Texas was divided into two great opposing camps over a contest respecting the election of a United States Senator and in which contest this suit and the allegations of the State in its petition therein played a prominent role—during this time and before this suit had been concluded in the trial court, and while the same was pending—the legislature of the State of Texas met and passed the Act of April 11, 1907. In the light of these facts we contend that the language of the Supreme Court of the United States in the great case of Cummings v. Missouri, is particularly applicable to the case at bar, and that the sentiment which moved the court in that case, under the facts presented to it, to seek even jealously to protect the rights of the citizen when the same appeared to have been infringed under the stress of undue excitement, must equally animate this Court in reviewing this case, and especially in passing upon the validity of this act.

We come now to a consideration of the second clause of what Mr. Justice Marshall terms a bill of rights for the people of each State. The clause which prohibits the passage of an *ex post facto* law. By an *ex post facto* law is meant one which imposes a punishment for an act which was not punishable at the time it was committed or imposes additional punishment to that which was prescribed at the time of the commission of the act; or changes the rules of evidence by which less or different testimony is made sufficient to convict than was required at the time of the commission of the act. We hardly think that it will be contended that the foregoing is anything but a fair statement of the meaning of the term *ex post facto* law, as the same has been interpreted in the many cases both

State and Federal, in which its meaning has been the subject of consideration.

In **Fletcher v. Peck** (6 Cranch, 137), Chief Justice Marshall defines an *ex post facto* law to be one:

> "which renders an act punishable in a manner in which it was not punishable when it was committed."

"Such a law," says this eminent jurist, "may inflict penalties upon the person or may inflict pecuniary penalties which swell the public treasury. The legislature is then prohibited from passing a law by **which a man's estate or any part of it shall be seized for a crime which was not declared by some previous law to render him liable to that punishment."**

This case of **Fletcher v. Peck** furnishes a striking example of the fluctuation of public sentiment. In that case the people of the South found in the Constitution of the United States, in the limitations therein imposed upon the powers of the separate States, a protection against oppressive and unjust laws, even as in Cummings v. Missouri that same Constitution was invoked to protect against the hasty and unwise and oppressive act of a State in the excitement following the close of the Civil War. It must seem strange, then, especially to this court, to find the same people who invoked the federal protection against *ex post facto* laws in Fletcher v. Peck, protesting against the application of the very principles in that case invoked when they are applied to the hasty, ill-considered and prejudiced legislation of these modern times, when such legislation is challenged because in violation of the fundamental principles under which this government was organized, and which, time without number, have been fully declared in the decisions of the Supreme Court of the United States, prior even to the admission of the State of Texas into the Federal Union. We are urged to make this observation in view of the contention strenuously made by the State in the hearing of this cause below that, since the year 1889, the State of Texas had been enacting laws on the subject of trusts, making each act an enlargement of its predecessor and all evidencing a fixed and continued purpose to control corporations within the State.

We have no desire nor are we called upon to question the power of the legislature of any State to pass laws for the suppression of trusts and combinations, and for the regulation of corporations in order to prevent such evils, but we do contend that all such laws, no matter how salutary and good their purpose may be, must conform to fixed and settled constitutional rules and principles. With reference to the particular act here under consideration, we submit that, under its terms and in the effect which has been given to it in this case, it clearly violates the long settled constitutional provision against the enactment of an *ex post facto* law. And we further deny the right of the State of Texas by this act to create a lien upon the property of plaintiff-in-error for past offenses or to base the right to appoint a receiver upon the assertion of any such lien. In this, as well as in the act of the court authorizing the seizure of this plaintiff-in-error's property through actual appointment of a receiver, we submit that the provision of the Federal Constitution has been distinctly violated, and this plaintiff-in-error has thereby been unconstitutionally deprived of its property without due process of law.

To illustrate further the application of this law, let us assume that three persons compose a firm and are operating in the oil business in the State of Texas and that three other persons have formed a corporation and are engaged in the same business, and that this firm and this corporation enter into a combination in violation of the anti-trust laws of the State of Texas. Reference to the act in question will show conclusively that the co-partnership does not fall within the terms of the act, but that the corporation does; that a lien may be asserted upon the property of the latter, dating from the institution of the suit against it and a receiver appointed of its property to enable the State to collect the penalties imposed against it, while such a proceeding is wholly without law or authority in the case of the co-partnership. Reference to the act of April 11, 1907, would show that this illustration is correct since nothing in the act refers to anything except "foreign or domestic corporations." The act itself is entitled:

"An act relating to fines, penalties and forfeitures due or to become due to the State of Texas by **foreign or domestic corporations** to provide for the securing and enforcement of payment thereof; to fix liens upon the property of **such corporations** to secure payment thereof; to provide for the survival of actions and causes of action in cases of a **dissolution or forfeiture of charters or cancellation of permits of such corporations**; to provide for the appointment of receivers, fixing venues, providing that this act shall be cumulative of all other laws in force in this State and declaring an emergency."

Elsewhere in this brief (appendix), will be found the full text of the act. We quote the title as above merely to support our contention that the act relates only to corporations and that it distinctly provides for the creation of a lien upon the property of corporations, and corporations only.

The proposition that the seizure of the property of this plaintiff-in-error or the encumbering it with a lien according to the terms of the act of April 11, 1907, does add and add substantially to the punishment provided for the violation of the Anti-Trust Acts of 1899 and 1903, and changes the law providing for such punishment as the same existed at the time of the commission of the acts, which it is alleged constituted an offense—this proposition would seem to be almost too self-evident to require elaboration by way of argument or authority.

Remembering that under the terms of the act under discussion the lien therein asserted is for all practical purposes created at a moment when a suit is filed against a defendant corporation by the State whether the State succeeds in the suit or not, let us examine for a moment the evil effects which will of necessity follow the creation of such a lien in support of our contention that such lien is an additional punishment as against this plaintiff-in-error.

Let us suppose that in this case the courts of the State of Texas had limited the right of the State to recover penalties to a period of two years at $50.00 per day—under a decision that plaintiff-in-error was not amenable to the act of 1899 on ac-

count of the bar of the statute of limitations, thereby reducing the maximum which the State could possibly recover to $36,500.00. Now the suit filed against plaintiff-in-error, as the petition therein was originally framed, called for the infliction of penalties aggregating more than $5,000,000.00. In the light of this, can anyone doubt that by the act of filing the suit the credit of this plaintiff-in-error as a merchant—for strictly speaking that is what he was—would be seriously injured and impaired, if not wholly destroyed, since the act of filing the suit against it created this enormous lien upon all its property then or thereafter brought into the State of Texas.

We submit that it is elementary law that a statute which subjects, in criminal prosecutions, for the same offense, one person to a greater or a different punishment than others, or punishes one and not the other, is in violation of the provision in the United States Constitution which prohibits any State from denying to any person within its jurisdiction the equal protection of the law. (**Pace v. Alabama,** 106 U. S. 585; **Niagara Fire Insurance Co. v. Cornell,** 110 Fed. Rep. 817.)

In this connection, we desire also to submit that, under the rule of strict construction of penal statutes and remembering that the Anti-Trust Acts under which it is sought to punish this plaintiff-in-error are penal, the encumbering of its property by a lien with all the incidents attaching to such encumbrance by way of impairment and destruction of its credit and inability to convey its property freely can be treated as nothing else than the punishment of this plaintiff-in-error **before it has been found guilty** of any offense. This feature of the case appears so obvious to us that it would seem to require but little discussion. The principle which may be invoked as against this proposition by analogy from the rule of *lis pendens* or the statutory lien which may arise in the bringing of civil suits can have no application here, for, as we have constantly shown, this is a penal action, a suit for the recovery of a penalty, a suit brought to protect a public right

and to redress a public wrong, and whatever be its form, we insist that the defendant therein is entitled to all the protection established by the rules of criminal law? In view of this, we earnestly contend that any law or the action of any court which deprives the defendant in a criminal suit of his property or his liberty before the suit results in a verdict of guilty against him, and a judgment properly entered thereon, is such a glaring violation of due process of law, of the law of the land, which hears before it condemns and punishes, that this alone would be sufficient to justify any court in declaring this act wholly unconstitutional and void. We admit that it is a well-known principle in criminal law and a practice constantly followed to deprive a person of his liberty even before judgment of guilt, and this, perhaps, too, might be extended to a sequestration of his property—but alone and for the express purpose of compelling his appearance in the trial of the cause. No such purpose as this is expressed in the act in question.

In that the appointment of the receiver under the order of the court actually takes the property of plaintiff-in-error from its management and control, we submit that not only is it deprived of the value residing in the use of that property while in the hands of the receiver but that the damage which must necessarily follow to an established business—a business more or less technical in its character, requiring expert and skilled and experienced management, by placing it in the hands of a receiver who cannot be presumed to possess the necessary skill and ability to manage such business in the manner in which its owners managed it—we submit that this is sufficient to show that the punishment of this plaintiff-in-error is materially and substantially increased. In this connection it must also be remembered with respect to the appointment of such receiver that when such receiver is appointed at the suit of the state, and takes charge of the property, administers and manages it as best he can pending the litigation, and then defendant is finally acquitted of the charge presented against it in such suit, even though defendant's business which is now returned

to it by the receiver in charge may be found seriously impaired—if not wholly destroyed—no adequate remedy exists to recover any loss so suffered, as against the state.

The suggestion that the appointment of a receiver is an additional remedy for the suppression of trusts and may be therefore justified upon the ground that with respect to "remedies," the provisions of the Federal Constitution prohibiting *ex post facto* laws do not apply, fails to take into account the elementary rule that it is the substance of the act and not the name which must control and that what cannot be done directly cannot be done indirectly. If this act is treated as purely a remedial measure so far as its form is concerned this court can not close its eyes to the effect which this so called remedial statute must produce upon the property of plaintiff-in-error. The above contention is adequately and strongly answered in the opinion of this court in **Cummings v. Missouri.**

> "The Constitution deals with substances, not shadows. Its inhibition is levelled at the thing, not the name. It is intended that the rights of the citizen should be secured against deprivation for past conduct by legislative action under any form, however disguised. If the inhibition can be avoided by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

In concluding this branch of our argument, we cannot refrain from saying one word more upon the proposition that in a civil action for the enforcement of a penalty the principle for which we are contending should be applied and to refer in connection therewith to the case of **Wilson v. O. & M. R. R. Co.** (64 Ill., 542; 16 Am. Rep., 565). In that case the statute imposed a penalty of $50.00 for certain offenses. A subsequent act amended the former so as to authorize a penalty not exceeding $100.00 and contained a proviso that the second act should not apply to proceedings pending under the first act, except so far as to change the amount of the penalty. It was held that the first act was repealed by the second but that the proviso of the latter was unconstitutional as an *ex post facto* law and that therefore the prosecutions pending under the first act were defeated by the passage of the second.

The case of **Havemeyer v. Superior Court,** (84 California 327; 24 Pac. 121), which we have fully discussed above, is in many respects decisive of the propositions raised here with respect to the illegality of the appointment of a receiver. The Havemeyer case furnishes an exceptionally strong analogy in that the corporation, defendant in that case, and against whom judgment of forefeiture was rendered (upon the strength of which judgment the receiver was appointed) was a corporation of the State of California, and consequently no question could arise as to the authority of the state court in pronouncing a decree of dissolution. In denying the right of the trial court to appoint a receiver of the property of the corporation after judgment of forfeiture entered against it and holding that the power of the trial court with respect to the property of the corporation wholly ceased when the defendant in the original suit filed its appeal bond from the judgment of forfeiture, the Supreme Court of California in its learned and comprehensive opinion, speaking through Mr. Chief Justice Beatty, says, with reference to the contention that the appointment of the receiver in such case is an additional punishment:

> "He (referring to the opinion of the trial judge) asks if it is possible that this controversy between the state and a concern with millions of capital is limited to the imposition of a fine of $5,000.00 and the cancellation of a charter, the duplicate of which can be obtained while we are talking here; and he answers his own question as follows: 'I understand the great interest of the state is to break down the monopoly. To do that it seizes the means and utensils—the business— with which the monopoly has been proceeding; it scatters it; it divides it up; a receiver is appointed for that purpose; that is a part of the penalty; that is a part of the penalty provided by law, because they have forfeited their corporate rights—no other reason.' Translated into terms specifically applicable to the case before us, the meaning of this is that if a corporation, organized for the purpose of refining sugar, enters into a combination with other corporations through the medium of what is called a 'trust' for the purpose of limiting the production and keeping up the price of refined sugar, the courts will not only forfeit its charter and impose the ut-

most fine which the law prescribes for such offenses but they must go further and by the hands of a receiver seize into their possession all the property of the defunct corporation and especially a sugar refining plant, not for the purpose of preserving and protecting it and as speedily and economically as possible distributing it to those who are equitably entitled, viz: creditors and stockholders, but for the quite opposite purpose of shutting up and condemning it to rust and idleness until such time as it can be unfitted completely for the purpose to which it is best adapted by dividing it up and scattering it. We confess that this is to us a novel doctrine and one which does not upon any ground commend itself to our judgment. It may not be the rule in this state to construe penal legislation strictly, but even here when a court is asked to impose a penalty for infliction of a law the first inquiry is: What penalty does the law prescribe? The answer to this question is sought, not in labored construction of other statutes but in the express terms of the act defining the offense."

The above is but a small portion of a lengthy opinion of the court all of which is based upon the proposition that the appointment of the receiver to take charge of the property of a corporation **whose dissolution has even been decreed,** to say nothing of merely fining it and ousting it from the state, is distinctly and in every sense the imposition of a penalty.

We come now to the consideration of the proposition that the Texas Act of April 11th, 1907, in so far as under it the right to appoint a receiver is limited exclusively to suits against corporations, is unconstitutional and void in that it provides different penalties for the same offense when committed by different defendants and thereby is a denial of the equal portection of the laws. We submit that this element of the act in question constitutes an arbitrary and unwarranted differentiation between persons and imposes burdens upon one class where none are imposed upon another for doing precisely the same act in violation of the same law. Elsewhere in this argument we have pointed out that under the act a combination entered into between a co-partnership and a corporation, making both parties liable to the penalties under the Anti-Trust Act would,

in the case of the corporation, subject it to the provisions of the Act of April 11th, 1907, and authorize the appointment of a receiver of its property pending an appeal; but not so in the case of the partnership equally guilty with the corporation. In the one case the lien is created upon the property of the corporation, a cloud upon the title to its property is created from the time the suit is filed but none of these burdens fall upon the co-partnership. We utterly fail to see that the fact that one is a corporation and the other is not, makes any substantial difference and we submit that any classification of this character, if indeed the legislature intended to make a classification, is wholly capricious and unwarranted by every rule of law. In this case we have a foreign corporation which as a matter of fact cannot be dissolved by the decree of any court of Texas, and which, even if its permit to do business in the state is canceled, still remains the owner of its property, and is still vested with all the right to carry on an interstate business or sell its property. That the creation of a lien or, perhaps more properly speaking, the claim of a lien, arising from filing suit against such firm corporation must constitute a serious impairment and a substantial injury to its ownership of its property cannot be questioned. And yet under the act under discussion the individual or the co-partnership is relieved from this burden and the corporation is made to bear it.

If the lien herein asserted were made to spring from the judgment of conviction it might well be claimed that the individual would stand bound for all of his property for its satisfaction while only the property of a corporation as such could be reached. But that is not the case here. The result here is to cloud the title to the property of the corporation even long before it is found guilty, to embarrass it in the conduct of its affairs and disable it in carrying on its business, to prevent it from creating liens upon its property for needed extensions, improvements and repairs and from borrowing money on its general credit or buy goods in the usual course of its business, because under this law all the property which the corporation has in the state

or all the property which it may bring within the state after the suit against it is filed is impressed with this lien which takes into no account the right of the corporation to sell goods and pass the title thereto to the purchaser in due course of trade—the result of all this can be none other than the destruction of the business of the corporation from the moment the suit is filed, when the individual or the co-partnership who may be joint offenders with it and who may be equally sued as such are left free to continue their business unembarrassed and unhindered by such an encumbrance. We submit that such a law presents such a glaring inequality, one so patent and so far reaching in its unjust effect, that it requires no argument to show that it is a plain violation of the principle of the equal protection of the laws.

We assume in this connection that it will not be contended that a foreign corporation doing business within a state is not entitled to the protection of the Federal Constitution as herein invoked in the same degree as any person or domestic corporation.

We have already pointed out in connection with the discussion of the effect of the appeal in the main case herein in staying further proceedings by way of the appointment of a receiver, that the application of such law to a corporation chartered under the laws of the state, whose chartered existence could be destroyed by the court was illegal, and void in that such a law was a denial of the equal protection of the law, and that in such cases it had been uniformly held that an appeal from the judgment of dissolution under a *supersedeas* bond has the effect of holding the judgment in abeyance and continuing the corporation as a living entity until such judgment is affirmed. Such was the distinct holding of the court in the Havemeyer Case, *supra*, and such was the distinct holding of the court in Jackson v. Trunk Railway Company, 85 Texas, 605.

If the authorities are correct, the only other means of escaping the conclusion that such law is invalid is to insist that this statute cannot be applied to state corporations but is limited in its application solely to foreign corporations.

With respect to the question of classificaation herein involved, we respectfully refer the court to the learned opinion of Mr. Justice Brewer in the case of the **G. C. & S. F. R. R. Co. v. Ellis,** 165 U. S. 150; 41 L. ed. 666. We might well be justified in quoting the entire opinion in that case since almost every word said therein has a distinct bearing upon the case at bar. We content ourselves merely with saying that in that case this Court distinctly held that corporations are persons within the provisions of the 14th Amendment and that a state has no more power to deny to them the equal protection of the law than it has to individual citizens. The state statute under examination in that case provided for the imposition of an attorney's fee not to exceed $10.00, in addition to costs, upon railway corporations omitting to pay certain claims within a certain time after presentation. This court finding that the act applied to no other corporations and to no individuals declared it unconstitutional as denying the railway companies the equal protection of the laws. And in discussing the question of classification therein raised, Mr. Justice Brewer declared that a classification, to relieve a statute from the charge of a denial of the equal protection of the law, must be one which is not made arbitrarily, but must be based upon some defense which in all circumstances bears a just and proper relation to the attempted classification. We take the liberty of inviting the particular attention of the Court to this case.

In concluding our argument on this point we submit that if the act in question contained no other phase, than the one herein pointed out, this alone is enough to condemn it. And when consideration is taken of the serious and far-reaching effect produced upon the business and property of this plaintiff-in-error by the application of a right based upon this statute, the viciousness of the act must seem even more apparent.

We further submit that the Act of April 11, 1907, is unconstitutional and void and in violation of Section 1 of the 14th Amendment to the Federal Constitution in that it does not pro-

vide for a fixed and uniform rule of law applicable to all persons alike, but is a delegation of the legislative power to an officer of the executive department to create or not to create a lien as in his wisdom he may see fit and thereby to discriminate between persons at will. Section 1 of the Act in question declares.

> "That the State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney-General or District or county attorney acting under his direction, in any court of competent jurisdiction within this state for the purpose of forfeiting the charter or cancelling the permit of such corporations or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture shall constitute notice of such lien."

The above language can admit of but one construction, to-wit, that under and by virtue of it the Attorney-General of the state has it within its power at all times to encumber the property of any corporation by filing a suit against it either to forfeit its charter or cancel its permit or merely to recover penalties, or both, whether such suit be founded upon facts which he may reasonably believe constitute a sufficient cause of action or not. If it be contended in answer to this that it must be presumed that the Attorney-General of the state will exercise the duties of his office lawfully and without prejudice, etc., we nevertheless submit that this is an unwarranted delegation of legislative power, and that even though it is admitted that the Attorney-General will act in good faith the "law of the land" does not contemplate that the property of a corporation shall be at all times subject to the imposition of a lien whether arbitrarily or mistakenly created without at least some redress to the corporation for damages which it may suffer thereby.

In the case of the **Mayor of Baltimore v. Radecke** (49 Md., 217; 33 Am. Rep., 239), a city ordinance prohibited any person from putting up a stationary steam engine without the consent of the mayor and council and provided for the revocation of such permit, and to compel the removal of such engines on

six months' notice; it was held unreasonable and void in that it was an improper delegation of legislative authority. In commenting upon the power thus delegated to the mayor, the Supreme Court of Maryland says:

> "But it commits to the unrestrained will of a single public officer the power to notify every person who now employs a steam engine in the prosecution of any business in the City of Baltimore to cease to do so. And by providing compulsory fines for every days' disobedience of such notice and order of removal renders his power over the use of steam in that city practically absolute so that he may prohibit its use altogether, but if he should not choose to do this but only to act in particular cases, there is nothing in the ordinance to guide or control his action. It lays down no rules by which its impartial execution can be secured or partiality and oppression prevented. It is clear that giving and enforcing these notices may and quite likely will bring ruin to the business of those against whom they are directed. While others from whom they are withheld may be actually benefited by what is thus done to their neighbors. **And when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed,** it becomes unnecessary to suggest or to comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

We have quoted the above not only for the purpose of showing the effect of the delegation of such power to an executive officer but even more for the purpose of showing that the courts will not hesitate to take into consideration the evil effects which may be produced by the arbitrary exercise of such power, even in the face of a presumption that public officers will execute the duties of their office *bona fide* and without prejudice.

The cases might be multiplied in which ordinances and statutes of this character have been held null and void, not only

upon the ground that they denied the equal protection of the laws, but that they were unreasonable and arbitrary and in violation of the principle that legislative power cannot be delegated to either department of the government. As was said by this court in the leading case of **Yick Wo. v. Hopkins** (118 U. S. 366):

> "The guaranty of equal protection of the laws is a **pledge of the protection of equal laws.**"

In **Barbier v. Connolly,** (113 U. S. 27), this court in construing this provision of the Fourteenth Amendment declared that

> "It was undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and to acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property or prevention and redress of wrong and the enforcement of contracts, **that no impediment should be imposed upon the pursuits of anyone except as applied to the same pursuits of others under like circumstances; and that no greater burdens should be laid upon one than are laid upon others in the same calling and condition.**"

In concluding this brief and argument, we cannot refrain, in the light of all the facts in this case as exhibited by the record, to invite the attention and thoughtful consideration of the court to the words of Mr. Justice Matthews, speaking for this court in **Yick Wo. v. Hopkins,** (118 U. S. 356):

> "When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

The above words seem, to us at least, to have a particular signification when applied to this case. The first official act of this nation proclaimed the theory upon which all government

is founded in words which have ever since been the star of hope to other nations of the world:

> "We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain inalienable rights; among these are life, liberty and the pursuit of happiness."

While it may be true, as has been said by this Court on several occasions, that this Declaration, the fundamental principles, therein contained, may not have all the force of organic law or be made the basis of judicial decisions as to the limitations to be imposed upon rights and duties, we must not forget that in this Declaration rests the spirit of the organic law of this nation and the letter of the Constitution must always be construed in the spirit of the Declaration of Independence. That duty rests imperatively and unceasingly upon the Federal Courts of this land, and more especially upon this court.

We have endeavored in this argument, oft-times at the cost of no little self-restraint, to be temperate in our language and whenever we have attacked the laws of the State of Texas and their application to plaintiff-in-error herein, we have endeavored to do so, constantly remembering the position to which defendant-in-error, in this case, is entitled by reason of the fact that it is one of the States of this Union. But with all due deference to the dignity and position occupied by defendant-in-error, we assert, that in our opinion, few cases have ever been presented to this Court exhibiting such a glaring denial of constitutional rights as is presented by the case at bar. If the theological doctrine of vicarious punishment has become a principle of our law, then, indeed, is the judgment below correct and should be sustained. But if this doctrine does not find place in our law, then are the proceedings and the judgment below worthy of naught but condemnation.

Respectfully submitted.

H. S. PRIEST,
*of Counsel.*

# APPENDIX.

## ACT OF APRIL 11, 1903.

An act relating to fines, penalties and forfeitures due or to become due to the State of Texas by foreign or domestic corporations; to provide for the securing and enforcement of payment thereof; to fix liens upon the property of such corporation to secure payment thereof; to provide for the survival of actions, and causes of action in case of the dissolution or forfeiture of charters or cancellations of permits of such corporations; to provide for the appointment of receivers, fixing venue, providing that this act shall be cumulative of all other laws in force in this State, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Whenever any corporation created under the laws of this State, or any foreign corporation authorized to do business in this State, shall violate any law of this State, including any law against trusts, monopolies and conspiracies, or combinations, or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within the State at the time of such violation, or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and all costs of suit and of collection, and the State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney-General or District or County Attorney acting under his direction in any court of competent jurisdiction within this State for the purpose of forfeiting the charter or canceling the permit of such corporations, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture shall constitute notice of such lien. Where any such law has heretofore been violated, or shall be violated before the taking effect of this act, and a cause of action exists for such fine, penalties or forfeiture, or shall come into existence before the taking effect of this act, and suit

shall be filed in such case, the State shall have a lien to secure the payment of such fine, penalties and costs from the time this act shall take effect on all property of such corporation within this State or which shall thereafter come or be brought within the State.

Section 2. Any action or cause of action for any fine, forfeiture or penalty that the State of Texas has or may have against any corporation chartered under the laws of this or any other State, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter. Whenever a corporation against which the State has heretofore instituted suit, or shall hereafter institute suit, forfeiture of its charter, or cancellation of its permit, or for fines or penalties under any law of this State, shall dissolve in this or any other State, or shall have a judgment rendered against it in this or any other State, for the forfeiture of its charter, the court in this State in which such suit is pending, shall appoint a receiver for the property and business of such corporation within this State or that may come or be brought within this State during such receivership, or the court may, in any case wherein the State is suing any such corporation for the forfeiture of its charter or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation, whenever the interests of the State may seem to require such action. If such dissolution shall take place or judgment of forfeiture be rendered against such corporation before this act takes effect, the court shall, upon the taking effect of this act, appoint a receiver for the property and business of such corporation in this State; and the State shall have the right to the writs of attachment, garnishment, sequestration or injunction without bond; to aid in the enforcement of its rights created by this act; and all property that may come into the possession of any receiver appointed under the provisions of this act, not otherwise exempt by law, shall be subject to the lien herein created, and for the payment of any such fines or penalty.

Section 3. The Attorney-General, or any district or county attorney acting under his direction, may bring suits in the name of the State of Texas for the foreclosure of such lien in the District Court of any county in the State of Texas, and in case the suit for foreclosure should be brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such

corporation for forfeiture of its charter or cancellation of its permit or for fines or penalties, service may be had upon any person within the State who acted and was acting as agent of any such corporation in this State at the time of such dissolution or forfeiture of charter or cancellation of permit.

Section 4. The rights and remedies given by this act shall be construed as cumulative of all other laws in force in this State, and shall not effect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, penalties and forfeitures.

Section 5. In case any suit should heretofore be brought in any of the courts of this State for the recovery of penalties mentioned in this act, the same shall not be settled or compromised without trial upon the merits thereof, without the consent and approval of the Attorney-General of the State.

Section 6. The fact that there is no law that prevents the abatement of actions or causes of action for fines and penalties when corporations becoming liable for same shall dissolve or be dissolved for forfeiture of their charters, or cancellation of their permit, and the fact that there is no adequate remedy for the collection and enforcement of such fines and penalties, creates an emergency and an imperative public necessity demanding that the constitutional rule requiring bills to be read on three several days in each house be suspended, and it is so suspended, and that this act shall take effect and be in force from and after its passage, and it is so enacted.

Approved, April 11, 1907.

NOTE. The complete text of the Texas Anti-Trust Acts of 1899 and 1903 is contained in briefs of associate counsel for plaintiff-in-error, and necessary portions thereof are incorporated in the "Statement" herein.

*IN THE*

# Supreme Court of the United States,

OCTOBER TERM, 1908.

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## Nos. 359 and 360.

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WATERS PIERCE OIL COMPANY,
*Plaintiff in Error,*

AND

STATE OF TEXAS,
*Defendant in Error.*

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## ADDITIONAL BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

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The argument herein presented, on propositions submitted, is intended to be in addition to and in support of the presentation of the case made by the brief filed herein.

The judgment for $1,623,900 and for the cancellation of the permit of the Waters Pierce Oil Company to do business in Texas was rendered by virtue of the anti-trust laws of 1899 and of 1903; and the judgment appointing a receiver was rendered by virtue of the Act of 1907; all of these acts are contained in the appendix to the brief.

The references herein, unless otherwise specified, are to the Printed Record in Cause No. 359.

The propositions submitted in this argument, presenting constitutional questions, were all submitted and raised in the trial court, and assigned as error in the Court of Civil Appeals and presented in the petition for writ of error to the Supreme Court of the State of Texas, in accordance with the rules of practice and procedure, and of the statutes of the State of Texas, and have been presented by assignments of error in this Court.

We therefore submit for the consideration of the Court that:

## THE ANTI-TRUST LAWS OF TEXAS ARE TOO VAGUE AND INDEFINITE TO BE ENFORCED.

**The judgments below are void, under that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which prohibits the States from depriving any person of property without due process of law; for the reason that they are penal statutes and are not couched in such explicit terms that the parties upon whom they are intended to operate might, with reasonable certainty, ascertain and determine what particular acts were prohibited; and for the reason that, as construed by the State Courts herein, it was left to the jury to determine whether or not the acts done "would be reasonably calculated" to effect the purpose prohibited, or "tended" to effect such purpose.**

The established construction of penal statutes in Texas was correctly announced by the Supreme Court in the case of M. K. & T. Railway Company of Texas v. State, 100 Tex. Sup. Ct. 424, in which the court said:

"It is a well-established principle of statutory construction that penal statutes must be strictly construed in determining the liability of the person upon whom the penalty is imposed, and that the more severe the penalty, and the more disastrous the consequence to the person subjected to the provisions of the statute, the more rigid will be the construction of its provisions in favor of such person and against the enforcement of such law (Suth. Stats. Const., Sec. 322, Potter's Dwaris, 244). A penal statute such as now before us must be couched in such explicit terms that the party upon whom

it is to operate may, with reasonable certainty, ascertain what the statute requires to be done, and when it must be done; otherwise there would be no opportunity for a person charged with the duty to protect himself by the performance of it according to the law. (Suth. Stats. Const., Sec. 324 Potter's Dwaris, 246-251; Tozer v. United States, 52 Fed. Rep., 917). In the case last cited Judge Brewer said: 'But, in order to constitute a crime, the act must be one which the party is able to know in advance, whether it is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable.' "

This construction by the Supreme Court of the State of Texas is supported by the case of Tozer v. United States, referred to by that court, and the case of C. & N. W. Ry. Co. v. Dey, 35 Fed. Rep. 876, wherein the Circuit Court said:

"No penal law can be sustained unless its mandates are so clearly expressed that any ordinary person can determine in advance what he may and what he may not do under it."

And is also supported by the case of U. S. v. Brewer, 139 U. S. 278, in which the court say: "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid."

The anti-trust law of the State of Texas, referred to as the Act of 1899, has four principal sections purporting to fine and prohibit acts by parties engaged in commerce.

The first section, eliminating unnecessary words, declares that "Any corporation . . . transacting or conducting any kind of business in this State . . . who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation, or understanding with any other corporation . . . to regulate or fix the price of any article of manufacture, etc., . . . shall be deemed and adjudged guilty of a conspiracy to defraud and to be subject to the penalties as provided in this act."

Section 2 enacts, omitting surplus words, as follows:

"A monopoly is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill,

or acts, or of any other valuable thing or possession, by or between persons, firms or corporations . . . whereby any one of the purposes or objects mentioned in this act is accomplished, or sought to be accomplished, or whereby any one or more of said puposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced."

Sections 3 and 4 are not involved in this case.

The trial court, in paragraph VII of its charge (Print. Rec., p. 288), submitted the case under the law as announced in section 1 of said Act of 1899; and in paragraph VIII of its charge (Print. Rec., p. 289) submitted the case under the law as announced in section 2 of said Act of 1899. In paragraph VIII the court authorized the jury to find the Waters Pierce Oil Company guilty and assess penalties against it as follows:

"If you find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto, and prior to March 31, 1903, the defendant, acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the State and say by your verdict. We, the jury, find for the State on the issues submitted for our consideration in paragraph 8 of the court's charge. In this connection, you are instructed that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust law of Texas."

That part of the verdict of the jury which refers to the Act of 1899 is as follows:

"We, the jury, find for the plaintiff against defendant on each

of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties $1,549,500" (Print. Rec., p. 314).

The two issues submitted to the jury under the Act of 1899 were contained in paragraphs VII and VIII of the charge referred to, and authorized a finding for the same period of time; that is, from May 31, 1900, the date that plaintiff in error was admitted to do business in Texas, down to March 31, 1903, the day upon which the Anti-Trust Act of the State of Texas of 1903 became effective and repealed the Act of 1899. So it is conclusively established that the jury found against plaintiff in eror under both paragraphs VII and VIII of the trial court's charge, and upon this verdict judgment was entered.

Waiving the question, for the time, as to whether or not section 1 of the Act of 1899, which was submitted under paragraph VII of the court's charge, is valid, we present the proposition that section 2 of said Act of 1899, which was submitted to the jury in paragraph VIII of the court's charge, is unconstitutional and void and in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

The very question announced by the Circuit Court in the case of Tozer v. United States, 52 Fed., 917, is presented by the second section of the Act of 1899, and contained in paragraph VIII of the court's charge; that is, the question of leaving it to a jury to determine what is reasonable or unreasonable. The jury were authorized to find against plaintiff in error, and did find against plaintiff in error, as manifest by their verdict, on the proposition that plaintiff in error "had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey . . . whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated."

Who can determine in advance what is "reasonably calculated" to be the effect on the price of oil by a combination or union of capital of two corporations? "Reasonably calculated" is a process

of mental speculation. One man may "reasonably calculate" one way, and another man equally as intelligent, may "reasonably calculate" just the reverse. In fact, that is what makes one good business man sell to another good business man; because each one "reasonably calculates" that he is getting the advantage of the other. To say, therefore, in a penal statute, and in a charge to a jury, as was said in the Act of 1899 and in the charge in this case, that the jury may find a party guilty and assess enormous fines, because, in the opinion of the jury, the act done was "reasonably calculated to regulate or fix the price of oil," is to remove all certainty from penal statutes and from proceedings in court. It leaves the citizen, and his property rights, absolutely at the mercy of twelve jurors, who, in many cases, know nothing about the character of the business being transacted.

In construing these words, we must remember, also, that it is the established law in Texas, that penal statutes must be "strictly construed in determining the liability of the person upon whom the penalty is imposed, and that the more severe the penalty, and more disastrous the consequence to the person subjected to the provision of the statute, the more rigid will be the construction in favor of such person and against the enforcement of such law." This language was used by the Supreme Court of Texas in passing upon a case where the State had sued for penalties for a failure on the part of a railway company to furnish certain accommodations at its depot, and was said in passing upon an assignment of error, which challenged the validity of the statute, for the reason that it violated the due process clause of the Fourteenth Amendment to the Constitution of the United States (State v. Ry., 100 Tex. 424). Authorities without number might be cited from Texas and other States in support of the same position, but they are deemed unnecessary.

The correctness of the authorities quoted, holding that such a law as section 2 of the Act of 1899, cannot be properly enforced,

is made more apparent by further reference to the charge and evidence in this cause.

In section XI of the court's charge (Print. Rec., p. 285), the jury were instructed with reference to the second section of the Act of 1899 as follows:

"You are further instructed that said statute also made it unlawful for any corporation transacting or conducting any kind of business in this State to bring about or permit any union or combination of its capital, property, trade or acts with the capital, property, trade or acts of any other person or corporation, whereby the price in Texas of any article of manufacture or merchandise would be fixed or sought to be fixed, regulated or sought to be regulated; or whereby the price in Texas of any article of manufacture or merchandise would be reasonably calculated to be fixed or regulated, or whereby the trade in such article of manufacture or merchandise in Texas would be sought to be controlled or limited, or would be reasonably calculated to be controlled or limited."

It will be observed that the court in this announcement of the law made it unlawful for the Waters Pierce Oil Company "to bring about or permit any union or combination of its capital, etc.;" while the law provided that "a monopoly is any union or combination or consolidation or affiliation of capital, etc., . . . by or between persons, firms or corporations." In other words, the law requires the union or combination to be "by or between corporation"; while the trial judge made it unlawful for the Waters Pierce Oil Company "to bring about or permit" such union or combination. Here was a distinct departure by the trial court from the law in his attempt to submit the matter to the jury, which of itself is a departure from the rules of due process of law in a penal case.

But when we turn to the action of the jury and the evidence upon which they acted, the departure is emphasized. In the determination of the question, as to whether or not there had been a monopoly formed, "by or between" the Waters Pierce Oil Company and another corporation or corporations, the principal evidence which the jury must act upon was contained in Stipulation No. 1

entered into by counsel in the case (Print. Rec., p. 424). That stipulation shows:

(1) That the Standard Oil Company of New Jersey is a corporation incorporated under the laws of the State of New Jersey in 1882, and that it has never conducted any business in the State of Texas.

(2) That said Standard Oil Company of New Jersey owned a controlling interest in the shares of stock of both the old and the new Waters Pierce Oil Company.

It further shows that the Standard Oil Company owned a controlling interest in the stock of a number of other oil companies.

There was absolutely no evidence showing, or attempting to show, that the price of oil in Texas had been "fixed or regulated" by this ownership of stock, and there is no evidence to show that this ownership of stock "would be reasonably calculated to fix or regulate the price."

There was certain evidence, admitted by the court, showing that the Standard Oil Company, a stockholder in the Waters Pierce Oil Company, sent its auditors to the office of the Waters Pierce Oil Company at St. Louis to audit the books of the latter company; that the Waters Pierce Oil Company made certain financial reports to the Standard Oil Company or its officers; and that an oral agreement had been entered into between H. C. Pierce and representatives of the Standard Oil Company of Ohio, in 1878, limiting territory; and that the new Waters Pierce Oil Company had thereafter confined its business to the territory occupied by the old company after 1878. It was not shown that these circumstances in any way affected the price of oil, and if they raised any doubt, such doubt was dispelled by the only positive testimony on the subject, which was given in the case, and that is the testimony of Mr. H. C. Pierce, introduced by the State, who testified as follows:

"A. I have managed the business of the various interests, com-

mencing with W. H. Cobb & Co., H. C. Pierce & Co., Waters. Pierce & Co., the Waters Pierce Oil Company organized in 1878, and the Waters Pierce Oil Company organized in the year 1900, down to the present time, with the exception of a short interval.

Q. Do you know, after the spring of 1900, when the new Waters Pierce Oil Company was organized, how its affairs and policies were managed?

A. I do.

Q. By whom?

A. By the officers and the directors and the executive committee, composed of the officers and directors and some of the heads of departments.

Q. Do you know who constituted the executive committee of the Waters Pierce Oil Company?

A. Myself, Mr. Finlay, the vice president; Mr. Adams, the treasurer; Mr. Gruet, the secretary; Mr. John D. Johnson, the general counsel; Mr. Stephen Johnson, manager of the lubricating department; Mr. Charles P. Ackert, general manager of the company. There may have been one or two more, but those are the names I now recall.

Q. Now, I will ask you, Mr. Pierce, whether the present Waters Pierce Oil Company ever had any understanding or made any agreement, expressed or implied, with either the Republic Oil Company, the Standard Oil Company of Indiana, or any other company or person in the State of Missouri, or elsewhere, for the purpose of fixing or intending to fix or maintain the price at which any of the products of petroleum should be sold upon the market?

A. Absolutely it did not.

Q. And has not, to your knowledge, down to the present time?

A. To my knowledge, and I know generally and particularly in regard to the affairs of the Waters Pierce Oil Company, it has not down to the present time" (Print Rec., p. 500).

This testimony was absolutely uncontradicted and was conclusive on the State.

Here we have a result, then, of a jury enforcing such a law, as the second section of the Act of 1899, by determining that one corporation, having acquired a controlling interest in the stock of another corporation, is "reasonably calculated to fix and regulate the price" of the commodity dealt in by such corporation. This,

too, in the face of the positive testimony of the manager of such corporation, and its other officers and agents, that it did not have such effect, and in face of the absence of any testimony to show that it had such an effect.

We assert, therefore, with confidence, that the Waters Pierce Oil Company had the right to proceed with its business in the State of Texas after the passage of the Act of 1899, believing that it was not violating the law, because it knew that such ownership of stock did not affect the price of oil in Texas, and because it could "reasonably calculate" that it would not do so. For doing this, it surely cannot be convicted as a criminal, and any law which attempts to make an act of such character a crime, is void, because it is not due process of law.

The anti-trust law of the State of Texas, referred to as the Act of 1903, has three principal sections: Section 1 on trusts section 2 on monopoly, and section 3 on conspiracy; only sections 1 and 2 are involved in this case.

The trial court, in submitting the law as embraced in section 1, instructed the jury in paragraph IX of the charge, as follows:

"IX. If you find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were, on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, you will return a verdict for the State, and say by your verdict, We, the jury, find for the State on the issues submitted for our consideration in paragraph 9 of the court's charge. In this connection, you are instructed that if the defendant became a party to a trust of the character mentioned in this paragraph of the charge, each day

between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas."

The trial court, in submitting the first subdivision of section 2 of said Act of 1903, charged the jury, in paragraph X of the charge, as follows:

"X. If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix, maintain, or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the State and say by your verdict, We, the jury, find for the State on the issues submitted for our consideration in paragraph X of the court's charge In this connection, you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas."

The trial court, in submitting the law as embraced in subdivision 2 of section 2, charged the jury, in paragraph XI of the charge, as follows:

"XI. If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had, on March 31, 1903, or any date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the pur-

pose and intention on part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State, and say by your verdict, We, the jury, find in favor of the State on the issues submitted for our consideration in paragraph 11 of the court's charge. In this connection, you are instructed that if defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas."

By referring to the law itself, it will be found that the trial court attempted to construe the law, and determine what it meant, because the law is not literally followed in the charge.

In construing the first section of said Act of 1903, the trial court evidently intended to make the first subdivision of said section 1 a general statement or qualification on the subsequent subdivisions. In order to show why he did this, it is necessary to refer to the anti-trust law of 1889 (Revised Statutes of Texas, Art. 5313) and the construction thereof by the Supreme Court of Texas in the case of Queen Insurance Company v. State, 86 Texas 266-7. We quote the Act of 1889 so far as it is material:

"Article 5313. A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce."

We quote the first section of the Act of 1903 so far as it is material:

"Section 1. Be it enacted by the Legisature of the State of Texas: That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations, or associations of persons, or either two or more of them for either, any, or all of the following purposes:

1. To create, or which may tend to create, or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce or in the preparation of any product for market or transportation."

It will be observed that in the first subdivision of section 1 of the Act of 1903 the words "which may tend" are inserted, and that in subdivision 2, the material words added, are "fix and maintain," and that in subdivision 3, the material word added is the word "lessen" before "competition."

Now before the adoption of the Act of 1903, the Supreme Court of the State had construed the Act of 1889, in the case of Queen Ins. Co. v. State, 86 Texas 267, in which the court said:

"It seems to us, therefore, that the words in the first subdivision of section 1 of the act, 'to create or carry out restrictions in trade,' were intended only as a general expression of the purpose of the law, and that the acts defined in the subsequent members of the section were intended as a specific definition of what was meant in the first."

After referring to another authority, the Supreme Court of the State again, on the same page, said:

"But it is a rule of construction, that each word and sentence should be presumed to be intended for a purpose, and that each

should be given effect; and it may be argued that our construction destroys the effect of the words in the first clause, and that under such construction they might have been omitted without changing the meaning of the section. But the argument defeats itself. If the words 'restrictions in trade' are not to be limited in their meaning, then all the subsequent parts of the section were unnecessary, and may have been omitted without altering the sense."

The trial court was, therefore, justified in construing the Act of 1903, in his charge to the jury, as the Act of 1889 had been construed by the Supreme Court of the State in the case referred to.

It is evident, and a jury would so understand, that the trial court intended to make the words, "for the purpose of creating in Texas, or which tended to create in Texas," a qualification, not only upon the words "restrictions in the free pursuit in this State of the business of selling oil refined from petroleum," but also intended them to be a qualification upon the words, "fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil." This makes his construction accord with the construction placed upon the Act of 1889 by the Supreme Court of the State, and makes the word "tended" qualify all that follows in paragraph IX of the charge; and therefore makes section 1 of the Act of 1903 void for uncertainty; for the reason that no one can tell in advance what act "tends" to a restriction in the free pursuit of business or "tends" to fix the price of a commodity, or "tends" to prevent or lessen competition in business.

Again, as to section 2 of the Act of 1903, the court, in paragraph X of its charge submits to the jury the question, that if the "direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, . . . under such circumstances, that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of oil, . . . or to fix, maintain, or increase the

price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the State, etc."; the same vice is presented in this paragraph in the use of the words "tended to create." This would make the first subdivision of section 2 void for uncertainty.

Again, in paragraph XI of his charge, the court, in submitting subdivision 2 of section 2, with reference to the Standard Oil Company of New Jersey acquiring the capital stock of the Waters Pierce Oil Company, made the same use of the words "tended to affect or lessen" by making them qualify all the facts submitted in that paragraph.

It will be observed that the court, in using the word "tended," as he did use it in paragraphs X and XI, followed the law as it is contained in section 2 of the Act of 1903.

The consequence is that the construction placed upon the Act of 1903 by the trial court, in all of the provisions thereof, which were submitted to the jury in this case, renders that act unconstitutional and void under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

We submit, therefore, with reference to the Anti-Trust Act of 1899, as construed and submitted by the trial court, and as to the Anti-Trust Act of 1903, as construed and submitted by the trial court, both of which constructions were approved by the courts of last resort in Texas, that both of said acts are thereby rendered unconstitutional and void.

This position is sustained by the decisions of the Supreme Court of the State of Texas. In addition to the cases heretofore referred to, we refer again to the case of the Queen Insurance Company v. State, 86 Texas 262, where the court, on the question of construing the anti-trust law of 1889, said:

"There is a maxim that ignorance of the law excuses no one, which is not true as applied to every case. For a man is not guilty of theft who honestly takes property under an honest claim of right, though he may be mistaken as to the law. But it is true in the sense that no one can allege his ignorance of the law which

makes a certain act penal, in justification of his commission of that act. If he be held bound to know the law, he should have the means of knowing it, and hence he should not be punished for the infringement of a statute unless it designate with a fair degree of clearness and precision the act or omission which is forbidden by it. The offense need not be defined in the logical or legal sense of that word; for general terms may be used which in themselves require to be defined; but the terms employed should be sufficiently definite in their meaning, as plainly to designate the very act, which is sought to be made punishable by law."

Again, in the case of G. C. & S. F. Ry. Co. v. Dyer, 84 Tex. 194, the court was passing upon a statute which authorized the recovery of a statutory penalty for a failure to deliver a bill of goods. After reviewing the entire case, the court announced the law with reference to the certainty required in statutes inflicting a penalty in such matters to be as follows:

"Every man is presumed to know the law, and it would seem that before any one should be punished, either in a criminal or a civil action, for an act claimed to be penal, the offense should be clearly defined, and that any grave doubt as to the intention of the Legislature should be resolved in favor of the defendant."

This was, and always had been, the law in Texas prior to the trial of the case at bar; and this construction of penal statutes by the courts of the State of Texas, being in accordance with the general law in force in the United States and in England, we conclude that such construction should be followed by this Court in this cause.

It is clear that the verdict under the Act of 1899, being based on a statute which authorized the jury to find from two hundred to five thousand dollars per day, and the jury finding defendant guilty under both sections of the charge submitting that act, that it is impossible for any one to determine what penalties they inflicted under the first section of that act, and what penalties under the second section, or how much the penalties were increased by their finding under the section section, which contains the objectionable clause, "reasonably calculated."

While the Act of 1903 fixed a specific penalty of fifty dollars per day, and the Court of Appeals of Texas says that this finding must be sustained, if either one of the paragraphs of the court's charge is correct, that is, either IX, X or XI of said charge; still we insist that we have clearly shown that the word "tended" was made to control the entire charge with reference to the Act of 1903, and it will be admitted, we conclude, that where an act is prohibited, which "tends" to accomplish a certain purpose, that it is so indefinite that no one can tell what acts are embraced within its provisions.

In the case of L. & N. R. R. Co. v. R. R. Commission of Tennessee, 19 Fed. 679, Judge Baxter, in construing the terms "reasonable rates" and "fair and just return" used in the statute regulating railroads, announced the correct doctrine on criminal stautes. At page 692 he says:

"We think the property of a citizen—and a railroad corporation is, in legal contemplation, a citizen—cannot be thus imperiled by such vague, uncertain, and indefinite enactments. The corporations and persons against whom this act is directed can do nothing under it with reasonable safety. They may take counsel of the commission, act upon their advice, and honestly endeavor to conform to the statute. But if a jury before whom they may be subsequently araigned, shall, in their judgment and upon such arbitrary basis as they are at liberty to adopt, conclude that the commissioners misadvised, or that the managers of the accused railroad corporation made a mistake in regulating their charges upon a 5 per cent., instead of a 4 per cent. basis, the honesty and good faith of the accused will go for nothing, and penalty upon penalty may be added until the defendant's property shall be gradually transferred to the public. This cannot be permitted. Penalties cannot be thus inflicted at the discretion of a jury. Before the property of a citizen, natural or corporate, can be thus confiscated, the crime for which the penalty is inflicted must be defined by the law-making power. The Legislature cannot delegate this power to a jury. If it can declare it a criminal act for a railroad corporation to take more than a 'fair and just return' on its investments, it must, in order to the validity of the law, define with reasonable certainty

what would constitute such 'fair and just return.' The act under review does not do this, but leaves it to the jury to supply the omission. No railroad company can possibly anticipate what view a jury may take of the matter, and hence cannot know in advance of a verdict whether its charges are lawful or unlawful. One jury may convict for a charge made on a basis of 4 per cent., while another might acquit an accused who had demanded and received at the rate of 6 per cent., rendering the statute, in its practical working, as unequal and unjust in its operation as it is indefinite in its terms."

The Court of Appeals of Kentucky, in the case of L. & N. R. R. Co. v. Commonwealth, 35 S. W. 129, in passing upon the question of what is meant by "reasonable rates," held the statute to be in violation of the Fourteenth Amendment to the Constitution of the United States, as well as the State Constitution, and in so holding, said:

"That this statute leaves uncertain what shall be deemed a 'just and reasonable rate of toll or compensation' cannot be denied; and that different juries might reach different conclusions on the same testimony, as to whether or not an offense has been committed, must also be conceded. The criminality of the carrier's act, therefore, depends on the jury's view of the reasonableness of the rate charged. And this latter depends on many uncertain and complicated elements. That the corporation has fixed a rate which it considers will bring it only a fair return for its investment, does not alter the nature of the act. Under this statute it is still a crime, though it cannot be known to be such until after an investigation by a jury, and then only in that particular case, as another jury may take a different view, and, holding the rate reasonable, find the same act not to constitute an offense. There is no standard whatever fixed by the statute, or attempted to be fixed, by which the carrier may regulate its conduct. And it seems clear to us to be utterly repugnant to our system of laws to punish a person for an act, the criminality of which depends, not on any standard erected by the law, which may be known in advance, but on one erected by a jury; and especially so, as that standard must be as variable and uncertain as the views of different juries may suggest, and as to which nothing can be known until after the commission of the crime.

If the infliction of the penalties prescribed by this statute would not be the taking of property without due process of law, and in violation of both State and Federal Constitutions, we are not able to comprehend the force of our organic laws."

These, with the other authorities cited, we think, are sufficient to sustain our contention.

## THE ANTI-TRUST LAWS OF 1899, 1903 AND OF 1907, AS CONSTRUED HEREIN, ARE EX POST FACTO LAWS.

**The judgments below are void under the ex post facto provision of subdivision 1, section 10, Article I of the Constitution of the United States; for the reason that each of them, as construed by the courts of Texas herein, inflicted punishment on plaintiff in error for alleged acts done in violation of the anti-trust laws of 1899, 1903 and 1907 of the State of Texas, which acts, as shown by the evidence, were done prior to the enactment of said laws, and were not punishable when done in the manner in which they are punished by said judgments.**

In the case of Kring v. Missouri, 107 U. S. 221-228, this Court quoted with approval the definition of Mr. Justice Washington as to what was an *ex post facto* law, as follows:

"An *ex post facto* law is one which, in its operation, makes that criminal which was not so at the time the action was performed; or which increases the punishment, or, in short, which, in relation to the offense or its consequences, alters the situation of a party to his disadvantage."

And also, in the same case, quotes with approval the definition of the classes of laws which were classed as *ex post facto* by Mr. Justice Chase in the case of Calder v. Bull, 3 Dall. 386, as follows:

"1. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action.

2. Every law that aggravates the crime or makes it greater than it was when committed.

3. Every law that changes the punishment and inflicts a greater punishment than was annexed to the crime when committed."

In the case of Fletcher v. Peck, 6 Cranch (U. S.) 138, Chief Justice Marshall defined an *ex post facto* law to be "one which renders an act punishable in the manner in which it was not punishable when it was committed."

As to the Anti-Trust Act of the State of Texas of 1899, it does not appear on its face to be retroactive. It would seem from its provisions that the Legislature intended it to apply to acts committed after it took effect, unless such construction can be placed upon the act by reason of the first part of section 14 thereof, which is as follows:

"Section 14. The provisions of the foregoing sections and the pains and penalties provided for violations of this act shall be held and construed to be cumulative to all laws now in force in this State. And provided that the provisions of this act shall not exempt from punishment or forfeiture any person, firm, association of persons or corporations, who may have violated or offended against any law now in existence that may be, or may be construed to be, repealed by this act or in conflict herewith."

This provision may have influenced the courts of Texas to hold that the punishment provided for in the law of 1899 could be inflicted for acts committed before it was passed by the Legislature.

It will be observed that the trial court, in paragraph VII of his charge (Print. Rec., 288), authorized the jury to assess penalties against plaintiff in error, "if it entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey, on June 1, 1900, to fix or regulate the price of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents, on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, you will return a verdict for the State." The jury in their verdict assessed penalties under this charge "for each of the days between May 31, 1900, and March 31, 1903;" and judgment was entered therefor. (See verdict and judgment, Print. Rec., 314.)

Now, when we turn to the allegations and proof in the case to ascertain if plaintiff in error "entered into or became a party to an agreement or understanding with the Standard Oil Company of

New Jersey, on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum;" or to find that it "remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying same out in Texas," we discover that there is no pretense in the testimony that any such acts were done on June 1, 1900, or any day subsequent thereto and prior to March 31, 1903.

Defendant in error, in paragraph 2 of its petition, filed in the trial court (Print. Rec., 2), relied upon an agreement entered into in 1878, and certain written agreements entered into in 1882, and in the fourth paragraph of its petition (Print. Rec., 7 to 15) set out the agreement dated Jan. 2, 1882, called "Exhibit A," and also set out (Print. Rec., 16, 17) the supplemental agreement entered into on Jan. 4, 1882; and in the third subdivision of paragraph 4 of the petition, it alleged "that said defendants so entered into and became a party to the conspiracy then formed, and carried out and observed and performed the same up to the present time."

In proof of the agreements entered into, it was stipulated that the copies of the agreement of Jan. 2, 1882, and subsequent thereto of Jan. 4, 1882, marked exhibits "A" and "B," in plaintiff's petition, were true copies and should be introduced in evidence, and it was further stipulated that neither the Waters Pierce Oil Company nor Henry Clay Pierce had signed either of said agreements (Print. Rec., 398-9).

As to the agreement of 1878, and the carrying out of that agreement, the State relied upon the testimony of Mr. H. C. Pierce, in which he said (Print. Rec., 442-3):

"A. When, in 1878, I organized the first Waters Pierce Oil Company, its predecessors, Waters Pierce & Co. and H. C. Pierce & Co., had already established business in all the territory in which the present Waters Pierce Oil Company now operates, and it was agreed and understood between myself and the representatives of the Standard Oil Company of Ohio, I think, at least it was the only Standard Oil Company that I knew of being in existence at that time, that the first Waters Pierce Oil Company should confine its

operations and transact its business within a certain territory which Waters, Pierce & Co and H. C. Pierce & Co. had transacted their business. In other words, the Waters Pierce Oil Company organized in 1878 was to take over the business of Waters, Pierce & Co. In pursuance of this understanding, certain lines were agreed upon in the State of Illinois which comprise parts of, I think, Madison and St. Clair Counties, including East St. Louis."

The witness then described the teritory of the Waters Pierce Oil Company in Illinois and Missouri, and was then asked (Print. Rec., 443):

"Q. Continue with respect to the other territories, Mr. Pierce. That included parts of Illinois which you have described and the parts of Missouri that you have described, and what other territory?

A. The State of Arkansas; what is now the Indian Teritory and Oklahoma; the State of Texas; all of the State of Louisiana west of the Mississippi river, and the Republic of Mexico.

Q. Has there been any change in that territory since it was then established?

A. There has not.

Q. Pursuant to that division of territory the Waters Pierce Oil Company confined its operations to building up the trade within that teritory?

A. It did."

The witness further testified (Print. Rec., 448) as follows:

"A. Since the organization of the first Waters Pierce Oil Company, in the year 1878, neither myself nor any one connected with the Waters Pierce Oil Company, so far as I know, and certainly never with my authority, ever made any attempt to sell oil, to locate stations, or in any manner transact business outside of the territory in which the present Waters Pierce Oil Company now operates."

Again reverting to this question, the witness testified (Print. Rec., 449-50):

"A. The Waters Pierce Oil Company has been, and now is, dependent upon the Standard Oil Company for almost its entire supplies, and as I have already stated, the territory within which the Waters Pierce Oil Company, the present and its predecessors, were to operate was established twenty-eight years ago and has not been changed. I, as the manager of the Waters Pierce Oil

Company, did not deem it expedient to do business beyond the territory wherein the Waters Pierce Oil Company was thoroughly and fully equipped.

Q. Why didn't you deem it expedient?

A. Well, my judgment was against it generally.

Q. Why was your judgment against it?

A. It is a very difficult matter, General Hadley, to specifically define the basis of a judgment arrived at which is based upon a great many years of experience, but if the question is to be answered from the standpoint of to-day, it would be that the Waters Pierce Oil Company was not equipped to do business in Kansas City.

Q. Why haven't you equipped it to do business there?

A. Because the original Waters Pierce Oil Company agreed to confine its operations to the territory in which it, and its predecessors, has transacted its business.

Q. Who did it agree with?

A. It agreed, I should say, with Colonel Oliver H. Payne, the individual I presume you are seeking for?

Q. The representative of what company?

A. At that time the Standard Oil Company of Ohio.

Q. As a result of that agreement the Waters Pierce Oil Company has, in the State of Missouri, confined its business to certain territory, and the Standard Oil Company has confined its business to certain territory?

A. As to the Waters Pierce Oil Company, yes. As to the Standard Oil Company, I have not now, and have never had, any means of knowing the reasons for its operations.

Q. So far as the Waters Pierce Oil Company is concerned, your testimony is that according to an agreement it has not sold in the State of Missouri.

A. That was only the initial reason. I gave you the main reason first.

Q. But there was an agreement in the matter?

A. I have stated so."

Again reverting to the question of agreement (Print. Rec., 497), Mr. Pierce testified:

"A. When the Standard Oil trust was organized I was urged to place the Waters Pierce Oil Company in the trust, but refused to do so, and even after the 40 per cent. of the capital stock of

the Waters Pierce Oil Company issued to Hutchins & Thompson and the 20 per cent. issued to Chess, Carley & Co. had been placed in the trust by the Standard Oil Company of Ohio, to whom it had been transferred, I still refused to place my stock in the trust. When the first Waters Pierce Oil Company was organized it was agreed by all parties interested that I should control and direct its policy."

Again Mr. Pierce testified (Print. Rec., 498):

"A. It simply refreshes my memory. When the license of the first Waters Pierce Oil Company to do business in Texas was revoked, and I thought to settle with the State so that we could continue our business there, I was told very frankly by prominent citizens of Texas that the people of that State would not tolerate the methods of the Standard Oil Company, and that no corporation controlled by that company would be permitted to carry on business in Texas. I explained this situation fully to the executive committee of the Standard Oil Company, and they agreed that I should organize a new company, the stock of which I should hold, and that I should manage and control the company absolutely free from any dictation or direction of the Standard Oil Company. This was done, and in order that the company should conduct its business in strict accordance with the laws of every State in which it was operating, I placed the attorney of the company on the executive committee, with instructions to examine all reports and transactions to the end that no law should be violated. I earnestly desired the company to respect and obey the laws."

Again Mr. Pierce testified (Print Rec. 498-9):

"A. Up to the spring of 1904 the Standard Oil Company made no attempt to interfere in any way with my management and control of the Waters Pierce Oil Company, but at that time they transfered the stock which had stood in my name to Mr. M. M. Van Buren, and began in other ways to assume a control over the affairs and operation of the company. I protested against this conduct as a violation of their agreement with me, and as contrary to the representations which I had made to the people of Texas. After frequent interviews and discussions on this point, the management and control of the company were again committed to my direction, and my son, Clay Arthur Pierce, is now president of the company, and conducting it as an independent business."

The agreement testified to by Mr. Pierce, as having been entered into in 1878 by the old Waters Pierce Oil Company, and the Standard Oil Company of Ohio, is the only agreement proven. It is, therefore, a material inquiry to ascertain whether or not this agreement was unlawful; and to determine this fact, it is necessary to ascertain the ownership of the old Waters Pierce Oil Company.

On this subject Mr. Pierce testified (Print. Rec., 497):

"A. I have a memoranda answering that question, which I will read. During the fall and winter of 1877 and 1878, I organized, under the laws of the State of Missouri, the first Waters Pierce Oil Company, which succeeded to the business of Waters, Pierce & Co. The original capital was $100,000, of which amount Waters, Pierce & Co. subscribed for 40 per cent. Horace A. Hutchins and William D. Thompson, of Camden, Ohio, subscribed for 40 per cent., and Chess, Carley & Co., of Louisville, Ky., subscribed for 20 per cent. . . . Some time after the organization of the first Waters Pierce Oil Company the 40 per cent. belonging to Hutchins & Thompson and the 20 per cent. belonging to Chess, Carley & Co. was transferred to the trustees of the Standard Oil Trust, and I purchased the interest of William H. Wolter in the 40 per cent. belonging to Waters, Pierce & Co. So that when, on May 29, 1900, the first Waters Pierce Oil Company was liquidated the assets were distributed in these proportions."

This testimony, which was uncontradicted, shows that at the time of the agreement of 1878, the Standard Oil Company had no interest in the Waters Pierce Oil Company.

The next material inquiry, as to the lawfulness of this agreement, is the character of business done by the Waters Pierce Oil Company and the Standard Oil Company at the time the agreement was made.

On this subject Mr. Pierce testified (Print. Rec., 443-4):

"Q. When the Waters Pierce Oil Company—the old company—was organized in 1878, it succeeded the partnership of Waters, Pierce & Co.?

A. It did.

Q. From what source did the Waters Pierce Oil Company obtain its supplies of refined oil at that time?

A. Almost exclusively from the Standard Oil Company.

Q And from what source have it since that time obtained its supplies of refined oil?

A. Almost exclusively from the Standard Oil Company and its allied interests.

Q. Did the old Waters Pierce Oil Company or the present Waters Pierce Oil Company refine any oil or manufacture any of the products of petroleum in the United States?

A. It did not manufacture refined oil. It did manufacture lubricating oils and greases.

Q. All these other oils were obtained from the Standard Oil Company and its allied interests—Standard Oil Company of New Jersey?

A. All of the refined oil, naptha, gasolines and most of the lubricating oil were obtained from the Standard Oil Company and its allied interests.

Q. In other words, the Waters Pierce Oil Company was engaged exclusively as a merchant of manufactured products in the United States?

A. Within the United States almost exclusively so."

Then again reverting to this question (Print. Rec. 448-9), Mr Pierce testified:

Q. Now, Mr. Pierce, the Waters Pierce Oil Company and the firms which preceded the Waters Pierce Oil Company, and the old Waters Pierce Oil Company, organized in 1878, undertook to merchandise within the territory then allotted it, the products of the Standard Oil Company, and it has continued to occupy relatively that position ever since, is that true?

A. The firms which preceded the first Waters Pierce Oil Company purchased crude oil and crude petroleum from parties other than the Standard Oil Company, because in the beginning the Standard Oil Company did not have an existence, and refined and manufactured such crude oils into refined oil at their refinery located in St. Louis on the ground between 13th and 14th and Austin and Bratiott streets, and sold that oil wherever it could. When the firm of W. H. Cobb & Co. was organized in 1869, and succeeded the firm of J. R. Finlay & Co., it for a time continued the same method of transacting its business, but when the Standard Oil Com-

pany came into existence the firm of W. H. Cobb & Co. commenced purchasing crude petroleum and its refined products from the Standard Oil Company, and also continued purchasing from other parties. This method continued until the organization of the first Waters Pierce Oil Company in 1878. Does that answer your question sufficiently?

Q. Now, since 1878?

A. During and since 1878 the Waters Pierce Oil Company within its United States territory has acted almost solely as merchandiser of products of the Standard Oil Company, and in Mexico, since the establishment of refineries there, it has purchased crude oil outright from the Standard Oil Company and has manufactured and sold it in Mexico to the full extent of the demand."

Again reverting to this question (Print. Rec., 472), Mr. Pierce testified:

"Q. Why hasn't the Waters Pierce Oil Company developed oil fields and refined oil?

A. Well, I have not thought it to the interest of the Waters Pierce Oil Company to do so.

Q. You say the development of oil fields and establishment of refineries near the point of consumption lessens the cost?

A. The Waters Pierce Oil Company was not in the business of refining oil in the United States.

Q. You were authorized to do so in your charter?

A. We were authorized to do a good many things we did not do.

Q. Why did you think it not advisable to do so? Was it because you agreed with the Standard Oil Company not to do so?

A. No, sir, there was no such agreement ever made between myself and the Standard Oil Company. On the contrary, the Waters Pierce Company has built and is operating four very large refineries on its own account absolutely without hindrance from the Standard Oil Company, and has been doing so for the past twenty-five years.

Q. And that has lessened the cost to the consumer?

A. Very materially.

Q. Why haven't you established refineries in Texas, then?

A. Because the Waters Pierce Oil Company was not prepared to establish oil refineries. It had no facilities for doing so, and it was receiving its refined products from the Standard Oil Company

promptly and of good quality, and in a way to enable it to care for all of the business that I thought it would be advisable for the Waters Pierce Oil Company to engage in, and other people than the Standard Oil Company, as well as the Standard Oil Company, were refining oil in the State of Texas, and the Waters Pierce Oil Company has taken from the Standard Oil Company the production of the refinery at Corsicana, and all the products of the Security Oil Company in Texas, and there was no occasion for the Waters Pierce Oil Company to go into the refining business and invest capital when it could purchase oil from them more cheaply."

Again reverting to the same question (Print. Rec., 479), Mr. Pierce testified:

"Q. You could have bought from anyone you pleased, but you did not please to buy from anyone but the Standard?

A. Precisely.

Q. And the Standard could have sold to anyone they pleased, but its products were almost exclusively handled through the Waters Pierce Oil Company?

A. I think it was wisdom on the part of the Standard Oil Company to utilize the services of such a good merchant as myself."

This is the testimony in the cause, explaining the character of business done by the Standard Oil Company and the Waters Pierce Oil Company. It shows that the Standard Oil Company was a producing and manufacturing company, and that the Waters Pierce Oil Company was a mercantile company—a buying and selling company. The testimony also shows that the Standard Oil Company had as early as 1882, and probably had in 1878, various companies or agencies, in different portions of the United States engaged in selling its oil to consumers.

The Waters Pierce Oil Company had an established mercantile business in a certain territory in which it agreed to continue business. Was it unreasonable or unlawful for the Standard Oil Company to desire or to contract for the Waters Pierce Oil Company to continue to do business in the territory where it was established? We think not, as the Waters Pierce Oil Company was then, and continued to be, a customer of the Standard Oil Company. Was it unlawful for the Waters Pierce Oil Company to contract to con-

fine its business to that territory? We think not. It had an established business in the territory and the territory was a very large one, embracing parts of the States of Illinois, Missouri and Louisiana, and all the States of Arkansas, Texas, and what is now Oklahoma, and the entire Republic of Mexico. As the Waters Pierce Oil Company purchased the larger portion of its supplies from the Standard Oil Company, there was no inducement for it to go into other portions of the United States, and spend large sums of money in preparing to do business, where the Standard Oil Company already had established agencies or connections or customers, who were engaged in the sale of the same products; and likewise there was no inducement for the Standard Oil Company to spend large sums of money in the territory where the Waters Pierce Oil Company was doing business, in preparation to engage in business itself, when it was selling its products to the Waters Pierce Oil Company, which was already prepared to do business in that territory. As between the parties, the contract was mutally beneficial and was, therefore, upon a sufficient consideration. It was simply a business arrangement, entered into by business men of experience, for a proper and economical conduct of a given business. Consequently it was valid between the parties, and was in nowise invalid, unless it violated a well-established public policy.

*When Does a Contract in Partial Restraint of Trade Violate Public Policy?*

The clearest statement of the law on this subject which we have been able to find is made by Mr. Justice Bradley, in the case of Oregon Steam Navigation Company v. Winsor, 20 Wall (87 U. S.), 64:

"There are two principal grounds on which the doctrine is founded that a contract in restraint of trade is void as against public policy. One is, the injury to the public by being deprived of the restricted party's industry; the other is, the injury to the party himself by being precluded from pursuing his occupation and thus being prevented from supporting himself and his family. It is evident that both these evils occur when the contract is general, not

to pursue one's trade at all, or not to pursue it in the entire realm or country. The country suffers the loss in both cases; and the party is deprived of his occupation, or is obliged to expatriate himself in order to follow it. A contract that is open to such grave objection is clearly against public policy. But if neither of these evils ensue, and if the contract is founded on a valid consideration and a reasonable ground of benefit to the other party, it is free from objection, and may be enforced.

In accordance with these principles, it is well settled that a stipulation by a vendee of any trade, business or establishment, that the vendor shall not exercise the same trade or business, or erect a similar establishment within a reasonable distance, so as not to interfere with the value of the trade, business or thing purchased, is reasonable and valid. In like manner a stipulation by the vendor of an article to be used in a business or trade, in which he is himself engaged, that it shall not be used within a reasonable region or distance, so as not to interfere with his said business or trade, is also valid and binding. The point of difficulty in these cases is to determine what is a reasonable distance within which the prohibitory stipulation may lawfully have effect. And it is obvious, at first glance, that this must depend upon the circumstances of the particular case; although, from the uncertain character of the subject, much latitude must be allowed to the judgment and discretion of the parties. It is clear that a stipulation that another shall not pursue his trade or employment at such a distance from the business of the person to be protrected, as that it could not possibly affect or injure him, would be unreasonable and absurd. On the other hand, a stipulation is unobjectionable and binding which imposes the restraint to only such an extent of teritory as may be necessary for the protection of the party making the stipulation, provided it does not violate the two indispensable conditions, that the other party be not prevented from pursuing his calling, and that the country be not deprived of the benefit of his exertions."

Now we have seen that the territorial contract between the Standard Oil Company and the old Waters-Pierce Oil Company was "founded on a valid consideration and a reasonable benefit" to both parties. The evidence also shows that the Standard Oil Company was "the vendor of an article to be used in a business, or trade, in

which it was engaged;" that is, that the Standard Oil Company was selling to the Waters Pierce Oil Company refined petroleum to be re-sold by the Waters Pierce Oil Company. The evidence also shows that the limitations agreed upon on behalf of the Waters Pierce Oil Company confined it "within a reasonable region or distance, so as not to interfere with the business or trade" of the Standard Oil Company. The evidence also shows that the stipulation "imposed the restraint to only such an extent of territory as was necessary for the protection" of both parties. The evidence shows further that neither party was "prevented from pursuing its calling;" and shows that "the country was not deprived of the benefit" of the exertions of either party; because, the evidence shows, that the Standard Oil Company had never done business in Texas, and the Waters Pierce Oil Company had never done business outside of the territory referred to; and shows that the parties limited themselves to the territory where they were prepared to do business.

On this question of preparation to do an oil business, it is not deemed necessary to quote the testimony. But it is abundantly shown in the record, and is a matter of common knowledge, that to economically conduct the jobbing and retail trade, in a given territory, requires a party engaging therein to invest in a large number of tank cars, iron barrels, station tanks, horses and wagons, and other necessary instruments for the conduct of the business. It is probably more expensive to construct and maintain such instrumentalities than it is to construct and maintain the ordinary buildings for the conduct of the usual commercial business. In addition to this, there are standard brands of oil, which are called for by the trade, just like standard brands of other commodities, and these brands are owned and controlled by the parties producing the manufactured oil. The Waters Pierce Oil Company had established a trade in the brands of oil manufactured by the Standard Oil Company. All these facts are shown by the record and are uncontroverted. Therefore, we assert that the contract proven to have been made, and alleged to have been a division of territory, came exactly

within the rules laid down in the case refered to, as being a contract unobjectionable to, and not in violation of, public policy.

The case of Oregon Steam Navigation Co. v. Winsor, referred to on this point, was quoted with approval in the case of Gibbs v. Consolidated Gas Co., 130 U. S. 396, in which latter case the contract was held void, because the Gas Company held a franchise, "to fulfill public purposes to subserve which they were incorporated." The doctrine announced by the State courts follow the same rule as announced by this Court in the case refered to.

The case of Diamond Match Co. v. Roeber, 106 N. Y. 473, involves a very similar question. That was a case where the Match Company brought suit to enjoin Roeber from engaging in the manufacture and sale of matches in the city of New York, in violation of an agreement which he had made in the sale of a similar business, in the city of New York, to the Match Company. The court held the contract valid, as being only in partial restraint of trade, because Roeber was not prevented from engaging in a like business in the State of Nevada and the Territory of Montana. The marked distinction between the two cases is, that in the case at bar, the Waters Pierce Oil Company is not restricted from doing business where it had been engaged in business, but simply agreed not to go into other portions of the United States; and the Standard Oil Company was not restricted in doing business where it had been doing business, but simply agreed not to go into the territory where the Waters Pierce Oil Company was engaged in business. Therefore, in the case at bar, there is no question about the agreement being simply "in partial restraint of trade."

In the case of McCurry v. Gibson, 108 Ala. 451, the Supreme Court of Alabama said:

"It is well settled law that while contracts in general restraint of trade are against public policy and void, yet those in partial restraint, founded upon a valuable consideration, and reasonable in their operation, are valid and binding. . . . The test which is laid down by which it may be determined whether a contract is reasonable, whether it affords only a fair protection to the interests

of the party in whose favor it is made, without being so large in its operation as to interfere with the interests of the public; Homer v. Granes, 7 Bing., 735-743; and this test has been uniformly followed in subsequent cases: Cooke v. Johnson, 47 Conn. 175; Brewer v. Marshall, 19 N. J., eq., 547; Chappell v. Brockway, 21 Wend. 157. A partial restraint is that which is restrictive in its operation in respect to place; and this may be made in express terms or it may result from a construction of the contract when viewed in the light of the environment and circumstances surounding the contracting parties."

We have gone thus far into a consideration of the contract of 1878 entered into by the old Waters Pierce Oil Company, for the reason that the trial court, in submitting the question of "an agreement and understanding with the Standard Oil Company of New Jersey," could have referred to no other agreement except this one of 1878. There is no proof of an agreement made by the Waters Pierce Oil Company organized in 1900 with the Standard Oil Company of New Jersey, or with any other company, to fix or regulate prices. The only evidence showing any agreement with the Standard Oil Company at the time of the organization of the present Waters Pierce Oil Company is contained in the testimony of Mr. H. C. Pierce heretofore quoted, in which, among other things, he says:

"I explained this situation fully to the executive committee of the Standard Oil Company, and they agreed that I should organize a new company, the stock of which I should hold, and that I should manage and control the company absolutely free from any dictation or direction of the Standard Oil Company. This was done, etc."

This testimony shows that there was no agreement between the present Waters Pierce Oil Company and the Standard Oil Company to fix or regulate prices of oil; but on the contrary, an agreement was made at the time of the organization of the present Waters Pierce Oil Company that its management and control should be absolutely free from the Standard Oil Company. It shows further, that the present Waters Pierce Oil Company was not thereafter bound to restrict its business to the territory specified in the

contract of 1878; and the testimony of Mr. Pierce shows that its doing so was simply because of his judgment as to what was the best business policy for the Company.

So that the record herein clearly and distinctly shows that the present Waters Pierce Oil Company had never entered into any contract or agreement to fix the price of oil in Texas, or any contract that could be so construed; but notwithstanding this fact, the trial court submitted to the jury the question of "an agreement or understanding," and in doing so could have had reference only to the territorial agreement of 1878 entered into by the predecessor of the present Waters Pierce Oil Company. Now that agreement was entered into by the predecessor of the present Company before the passage of any of the anti-trust laws of Texas. Said anti-trust laws, when passed, provided for the punishment of parties for entering into or carrying out agreements to fix prices. The trial court, in construing the anti-trust laws, and in submiting the questions to be determined by the jury, applied such laws to an agreement entered into in 1878 by the predecessor of the present Company, without any proof that the present Company had any connection with such agreement. By doing so, the trial court authorized the jury to apply the anti-trust laws to an agreement entered into before their passage, by the predecessor of the present Company, and authorized the jury to punish the present Company for "carrying out" such agreement, without proof that it had done so, and without proof that such agreement would fix or regulate prices of oil.

That this made the anti-trust laws *ex post facto,* seems clear; for the reason that it is perfectly lawful for the present Waters Pierce Oil Company to "continue" to do business in Texas, and for the Standard Oil Company of New Jersey to "continue" to do business in other portions of the United States. The only reason for claiming that such method of doing business would be in violation of the anti-trust laws, was the alleged fact that the old Waters Pierce Oil Company and the Standard Oil Company of Ohio

had, in 1878 entered into a territorial agreement. By the construction which the trial court placed upon the law and the facts, the agreement entered into between the old Waters Pierce Oil Company and the Standard Oil Company of Ohio, was made a necessary element of the "agreement," for which the present Waters Pierce Oil Company was convicted by the jury. Now that agreement was an act done prior to the passage of either of the anti-trust laws, by corporations neither of which was a party to this action, and at a time when the present Waters Pierce Oil Company was not in existence. The present Company could not have "continued," or "carried out" that agreement, for the reason that to do either would require it to be a party thereto. Now, we do not think that the decision of this Court in the case of United States v. Trans-Missouri Freight Association, 166 U. S. 342, contravenes the position which we here take. That was a case where the original parties to the agreement were before the Court. The agreement was one to fix and regulate the price of transportation. In passing upon the question, this Court said:

"It is said that to grant the injunction prayed for in this case is to give the statute a retroactive effect; that the contract at the time it was entered into was not prohibited or declared illegal by the statute, as it had not then been passed; and to now enjoin the doing of an act which was legal at the time it was done would be improper. We give to the low no retroactive effect. The agreement in question is a continuing one. The parties to it adopt certain machinery, and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement after it has been declared to be illegal, becomes a violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued, it then becomes a violation of the act. There is nothing of an *ex post facto* character about the act. The civil remedy by injunction and the liability to punishment under the criminal provisions of the act are entirely distinct, and there can be no question of any act being regarded as a violation of the statute which

occurred before it was passed. After its passage, if the law be violated, the parties violating it may render themselves liable to be punished criminally; but not otherwise."

We do not question the correctness of the decision in the Trans-Missouri Freight Association case. The power of Congress to regulate commerce between the States is doubtless such as to authorize it to declare such an association unlawful, and to provide means for enjoining the carrying on of such an association. The judgment in that case effected that purpose and no other. But that is not the case at bar. Here we have an agreement entered into, in 1878, by parties not before the Court. We do not think the agreement was unlawful when entered into, but if unlawful, it was not punishable as subsequently provided for in the anti-trust laws of Texas. Because of such agreement the judgments below punished the present Waters Pierce Oil Company, as provided for in the anti-trust laws of Texas. This made such laws, as herein applied, *ex post facto,* by inflicting such punishment upon the present Company for an act which was not so punished at the time the act was done, and by punishing it for the act of other parties, committed before the passage of said anti-trust laws.

Neither do we think that the case of the State of Texas v. M. K. & T. Ry. Co. of Texas and the American Express Co., 99 Tex. 547, is an authority against our position. In that case the contract between the railway company and the express company provided for giving exclusive privileges to the express company on the lines of the railway company. That contract was unlawful at the time it was made, because it violated Article 4540, R. S. of Texas, which required railroad companies to furnish equal facilities and accommodations, upon reasonable and equal rates, to all the companies engaged in the express business. This article was in force when the contract was made, and the Texas court, in deciding the case, at page 528, in discussing the police power of the State, said:

"It is unnecessary in this case to go into any extended examination of the question as to the extent of this power. If we had before us a contract which was originally lawful and reasonable

in itself, and which, although falling within the literal language of the statute, could not justly be regarded as so injurious to the State or its citizens as to afford reasonable grounds for its destruction, a different question would be presented. It is true that there are limitations upon the power of the Legislature to either strike down contracts already made or unreasonably and arbitrarily to restrict the liberty of citizens in contracting in future, but there is no occasion for applying them here. This contract was, as we have seen, made in the face of a statute then existing, and was not a reasonable, and can hardly be said to have been a lawful one; and it is wholly unnecessary to pursue an inquiry which might arise with reference to contracts of a different character."

By this decision the Supreme Court of Texas left the question which is involved in this case open for consideration when it should arise. Besides, there was involved in the case which the Texas court was then deciding, the same power of regulating common carriers. It is probable that all contracts of common carriers, affecting transportation, are made in view of the fact that such transportation may be regulated, and by the regulation, the contract may be more or less modified, if not destroyed. Consequently, neither of the cases referred to are authoritative in determining the case at bar; and the case at bar is one in which the anti-trust law referred to, as applied, is *ex post facto.*

### *Anti-Trust Laws as Applied to Combination Herein are Ex Post Facto.*

The trial court, in paragraph VIII of its charge, authorized the jury to convict the defendant under the Act of 1899, "if the defendant had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey whereby the price in Texas of oil" was fixed, etc.; and further instructed the jury, "that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, . . . would constitute a separate violation of the anti-trust laws of Texas" (Print. Rec., 289).

Now the testimony shows that some time after the organization of the first Waters Pierce Oil Company, the Standard Oil Trust acquired from two of the stockholders therein 60 per cent of the stock in that company and held the same down to the time of the dissolution of that company, and that its assets were distributed on that basis—40 per cent to H. C. Pierce and 60 per cent to the Standard Oil Company. The testimony also shows an agreement between the Standard Oil Company and Mr. H. C. Pierce that he was to organize a new company, the stock of which he should hold.

There was no testimony as to a union or combination of capital by the Standard Oil Company of New Jersey with the Waters Pierce Oil Company, except the testimony of stock ownership in the Waters Pierce Oil Company by the Standard Oil Company. The testimony shows that this ownership of stock by the Standard Oil interests commenced soon after the organization of the old Waters Pierce Oil Company in 1878, and continued down to the time of the dissolution of that company. From the organization of the new Waters Pierce Oil Company down to June 1, 1904, the stock stood in the name of H. C. Pierce on the books of the Waters Pierce Oil Company, and, therefore, gave him the legal power during that period to vote the stock, and thereby absolutely control that company. By the amendment to its charter (Print. Rec., 1017), the Standard Oil Company of New Jersey was authorized to acquire and hold stock of other corporations. Under the law of the State of New Jersey, as announced in the case of Trenton Potteries Co. v. Oliphant, 58 N. J. 507, the court say, near the close of the opinion: "Such corporations are empowered to purchase, hold and use property appropriate to their business. They may also purchase and hold the stock of other corporations."

There was no law in Texas prohibiting the Standard Oil Company of New Jersey from owning stock in the Waters Pierce Oil Company, at the time the stock was acquired. Therefore, the holding

of the stock of the Waters Pierce Company by the Standard Oil Company was a lawful holding, and was a vested property right, at the time of the passage of the anti-trust law of 1899, and at the time of the passage of the anti-trust law of 1903. Could the continuance of this lawful holding of stock by the Standard Oil Company, and this vested property right be made a penal offense and punished by laws passed by the State of Texas after such holding had been acquired and such property right had been vested?

In the case of Calder v. Bull, 3 Dall., U. S. 387, Mr. Justice Chase, in delivering the opinion of the court, and in enumerating the powers of the Legislature, said:

"The Legislature may enjoin, permit, forbid, and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right, and prohibit what is wrong; but they cannot change innocence into guilt or punish innocence as a crime; or violate the right of an antecedent lawful private contract; or the right of private property. To maintain that our Federal, or State, Legislature possesses such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments."

In the course of a learned discussion of retroactive laws, at page 329, he quoted the following:

"In 2nd Lord Raymond 1352, Raymond, Justice, called the statute 7 Geo. 1st Stat. 2, par. 8, about registering contracts for South Sea stock, an *ex post facto* law, because it affected contracts made before the statute."

The case of Fletcher v. Peck, 6 Cranch 138, was a case wherein the State of Georgia, by legislative act, had granted title to certain land. The party to whom they were granted sold them to another party. The Legislature of the State of Georgia afterwards repealed the law of making the grant and forfeited the title. The opinion in the case was delivered by Marshall, Chief Justice. After having decided that the grant was a contract which vested title, he then proceeded to discuss the question as to whether or not the act of repeal and forfeiture was an *ex post facto* law within the mean-

ing of subdivision 1, section 10, Article I of the Constitution. In the course of his discussion, he said:

"The State Legislature can pass no *ex post facto* law. An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed. Such a law may inflict penalties on the person, or may inflict pecuniary penalties which swell the public treasury. The Legislature is then prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime which was not declared, by some previous law, to render him liable to that punishment. Why, then, should violence be done to the natural meaning of words for the purpose of leaving to the Legislature the power of seizing, for public use, the estate of an individual in the form of a law annulling the title by which he holds that estate? The court can perceive no sufficient grounds for making this distinction. This rescinding act would have the effect of an *ex post facto* law. It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased. This cannot be effected in the form of an *ex post facto* law, or bill of attainder; why, then, is it allowable in the form of a law annulling the original grant?

It is, then, the unanimous opinion of the court that, in this case, the estate having passed into the hands of a purchaser for a valuable consideration, without notice, the State of Georgia was restrained, either by general principles, which are common to our free institutions, or by the particular provisions of the Constitution of the United States, from passing a law whereby the estate of the plaintiff in the premises so purchased could be constitutionally and legally impaired and rendered null and void.

In overruling the demurrer to the third plea, therefore, there is no error.'"

This statement of the law was quoted with approval by this Court in the case of Cummings v. Missouri, 3 Wall. 277; and in the latter case this Court held that the requiring of an expurgatory oath from a priest before he should be permitted to discharge the duties and functions of his prieshthood, was included within the terms *ex post facto* laws; and in deciding the case, the Court, among other things, said:

"Now, some of the acts to which the expurgatory oath is directed were not offenses at the time they were committed. It was no offense against any law to enter or leave the State of Missouri for the purpose of avoiding enrollment or draft in the military service of the United States, however much the evasion of such service might be the subject of moral censure. Clauses which prescribe a penalty for an act of this nature are within the terms of the definition of an *ex post facto* law —'they impose a punishment for an act not punishable at the time it was committed.'"

These authorities warrant the statement that a law is *ex post facto* which deprives the owner of property, lawfully acquired, of the right to use the same; and this classification of the law is made conclusive when there is a penalty affixed for using such property. Therefore, we submit that the anti-trust law of 1899, as construed in this cause, was an *ex post facto* law.

As to the anti-trust law of 1903, the trial court charged the jury, in paragraph IX of his charge (Print. Rec., 289-90), that if the defendant entered into a combination of its capital with the capital of the Standard Oil Company for the purposes prohibited in said act, and "that the defendant remained or was a party to and acted under such combination, if such there were, on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, you will return a verdict for the State, etc.," and making each day between the dates stated a separate offense. The jury found for the State on this issue for all days between March 31, 1903, and April 29, 1907. There was no evidence that there was any combination of the capital of the Waters Pierce Oil Company with the Standard Oil Company of New Jersey, made on March 30, 1903, or on any date subsequent thereto. The verdict of the jury, therefore, could not be supported by any other evidence except that hereinbefore referred to in discussing pargraph VIII of the court's charge, as to the acquiring of stock in the Waters Pierce Oil Company by the Standard Oil Company. All the authorities and argument under paragraph VIII of the charge are, therefore, applicable to paragraph IX.

In paragraph X of the charge the trial court instructed the

jury that, if they found "that the direction of the affairs of the defendant corporation and of the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, etc.," they should find for the State (Print. Rec., 290). The jury found for the State on this issue and assessed penalties for each day between said dates (Print. Rec., 315). Now the testimony heretofore referred to shows that the affairs of the Waters Pierce Oil Company were under the management and control of Mr. H. C. Pierce, who had no connection with the Standard Oil Company during all of said period of time, and was not interfered with "up to the spring of 1904," when the Standard Oil Company transferred the stock which had stood in his name to M. M. Van Buren and "began in other ways to assume a control over the affairs and operations of the company." Mr. Pierce protested against this, and this interference stopped, and the company has since been managed by him and his son, Clay Arthur Pierce, "as an independent business."

So that the finding of the jury, that the control and management of the two companies were the same from March 30, 1903, to April 29, 1907, can only be supported by the proof offered as to the agreement made in 1878, and as to the Standard Oil Company acquiring stock in the Waters Pierce Oil Company in about 1890, and the agreement for the organization of the new company, as made by Mr. Pierce with the executive committee of the Standard Oil Company; all of which acts were done long prior to the passage of the statute of 1903, and were not unlawful when done, and the rights and interests vested thereunder had been acquired before the passage of the later act. Under the authorities heretofore quoted, we submit that this construction of the Act of 1903 made it an *ex post facto* law.

The court, in paragraph XI of his charge (Print. Rec., 291), instructed the jury that, if they found "that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date

subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention . . . to prevent or lessen the competition in the sale in Texas of oil, you will return a verdict for the State. . . . In this connection, you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April, 29, 1907, that it remained a party to such monopoly" constituted a separate violation of the law. The jury found a verdict for the State on this issue and assessed penalties for each of the days between March 30, 1903, and April 29, 1907.

Now, as heretofore stated, there was no pretense in the testimony that the Standard Oil Company acquired any stock in the Waters Pierce Oil Company, between the dates mentioned. So that, the construction placed upon the law of 1903 in this paragraph of the charge will make it an *ex post facto* law; for the reason, as heretofore given, that the Standard Oil Company had lawfully acquired such stock, and had a vested property right therein, before the passage of said law of 1903, and the Waters Pierce Oil Company was punished for such act of the Standard Oil Company by the verdict of the jury. We refer again to the authorities heretofore quoted and the evidence referred to herein, with the addition of the following stipulation (Print. Rec., 1023):

"It is agreed for the purposes of this case, only, upon the following facts, subject to all legal objections thereto:

Second: That said Standard Oil Company of New Jersey did own in the Waters Pierce Oil Company, a corporation organized under the laws of the State of Missouri, in May, 1878, 2747 shares out of a total of 4,000 shares of the said company, and that since about the 24th day of September, 1900, it has owned 2748 shares of the capital stock out of a total of 4,000 shares of the Waters Pierce Oil Company organized under the laws of the State of Missouri, May 29, 1900."

This stipulation was signed by counsel for both parties (Print. Rec., 1025).

These paragraphs, VII, VIII, IX, X and XI, of the trial court's charge were the only ones submitting and construing the anti-trust laws of the State of Texas on the trial of the main case.

*The Act of April* 11, 1907, *Giving Lien to the State and Authorizing the Appointment of a Receiver, as Construed in This Cause, is Retroactive.*

The Act of 1907, by section 1, gave the State lien on all of the property of corporations violating the anti-trust laws from the date that suit was instituted by the Attorney General or District or County Attorney, for the purpose of cancelling the permit of the corporation, or for fines and penalties, and provided that the institution of the suit should be notice of the lien. And further provided:

"Where any such law has heretofore been violated, or shall be violated before the taking effect of this act, and cause of action exists for such fines, penalties or forfeiture, or shall come into existence before the taking effect of this act, and suit shall be filed in such case, the State shall have the lien to secure the payment of such fines, penalties and costs from the time this act shall take effect, on all property of such corporation within this State, or which shall thereafter become or be brought within the State."

Section 2 of the Act of 1907 provided for the appointment of a receiver, whenever a corporation should dissolve in Texas, or any other State, or should have a judgment of forfeiture rendered against it, and then provided, "or the court may in any case wherein the State is suing any such corporation for the forfeiture of its charter or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation whenever the interest of the State may seem to require such action."

The matters in connection with the appointment of a receiver in this cause are set out and contained in Plaintiff in Error's Bill of Exceptions, tendered in the trial court and signed by the Judge

of that court, in the order in which they occurred (Print. Rec., 333-349).

This Bill of Exceptions shows that after the rendition of the judgment, and after the filing of a motion for a new trial, by the Waters Pierce Oil Company in the trial court, counsel for the State filed in said cause (which is Cause No. 359 in this Court) motion for the appointment of a receiver (Print. Rec., 336-7). This motion first sets up the rendition of the judgment for $1,633,-900, and the cancellation of the permit of the defendant in said cause to do business in Texas, for violations of the anti-trust laws of the State of Texas.

The second ground was about some proceedings in the Supreme Court of the State of Missouri, which was immaterial, it not being supported by any evidence, and not alleging anything as a fact.

The third ground alleged that the penalties adjudged could not be collected outside of the State, and the property of the defendant in the State was inadequate to pay the judgment, and was personal property that was easily removed, and then alleged, "that, under and by virtue of an Act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment."

The fourth ground is as follows:

"Fourth: That under the judgment of ouster rendered in this case, the defendant has no right to do business in this State, and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State."

Whereupon the State prayed for the appointment of a receiver and for an injunction.

The hearing on this application was set down for June 8. On June 7 the motion for new trial in the main penalty case was over-

ruled and notice of appeal given, and on the same day defendant Waters Pierce Oil Company tendered a bond for $3,275,000, for an appeal and supersedeas, to the clerk of the trial court (Print. Rec., 338). The trial court, on June 8, called up the application for the appointment of a receiver. Defendant Oil Company then raised the question as to its having tendered a bond, and the trial judge advised the clerk, whose duty it was to approve the bond, that the bond was insufficient, and the clerk declined to approve it. Whereupon the defendant asked time to secure an additional bond, and the cause was postponed until the 10th (Print. Rec., 339).

Various proceedings were had until, on the 15th day of June, 1907, the final order appointing the receiver was made by the trial court (Print. Rec., 344); and on the 19th the receiver's bond was approved (Print. Rec., 348).

In the Bill of Exceptions referred to (Print. Rec., 340) it is shown that the defendant Oil Company answered the application for a receiver by a demurrer, by general denial and by special denial of the allegations with reference to the proceedings in the Supreme Court of the State of Missouri; which answer was properly verified by two of the counsel for the defendant Oil Company. It was further shown in said Bill of Exceptions (Print. Rec., 341-2) that the court heard argument on this demurrer from the counsel for the defendant Oil Company, but declined to hear any from the State's counsel, and proceeded to announce his conclusions, and stated that he would take judicial notice of the proceedings in the case, and of the judgment finding the Oil Company guilty for violating the anti-trust laws, and cancelling its permit, and then announced "that it had been found guilty of violating the said anti-trust laws on each and every day from the first day of June, 1900, to the 29th day of April, 1907, and that its present permit to do further business in the State had been forfeited and canceled by reason of said violation, and that defendant had since May 31, 1900, been a member of an agreement which had its very existence in Texas, and in violation of the civil and criminal laws of Texas, and that it has been and still is in possession of certain instrumentalities by means

of which it, in violation of the public welfare and interests, intended to continue its violation of the law pending appeal from the judgment of conviction, and that the court would assume that the defendant would file its proper supersedeas bond from the said judgment of conviction, but that, notwithstanding defendant's right to so file the said supersedeas bond within the time provided by law, the court was of the opinion that the Legislature had provided as a remedy or means of preventing defendant from the continued violation of the law, that a receiver should be appointed to take charge of its property and business and deprive it of its instrumentalities by which it had so violated the law and would continue to violate law; and that because of such statutes, and of the declared purpose of defendant, speaking through its general counsel, John D. Johnson, in newspaper interviews which had been brought to the attention of the court, in which said Johnson had discussed the effect of the aforesaid judgment of conviction against defendant, and had declared the purpose of defendant to appeal from said judgment of conviction and to continue to carry on its business in the same manner that it had theretofore done, notwithstanding such judgment of conviction; and without any evidence being submitted to the court in connection with said application, the court thereupon announced that it would grant the said application and appoint a receiver as therein prayed for."

This opinion of the court announces the following:

(a) That the court would act upon the proceedings and judgment in the main case of which he would take judicial notice, without the introduction of any evidence.

(b) He declares that the property of defendant Oil Company, which it was using in conducting commerce, were instrumentalities which it used to violate the anti-trust laws.

(c) He declares that it intended to continue violating said laws, this finding being based on alleged newspaper interviews of its general counsel which had been called to the attention of the court.

(d) He admits that the defendant would appeal and give a supersedeas appeal bond.

(e) He construes the Act of 1907 as authorizing the appointment of a receiver to take charge of the defendant Oil Company's business and property, on account of the acts which it had done prior to the passage of such law, and that it authorized such appointment to prevent a defendant from using its property in commerce in violation of such law, as had been determined in the judgment appealed from.

Here was a distinct construction of the Act of 1907, which was set up and relied upon in the application for the appointment of a receiver, made by the trial court, by which construction such act was held to be valid and was held to authorize the appointment of a receiver, and to fix a lien on defendant's property, because of acts done before the passage of such law. This construction of the Act of 1907 has been approved by the higher courts of the State of Texas. Does such construction make said act unconstitutional as being an *ex post facto* law?

Now, one of the rights of property, inherent in the contract by which it is acquired, is the right of possession and use. The value of the use of property is materially affected by the question as to whether or not it is free from a lien of any character. Defendant Oil Company had acquired possession of its property and there was no lien upon it. It had conducted its business for a number of years, as it believed, lawfully. At the expiration of seven years the State passes a law giving a lien upon its property for penalties, which the State claimed to have been incurred during said seven years. The effects of said lien are:

(a) To cloud the title of the property of the defendant Oil Company, which would embarrass it in the making of needed extensions and improvements, borrowing money on the credit of such property, and selling goods in the usual course of trade.

(b) This would result in the destruction of the business of the defendant Oil Company, and of the value of its property used in such business, and would thereby destroy the most valuable property right in said business and property.

All these results were to be inflicted on account of acts previously done.

The appointment of a receiver authorized the seizure of the defendant Oil Company's property, and authorized the receiver to deprive it of the benefits to be derived from possessing said property, and conducting its business. The costs of a receivership become a burthern upon the property, and must be paid out of it. The management and conduct of the business is taken from those who have had long experience, and are experts in the conduct of such business, and placed in the hands of persons of unknown experience, ability or qualifications. Necessarily, the value of the good-will of the business would be materially impaired and lessened.

Now, neither the Act of 1899 or of 1903, nor any law of the State of Texas prior to the passage of the Act of April 11, 1907, created a lien upon the property of the corporation for violation of said anti-trust laws, nor provided for the appointment of a receiver for the property of a corportion charged with the violation of these two anti-trust laws; neither did any law of the State fix such lien, nor authorize the appointment of a receiver by the institution of a suit to collect penalties. Therefore, we submit that the law of 1907 violated the property rights of the defendant Oil Company, which were vested by its contract in acquiring its property in Texas, and that such deprivation and the fixing of the lien upon said property, increased the punishment of the defendant Oil Company for acts done prior to the passage thereof.

The courts of Texas have always held that this could not be done. In the case of ex parte Meyer, 27 Tex. Sup. Ct. 723, the court makes this statement in deciding the cause:

"We are then to deduce as correct conclusions from these cases that the contracts designed to be protected by the Constitution are, first, contracts by which private rights of property are vested."

This statement was made in considering the question of an *ex post facto* law. This announcement of the law is in accordance with the authorities heretofore cited in this cause, and is illustrated in the report of the case of United States v. Hall, 6 Cranch, 174,

in which counsel for defendant in error Hall, in presenting the case, made this argument:

"3. The act of Jan. 9, 1809, cannot apply to this case so as to make that penal which before was justifiable.

Marshall, C. J., stopped the counsel and observed that the court would never consider the penal act as applying to previous facts, unless such construction be absolutely unavoidable."

We submit that being deprived of the use of property, and having a lien fixed upon property, is punishment within the meaning of the term *ex post facto* law; and that the application of such punishment on account of previous acts, where authorized by the law, or by the construction of the law, brings the same clearly within the terms of an *ex post facto* law.

In the case of Cummings v. Missouri, 71 U. S. 277, this Court said:

"The Constitution deals with substance, not shadow. Its inhibition was leveled at the thing, not the name. It intended the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

The Legislature has power to pass laws for the suppression of trusts and combinations, but such laws must conform to fixed constitutional rules. The prohibition of *ex post facto* laws clearly prohibits the creation of a statutory lien or the appointment of a receiver for acts previously done. The lien and the receivership increase the punishment. This result cannot be accomplished under the guise of an additional remedy for the suppression of trusts. Such a construction would be permitting the "name" of the act to control, and not giving effect to the "substance."

It may be that the anti-trust laws of the State of Texas, of 1899 and 1903, as well as the Act of 1907, are in some of their provisions constitutional, so far as the wording of the acts are concerned; but the construction placed upon such laws by the trial court, which is

approved by the higher courts of Texas, renders them unconstitutional. The case of L. & N. R. Co. v. Eubank, 184 U. S. 34, is directly in point on this proposition. This Court had theretofore, in the case of L. & N. R. Co. v. Kentucky, 183 U. S. 503, held that Sect. 218 of the Constitution of the State of Kentucky was not obnoxious to the Constitution of the United States. But in the Eubank case, in 184 U. S., the State court had held that said Sect. 218 applied to "a long haul from a place outside of to one within the State, and a shorter haul between points on the same line and in the same direction, both of which were within the State;" and this Court held that such construction of said Sect. 218 by the State court made it obnoxious to the commerce clause of the Constitution of the United States.

If the statutes on which the judgments below are based are unconstitutional and void, the judgments themselves become unconstitutional and void; and we submit that all of said laws, as construed by the State courts, are unconstitutional and void, being in conflict with the *ex post facto* clause of the Constitution of the United States.

The matters and things referred to in Printed Record, Cause No. 359 in this Court, are contained in the record in Cause No. 360, which latter record also contains certain proceedings in the Court of Civil Appeals, and the Supreme Court of Texas, referring to the matter of receivership. The argument and authorities heretofore presented are intended to apply to the same matters and things presented in Cause No. 360 as referred to in Cause No. 359.

Since the preparation of the foregoing argument on the subject of *ex post facto* laws, we have been served with notice and copy of motion to dismiss case No. 359, a part of which motion is as follows:

The Twenty-second and Twenty-third Assignments of Error complain of the action of the trial State Court in refusing to sustain exceptions to portions of Defendant in Error's petition and refusal to give special charges asked by the Plaintiff in Error covering the

phase of the case made by the pleadings of the Defendant in Error, charging agreements about divisions of territory between the Plaintiff in Error and the Standard Oil Company of New Jersey. It is sufficient to say that the court did not authorize a conviction of the Plaintiff in Error for any such agreement, no such question was passed on in the State Court of Appeals, and therefore there is nothing upon which to base this assignment of error. On the contrary the State trial court instructed the jury to find for the Plaintiff in Error upon all issues made by the pleadings and not submitted to the jury in paragraphs VII and XI, inclusive, in the charge of the court, and we submit that an examination of the charge will disclose that not the shadow of a cause of action or offense is submitted in either of these charges of the court growing out of any such dnvision of territory."

This is a distinct, definite and binding waiver and abandoment by Defendant in Error of any right to sustain the judgments below on account of the territorial agreement of 1878 or the "carrying out" or "continuing to observe" such agreement by the Plaintiff in Error. By abandoning all claim to recover under such agreement in this Court, the Defendant in Error leaves this Court to determine the cause on the theory that there was no "agreement to fix the price of oil" upon which the jury could return a verdict in the trial court; for the reason that this was the only agreement proven, and there was no pretense of proof of any other or different agreement.

In the present state of the record we respectfully submit the following proposition:

(a) The admission made in this Court that the Defendant in Error was not entitled to recover in the trial court on account of the agreement of 1878, does not cure the error of the trial court in submitting the agreement to the jury, and approving their finding on that issue.

(b) The abandonment, by the Defendant in Error, of any claim on account of the agreement of 1878, and the admission made in this Court, leaves the case in the attitude, that the De-

fendant in Error procured a judgment below, on account of the agreement of 1878, and now admits that said agreement cannot be considered by this Court; therefore, it admits the procurement of a judgment below on evidence which cannot now be considered by this Court. The result is, the Defendant in Error admits that it has a judgment obtained without evidence, which means that it has taken the property of Plaintiff in Error without due process of law.

This action of the Defendant in Error in making the admission referred to in this Court cannot undo what Defendant in Error did in the trial court, or what the jury or the trial court did. The record shows the following: Defendant in Error, in its petition in the trial court, paragraph III, set up and declared upon the agreement of 1878 and alleged that the same was "still being carried out" (Print. Rec., 4, 5 and 6). This allegation was repeated in paragraph VIII of the petition (Print. Rec., 28, 29 and 30), subdivision 5 of paragraph VIII being as follows:

"That the division of territory previously agreed upon whereby the business operations of the Waters Pierce Oil Company should be confined to the territory hereinbefore named, and whereby neither the Standard Oil Company nor any of the companies under its control (other than the Waters Pierce Oil Company), should sell refined oil and the products of petroleum therein, has been insisted upon by the Waters Pierce Oil Company since May 31, 1900, as before, and has been acquiesced in by said Standard Oil Company and its allied interests and subsidiary corporations named in the trust agreement hereinbefore set out, all of whom are engaged in the same business as defendant, and has been observed by said Standard Oil Company (except in so far as it may have secretly and surreptitiously operated in said territory); that during that period said Waters Pierce Oil Company has by and in the State of Texas, through its officers, agents and employees, and through all of its stockholders of said defendant Company, maintained and undertaken to enforce, and has enforced an agreement, understanding and conspiracy which has precluded and prevented other corporations engaged in the sale of oil and its products, from selling oil in said territory, and has thereby maintained and controlled the

price of oil and its products, and established and maintained a monopoly, and said agreement and said monopoly so established from the time of the organization of the Waters Pierce Oil Company has been maintained by defendant from May 29, 1900."

On the trial of the case the Defendant in Error proved by the deposition of H. C. Pierce (Print. Rec., 442, 448 and 449), that the agreement of 1878 was entered into, specifying the territory as then occupied by the Waters Pierce Oil Company, to be the territory in which it would continue to do business, and proved by the same witness that the business of the Waters Pierce Oil Company has been confined to that territory up to the present time. This testimony has heretofore been quoted.

The court, in paragraph VII of its charge to the jury, which has heretofore been quoted, authorized the jury to find against Plaintiff in Error, if they found that it had entered into an agreement to fix or regulate the price of oil in Texas. Paragraph XII of the court's charge (Print. Rec., 291 and 292) is as follows:

"XII. The evidence introduced before you does not show with sufficient definiteness that the defendant has since May 31, 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil and Gasoline Company, in such manner as to violate the anti-trust laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts."

In this paragraph the court withdrew from the consideration of the jury certain contracts which had been introduced in evidence, but it will be observed that he did not withdraw from the consideration of the jury the contract and agreement of 1878. This shows conclusively that the court was intending by paragraph VII of his charge to permit the jury to find a verdict on account of that paragraph.

There were only two issues submitted to the jury under the law of 1899, and they were submitted in paragraph VI and paragraph VIII of the charge. The verdict of the jury on this

branch of the case shows that the jury found against Plaintiff in Error under paragraph VII of the charge and under paragraph VIII of the charge and assesed a joint penalty of $1,549,500 for the violation of the Act of 1899. This was about $1500.00 for each day on which the jury found against the Plaintiff in Error. It is impossible to tell how much the jury assessed on account of the issues submitted in paragraph VII or on account of the issues submitted in paragraph VIII of the charge. That part of the verdict is as follows (Print. Rec., 314):

"We, the jury, find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties $1,549,500.00."

Judgment was rendered on this verdict.

Any contention that the agreement of 1878 was not relied upon in the trial court is without support in the record. On the contrary, the record shows that such agreement was plead, proven, submitted to the jury and verdict returned thereon, which verdict was carried into judgment.

We submit that the result of this error cannot be cured by the admission in this Court that the Defendant in Error does not now rely upon such agreement; and that the abandonment by Defendant in Error of any reliance upon such agreement does not weaken, but strengthens our contention that the application and construction of the Act of 1899 in this record by the trial court makes that act an *ex post facto* law.

Again we say that the present attitude of Defendant in Error in this Court makes the judgment below in this record one which takes from Plaintiff in Error its property without due process of law.

## THE ANTI-TRUST LAWS OF THE STATE OF TEXAS OF 1899 AND 1903, AND THE ACT OF 1907, AS CONSTRUED AND APPLIED HEREIN, ARE VOID, BECAUSE THEY AUTHORIZE THE ASSESSMENT OF EXCESSIVE FINES, PENALTIES AND PUNISHMENT.

**The judgment against the Waters Pierce Oil Company, plaintiff in error, for $1,623,900 and for the cancellation of its permit to do business in Texas, and the judgment appointing a receiver, are void under the due process clause of the Fourteenth Amendment to the Constitution of the United States, for the reason that they assess such excessive penalties and punishments, when considered in connection with the character of the business done and the offense charged, as shocks the conscience of mankind.**

The case of M., K. & T. Railway Company of Texas vs. State of Texas, 100 Tex. Sup. Ct. Rep., 422, was one involving the validity of a statute of the State of Texas, requiring railway companies to furnish, and keep in specified conditions, certain facilities at each of its passenger stations on its line of railway. The Supreme Court of the State, in announcing the law with reference to such statutes, in view of the due process clause of the Constitution of the United States, said:

"The plaintiff in error challenges the validity of the law, for the reason that it is in contravention of the Fourteenth Amendment to the Constitution of the United States, which provides: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.' The prohibitions contained in this clause of the Constitution apply 'to all the instrumentalities of the State, and to its legislative, executive and judicial authorities, and, therefore, whoever by virtue of public position under a State government deprives another of any right protected by that amendment against deprivation by the State violates the constitutional inhibition, and, as he acts in the name and for the State, he is clothed with the State's power, his act is that of the State' (Chicago, B., etc., Ry. v. Chicago, 166 U. S. 233). After stating the facts of a proceeding

in court which was held to be due process of law, the Supreme Court of the United States, in the case last cited said: 'But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing the forms of procedure in the courts, and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law, regard must be had to substance, and not to form.' If the statute involved in this litigation is invalid, then the fact that the proceedings in the court are regular will not constitute it due process of law, by which the penalties denounced against the railroad company would be enforced."

After making this statement of the law, the court discussed the facts of the case, and then concluded by saying: "Surely such a law, if enforced, would take from the railroad company its property, in the penalties exacted by the statute, without due process of law, in violation of the principles of right." This was said in a case where the penalties assessed were only $1800.

This Court, in the case of ex parte Young, 209 U. S. 123, in passing upon the railroad rate statutes of the State of Minnesota, prescribing heavy fines and penalties, and punishment of agents and officers by confinement in the penitentiary, said:

"We hold, therefore, that the provisions of the acts relating to the enforcement of the rates, either for freight or passengers, by imposing such enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, are unconstitutional on their face, without regard to the question of the insufficiency of those rates."

Section 5 of the anti-trust law of the State of Texas, of 1899, made each day's violation of its provisions an offense, and subjected the party violating the same to a penalty of not less than two hundred dollars nor more than five thousand dollars for every such offense.

Section 7 of said act authorized the forfeiture of the permit of

active political campaigns in Travis County, involving the question as to whether or not the Waters Pierce Oil Company was a trust, and whether or not its admission to do business in Texas had been procured by fraud. He shows that, among others who engaged in this campaign, were himself, Judge A. W. Terrell, former minister to Turkey under Mr. Cleveland's administration; Mr. Taylor Moore, formerly District Attorney, and member of the Legislature from Travis County; Mr. Cocke, a member of the Legislature from Bexar County, and others. This is shown to have been a very thorough and exciting campaign; one in which the people were divided and very bitterly arrayed. He shows also that he had talked to people all over the county, and that they generally considered the Waters Pierce Oil Company as a trust, and that it had been readmitted to do business in Texas through fraud. His testimony is supported by a large number of other witnesses, and is practically uncontradicted. The testimony further shows that this agitation had been going on in Travis County practically ever since the readmission of the Waters Pierce Oil Company to do business in the State.

It shows, again, that this agitation was not local, but was supported by the daily press of the State. At page 208, an extensive exhibit is made from the Houston Chronicle, a daily paper published in Houston, Texas, containing statements, exhibits and figures, which were calculated to arouse the prejudices of the people. At page 209 are publications from the Austin Statesman, another local paper, denouncing the plaintiff in error as a trust.

In fact, this testimony shows that, if it is possible, by political controversy and denunciation of a corporation, its officers and agents, and those who are alleged to be friendly to it, to so arouse the people of a county that they will inflict an excessive punishment upon such corporation, that it was done in this case.

That such had been the effect of the agitation is apparent from the testimony which was offered to show that the president of the corporation was indicted without evidence. When a county is so aroused that a grand jury, in the solemn discharge of their duty,

acting under oath, will indict any person for so grave an offense as a felony, without hearing testimony, and when the District Attorney, representing the State, will prepare and return such an indictment, knowing that it was found without evidence, it seems apparent that the prejudices and passions of the people are very much aroused. This had occurred just a year before the trial of this cause, and occurred about the time this suit was instituted. The notice and comments upon the filing of the suit, in the local press, was on Sept. 21, 1906 (Print. Rec., 226), and the notice of the indictment of Mr. H. C. Pierce was on Nov. 22, 1906 (Print. Rec., 227). Unfortunately, this controversy about the legality of the transactions of the Plaintiff in Error was not confined to a discussion in a political campaign, but after the institution of this suit, the proceedings therein became involved in the same political discussion. So that the local paper referred to as publishing the previous notices did, on Dec. 28, 1906, publish and commented excitedly upon a demand made by the Attorney General for certain evidence in this cause (Print. Rec., 228-236). The controversy, with reference to this demand, was continued through the local press, and was carried into the Legislature, which assembled in Austin, Travis County, in the following January. The same controversy occupied the time of the Legislature for a large period of time, during the session of 1907, just previous to the trial in this cause. It was one of those bitter controversies, which sometimes occur, in the Legislatures of the various States, and probably attracted the attention of every qualified juror in Travis County. This record, in fact, would indicate that all such persons participated in the controversy. It does not seem strange, then, that the jury in the case, selected after such agitation, would be incapable of that calm deliberation necessary to arrive at a proper verdict.

Neither is it surprising that, under the conditions set forth, the jury found against the plaintiff in error on every issue that was submitted to them; nor that they applied the anti-trust laws to acts committed before the passage of such laws, nor that their finding was without evidence to support it in many things that were involved in

their verdict. In other words, they might have been expected to do, as the gand jury did in returning the indictment against Mr. H. C. Pierce, make their finding without evidence being introduced to support it.

Bearing on the question of excessive penalties, it is a fact that the County Attorney, who was one of the counsel representing the State, held an elective office in Travis County, and was doubtless zealous in the prosecution of those he deemed to be violators of the law.

The judge who tried the case, also held an elective office in Travis County, and may be assumed to have been familiar with all the controversies which had taken place in that county with reference to the Waters Pierce Oil Company. We always assume that judges are perfectly fair, and do not intend to do otherwise herein. But judges are human beings, just the same as other people are, and the nearer they are to the people in times of great disturbances, the more liable they are to have their opinions and judgments affected by the passions and prejudices surrounding them. The trial judge determined the law of the case, approved the verdict and caused judgment to be entered thereon. In examining the judgment to see whether or not it imposes excessive penalties, it is entirely proper, we think, to examine the rulings of the court to see what they indicate.

In the first place, he overruled eighty-nine special exceptions to the plaintiff's petition, except one—Special Exception No. 70 (Print. Rec., 72, Cause No. 360). This exception he sustained; it was to the allegation that the Standard Oil Company and its allied interests had used "codes" and stationery with only "26 Broadway" thereon, and had sent out letters without their being signed. A careful examination of the other exceptions and of the petition filed by the State, we submit, shows that many of the exceptions should have been sustained, at least, in part.

The trial judge overuled the application to change the venue (Print. Rec., 283, Cause No. 360). We submit again, that a careful investigation of the testimony offered on the motion to change

the venue shows that the chances of the Waters Pierce Oil Company to get a fair and impartial trial in Travis County would, to say the least of it, be doubtful. It is the duty of the court to see that every party has a fair and impartial trial.

In the submission of a case to the jury, under the practice and procedure in Texas, it is the duty of the trial court to apply the law to the facts. The trial judge in this case, in applying the law to the facts, so constructed his charge, as we have heretofore shown, as to leave it to the jury to determine whether certain acts "were reasonably calculated" to fix the price of oil, and whether certain other acts "tended" to fix the price of oil, etc. He also constructed his charge in such manner that the jury could apply it to acts which had occured before the passage of such laws (Print. Rec., 288-290, Cause No. 360). The court refused all of the twenty-five special charges requested by the plaintiff in error (Print. Rec., 294-312, Cause No. 360). As shown in our brief, a number of these special charges would have applied the correct law to the facts in the case, and would have aided the jury in reaching a correct conclusion.

After the return of the verdict, the State made its application for the appointment of a receiver, and the opinion announced by the trial judge in sustaining that application strengthens our contention that he was not in that frame of mind which conduces to such an administation of the law as is in keeping with the standard of its administration in the United States. This opinion of his has been heretofore copied.

The Court of Civil Appeals, located also at Austin, in Travis County, in its opinion (Print. Rec., 1141, Cause No. 360), approved all that the jury and the trial judge had done. On the question of the excessiveness of the punishment, the Court of Civil Appeals said (Print. Rec., 1161, Cause No. 360): "The verdict, while large, is much under the maximum permitted by the law. Its magnitude is mainly attributable to appellant's repeated and long-continued violations of the law, covering a period of six years. Hence, we have reached the conclusion that the verdict is not so large as to

render it manifest that the jury were actuated by prejudice or other improper motives." This is the only reason assigned by the court for thinking that the punishment was not an infliction of such excessive fines and penalties, as would be the taking of Plaintiff in Error's property without due process of law.

Now, we submit that the fact that the verdict is under the maximum permitted by the law is no reason for holding that it is not unconstitutional, and in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States. Suppose a statute authorized the imposition of a penalty from five dollars to ten million dollars, for entering into a contract which had theretofore been lawful. It might be considered that the imposition of a fine of five dollars would not be excessive, but could it be said that any amount between five dollars and ten million dollars would not be excessive, because it was much under the maximum?

Again, the question that the court relies upon, of the long continued violation of the law by the Plaintiff in Error, is one to be looked to, in the light of the testimony. As to whether or not Plaintiff in Error's doing business in the State of Texas was wrongful, had been a matter of discussion, it seems from the record, among the people of the State during this entire period of time. The testimony heretofore referred to, shows that the people themselves were divided upon this question. It and the authorities which we have heretofore presented, as we believe, conclusively show that Plaintiff in Error had not violated the anti-trust laws; for even now, in this, the Court of last resort, it is a doubtful question, to say the least of it. This being true, can it be said with safety that the largest penalty ever imposed in the history of the State, and probably larger than has ever been imposed in the majority of the States of the Union, can be justified upon the account of a long-continued violation of the law. It must be admitted from this record that the Plaintiff in Error and its counsel, who were learned in the law of the land, honestly believed that it was not violating the law.

Surely, then, the fine cannot be justified on the ground that it was an habitual criminal.

The Court of Civil Appeals also say that they reach the conclusion that the verdict is not so large as to render it manifest that the jury were actuated by prejudice or other improper motives. What size verdict would indicate prejudice or other improper motives? Here was a case where the testimony showed that the physical property of the Waters Pierce Oil Company in Texas was valued at a little over a million dollars. In its application for the appointment of a receiver, the State of Texas avers that it was informed and believed that the property of the Oil Company in the State of Texas was wholly inadequate to pay the judgment, and this statement was verified by the County Attorney (Print. Rec., 324). So we have a case in which the judgment imposed a penalty of $1,623,900.00 on a corporation having property within the State of little more than a million dollars in value, for entering into business contracts which were lawful when made; but still the Court of Civil Appeals of Texas conclude that it is not large enough to show prejudice or other improper motive. In other words, a verdict which confiscates over a million dollars worth of property and still is not satisfied is not large enough to show prejudice or other improper motive. If it is not, it seems difficult for the human mind to conceive of one that would be large enough. We submit that the Court of Civil Appeals of Texas erred in so holding.

The attempts of the Defendant in Error, and its representatives, to get possession of Plaintiff in Error's property is worthy of notice, on the question of inflicting unusual punishment.

On June 21st, the Attorney General and the receiver appointed by that court, applied to the Court of Civil Appeals of Texas, setting up the appointment of such receiver, and in the language of the Court of Civil Appeals, "The application concludes with a prayer for extensive relief against the receiver appointed by the judgment of the United States Court, etc." (Print. Rec., 39, Cause No. 360). The Court of Civil Appeals again, in the same opinion, says (Print. Rec., 48, Cause No. 360): "Plaintiff's prayer is for

a very large order, going to the extent of asking this court to appoint a receiver to recover and take possession of the property, and a mandatory injunction against the receiver, W. B. Dorchester, to forthwith cease acting as receiver, and to turn over and deliver to the receiver, to be appointed by this court, control and management of all the property of the defendant." This the Court of Civil Appeals declined to do. Thereafter, on Dec. 14, 1907, the Attorney General, County Attorney and associate counsel filed in the Supreme Court of the State an application (Print. Rec., 64-67, Cause No. 360), asking the Supreme Court to "direct Robt. J. Eckhardt to take actual and physical possession of the property of the Waters Pierce Oil Company, and conduct the business of such corporation under such orders as this court may make, pending the final disposition of this cause in this court." This application was properly verified by the Attorney General, and was amended, the amendment being filed Dec. 18 (Print. Rec., 67-72 inclusive, Cause No. 360). In this amended motion there was a prayer that the Supreme Court revoke its order, recalling the mandate of the Court of Civil Appeals in the matter of the receivership, and also a prayer for the same relief as in the original motion. The opinion of the Supreme Court upon this subject, in which the motions were refused, will be found on pages 72 to 81, inclusive (Print. Rec., Cause No. 360).

At the time the receiver was appointed, it was admitted that the judgment would be secured by a supersedeas bond; and during all the other proceedings by which the Defendant in Error, through its counsel, was attempting to get possession of the property of the Plaintiff in Error, the said judgment was secured by a bond in double the amount thereof.

In addition to the amount of the verdict for penalties, the judgment canceled the permit of the Oil Company to do business in Texas. This was a valuable right, and had three years to run.

The Oil Company had expended large sums of money in its preparation to do business in the State; and to stop it from doing business would necessarily entail a large loss upon it. Besides this,

the judgment appointing a receiver for the property of the Oil Company would deprive it of any character of control over that property, and would place its business in the hands of persons of un known experience or ability in handling the same; so that the chances were, the value of its business would be largely impaired by the receivership. It does not seem that there was anything else which could have been done to the Plaintiff in Error by the judgment of the court in which this case was tried, by way of punishment for the offenses with which it was charged.

In view of all of these facts, we submit that the judgment below assesses such penalties, fines, forfeitures and punishment against the Plaintiff in Error, under the facts and circumstances disclosed by this record, as render such judgment unconstitutional and void, for the reason that it takes Plaintiff in Error's property, and all of its property subject to that jurisdiction, without due process of law.

*Summary of Argument.*

We submit and insist upon each and all of the assignments of error and propositions presented in the main brief in these causes, for the reason that we believe all of them should be sustained. By way of summarizing the arguments herein presented, and only the arguments herein presented, we refer to the three propositions presented as follows:

**"The anti-trust laws of Texas are too vague and indefinite to be enforced."**

The argument and authorities presented under this heading show that the anti-trust laws of 1899 and 1903, as construed herein, are equivalent to the enforcement of a statute which should enact, "If a jury shall find that two or more corporations or persons have heretofore entered into any agreement or combination reasonably calculated to, or which tends to fix the price of oil in Texas, the jury shall assess a punishment against said corporations or persons, or either of them, of not less than two hundred nor more than five thousand dollars for each day such agreement or combination is continued." It would be admitted that such a statute was void

on its face. Yet that was exactly what was done herein by the construction placed upon the statutes by the State courts.

Again we refer to the proposition that:

**"The anti-trust laws of 1899 and 1903 and 1907, as construed herein, are ex post facto laws."**

The argument and authorities presented under this heading show that the anti-trust laws of 1899 and 1903 and 1907 as construed herein are equivalent to the enforcement of a statute which should enact, "If a jury shall find that two corporations have heretofore entered into a lawful contract, or that one corporation has heretofore lawfully acquired vested property rights in the stock of another, and that either of said acts are reasonably calculated to fix, or tend to fix, the price of oil in Texas, and that one of said corporations continues to do business in Texas after this act takes effect, then the jury shall punish said corporation so doing business, by assessing penalties against it for each day it continues to do business, in an amount not less than, etc."

Such a statute as this, it will be admitted, is void upon its face. Yet this was the effect given the anti-trust laws of 1899 and 1903, and the Acts of 1907, fixing a lien in favor of the State and authorizing a receivership in a suit for penalties.

Again we refer to the proposition that:

**"The anti-trust laws of the State of Texas of 1899 and 1903, and the Act of 1907, as construed and applied herein, are void because they authorize an assessment of excessive fines, penalties and punishment."**

The assessment of a fine for $1,623,000 against Plaintiff in Error and the cancellation of its permit to do business in the State and the appointment of a receiver to take possession of its property were equivalent to the enforcement of a statute which should provide, "In the trial of the cause involving the violation of the laws prohibiting corporations from entering into agreements, or making combinations, reasonably calculated to fix the price of oil, or involving the holding of stock in one corporation by another, which stock was lawfully acquired, the jury may assess such penalties as will confiscate all of the property of the corporation vio-

lating said laws prohibiting such agreements and such combinations, or which permits another corporation to hold its stock lawfully acquired by said corporation, and the court in which the judgment is rendered may appoint a receiver to take charge of all of the property of such corporation, notwithstanding the fact that the judgment for penalties has been secured by a supersedeas bond." It will be admitted that such a statute would be void upon its face. Yet that was exactly what was accomplished by the enforcement of the statutes referred to by the proceedings and judgments below.

Now, we do not think that this statement of the result of the judgments below is exaggerated or overdrawn. A careful examination of the records in these two causes, we believe, will show that our statement of the legal effect and result of such judgments is entirely correct.

This is the Court of last resort in these cases. It is the last opportunity which the Plaintiff in Error will have to offer any objection to the taking of all of its property in the State of Texas, valued at more than a million dollars, and to the application of the same to the use and benefit of the State of Texas. It is the last time that it can be heard to present the question of the protection of its property rights against confiscation, in violation of the guarantees contained in the Constitution of the United States. It does not seem improper, therefore, for it to insist, earnestly, that each and every proposition submitted in its principal brief, and in this additional brief and argument, should be scrutinized and examined with the utmost care.

The questions involved are of such gravity, and of such far-reaching importance, not only to the Plaintiff in Error, but to all corporations and persons engaged in commerce in the United States, that counsel for Plaintiff in Error concluded that it was not only proper, but that it was incumbent upon them, in the discharge of their duties, to call attention as they have done to all the matters and things involved in this record, and the results thereof. In doing this they have not intended to depart in any manner from

the established rules and regulations for the presentation of questions in this Court. They have intended to give "full faith and credit" to the action of the State, its courts and its legal representatives, in all that has been done in these causes. They have not intended to impugn the personal motives of any one, or of any party. The purpose and intent has been to point out simply the legal errors which had been committed, and the results that would flow therefrom.

And, in view of the record, it is submitted that the judgments below are void, for the reasons assigned in this Court, and especially because the Plaintiff in Error has been punished for acts which it could not know were penal at the time they were committed, and has been punished for acts committed before the laws of the State referred to were enacted, and has been punished by the confiscation of its property, by excessive fines, penalties and seizures. For these reasons, it is submitted that the judgments in both causes should be reversed.

J. D. JOHNSON,
E. B. PERKINS,
Counsel for Plaintiff in Error.

Supreme Court, U. S.
FILED.
OCT 27 1908
JAMES H. McKENNEY,
CLERK.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

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## Nos. 359 and 360.

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WATERS-PIERCE OIL COMPANY, PLAINTIFF IN ERROR,

vs.

STATE OF TEXAS, DEFENDANT IN ERROR.

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## ARGUMENT FOR PLAINTIFF IN ERROR.

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H. S. PRIEST,
*Of Counsel for Plaintiff in Error.*

IN THE

# Supreme Court of the United States.

*OCTOBER TERM, 1908.*

NO. 359 AND NO. 360.

WATERS-PIERCE OIL COMPANY,
Plaintiff-in-Error,
vs.
STATE OF TEXAS,
Defendant-in-Error.

## STATEMENT.

In 1899, the Legislature of Texas enacted a law in fifteen sections against pools, trusts and monopolies in trade which took effect January 31, 1900, the substantial provisions of which, so far as this cause is concerned, are comprised in Sections 1 to 8, which are as follows:

> "Section 1. Any corporation organized under the laws of this or any other state or country, and transacting or conducting any kind of business in this State, or any partnership, or individual or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or the pre-

mium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to the penalties as provided by this act.

Section 2. A 'monopoly' is any union or combination or consolidation or affiliation of capital, credit, property assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a 'monopoly,' as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stock or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the

meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a 'monopoly,' as defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

Section 3. If any person, persons, company, partnership, association or corporation, engaged in the manufacture of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction shall be subject to the penalties of this act.

Section 4. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this State or elsewhere, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State, their products for the purpose of driving out competition or financially injuring competitors engaged in similar business, said person, persons, company, partnership, association, corporation or agent resorting to this method of securing a monopoly within this State in such business, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subject to the penalties of this act.

Section 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation

or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney-General or the district or county attorney; the moneys thus collected to go into the state treasury, and to become a part of the general fund, except as hereinafter provided.

Section 6. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

Section 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other state or country, which shall violate any of the provisions of the preceding sections of this act shall there-

by forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as *prima facie* proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, to the Commissioner of Insurance, Statistics and History of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation."

This act was repealed by an act which became effective March 31, 1903, the provisions of which substantially affecting this case are comprised in the first thirteen sections, which are as follows:

"Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any, or all of the following purposes: 1. To create or which may tend to create or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State. 2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any produce for market or transportation. 3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation. 4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise,

produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established. 5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected. 6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation. 7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof.

Section 2. That a monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods: 1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first

section of this Act. 2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

Section 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade: 1. Where any two or more persons, firms, corporations, or associations of persons who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation, or association of persons any article of merchandise, produce or commodity. 2. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

Section 4. Any and all trusts, monopolies and conspiracies in restraint of trade as herein defined, are hereby prohibited and declared to be illegal.

Section 5. Any corporation holding a charter under the laws of the State of Texas, which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

Section 6. For a violation of any of the provisions of this act by any corporation mentioned herein, it shall be the duty of the Attorney-General, upon his own motion, and without leave or order of any judge or court, to institute suit or **quo warranto** proceedings in Travis County, at Austin, or at the county seat of any county in the State, where such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

Section 7. When a corporation organized under the laws of this State shall have been convicted of a violation of any of the provisions of this Act, and its charter and franchise has been forfeited, as provided in section 5, no

other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

Section 8. Every foreign corporation violating any of the provisions of this Act is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney-General to enforce this provision by injunction or other proceedings in the district court of Travis County, in the name of the State of Texas.

Section 9. The provisions of Chapter 92 of the Revised Statutes of this State of 1895, to prescribe the remedy and regulate the proceedings by **quo warranto,** etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this Act.

Section 10. When any foreign corporation has been convicted of a violation of any of the provisions of this Act, and its right to do business in this State has been forfeited, as provided in Section 8 of this Act, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations shall be permitted to incorporate or do business in Texas.

Section 11. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this Act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis County, and it shall be the duty of the Attorney-General, or the district or county attorney under the direction of the Attorney-General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this Act shall be over and above the fees allowed him under the general fee bill.

Section 12. Any contract or agreement in violation of the provisions of this Act shall be absolutely void and not enforcible either in law or equity.

Section 13. And in addition to the penalties and forfeitures herein provided for, every person violating this

Act may further (be) punished by imprisonment in the penitentiary not less than one nor more than ten years.

Under the provisions of these two acts, the Attorney-General of Texas and the County Attorney of Travis County of that State, on the 22nd of September, 1906, instituted a suit against the Waters-Pierce Oil Company to recover penalties under the Act of 1899, from the 29th day of May, 1900, until the 31st day of March, 1903, at the rate of five thousand dollars per day and under the Act of 1903 from the 31st day of March, 1903, until April 29, 1907, the date at which the last amended petition was filed, at the rate of fifty dollars per day.

**The facts are:** That in 1878 a Waters-Pierce Oil Company was organized to succeed the partnership of Waters, Pierce & Company, oil merchants of St. Louis. Its capital was one hundred thousand dollars, divided into one thousand shares of the par value of one hundred dollars each and was subscribed and owned, 40 per cent by Waters, Pierce & Company; 20 per cent by Chess Carley & Company; and 40 per cent by Hutchings & Thompson. In June, 1882, its capital was increased to four hundred thousand dollars and at that time its stock ownership stood: Hutchings & Thompson and Chess Carley & Company, 2,750 shares; H. C. Pierce, 1,250 shares. Subsequent to this time Hutchings & Thompson and Chess Carley & Company transferred their 2,750 shares to the trustees under what is generally known as the Standard Oil Trust Agreement of January 2, 1882, which we will later refer to. Mr. Pierce continued to own his shares up to the date of the dissolution of the company in May, 1900, and from the date of the organization of the company down to the date of its dissolution, managed and controlled its affairs.

When this company was first organized, it was distinctly agreed that its management should be conducted by Mr. H. C. Pierce who was then an experienced oil merchant, familiar with the trade and territory to which its business was to be confined, and this agreement was complied with until the dissolution of the company at the time above stated. The territory which this company was organized to develop and serve was a small

part of Illinois, a part of Louisiana, and practically all that part of Missouri south of the Missouri River, Arkansas, Texas the Indian Territory and the Republic of Mexico. The oil business was then comparatively new and insignificant and the territory allotted to this company practically undeveloped in the oil trade. The business, in the opinion of the management of the company required great detail in facility for merchandising and watchfulness in upbuilding the business. To encourage the purchase of oil and popularize it and make its merchandise convenient and easy and to economize in the cost, the company, under Mr. Pierce's management, acquired tank cars for transporting the oil in bulk from the refineries to distributing stations where large local tanks were built to receive it in bulk; provided tank wagons in which to locally distribute oil in large or small quantities to dealers within a radius of ten to fifteen miles; and contrived iron barrels to ship to longer distances that could not be reached by wagon wherein the evaporation of oil would not take place and thereby occasion loss to the merchant—in short, every convenience that would administer in the economy of handling the oil, both to the consumer and its customers, and cheapen its use was instituted and enlarged upon as the business grew in proportions and the population of the territory in which its plant was constructed increased. By reason of these facilities and the increase in the population of this territory, the company's business grew from the sale of a few hundred thousand barrels at the date of its organization into millions of barrels before its dissolution.

This company was never a manufacturing or refining company in the United States. The only sources from which it could get in quantity and quality with promptness the oil necessary to supply its customers was the Standard Oil Company of Ohio and its successors in the refining business. From 1892 until the dissolution of the company its directorate consisted of Mr. Pierce, Mr. Findley, Mr. Pierce's brother-in-law, Mr. C. M. Adams, who had been with the company nearly all of its corporate life as an employee, Mr. Gruet, who had been employed by Mr. Pierce, and Mr. H. M. Tilford who resided in

New York. The home office of the company was at all times located at St. Louis and its business managed and ordered from there.

In 1900 a suit, which had been brought against this company by the State of Texas for the cancellation of its license to do business there because of a violation of some provision of the Anti-Trust Law of that State, culminated in a final judgment against it. This proceeding was based upon the acts of some of the agents of the company in making so-called exclusive contracts with local dealers which were held to be forbidden by the laws of Texas.

The Waters-Pierce Oil Co. v. Tex., 177 U. S., 28.

Thereupon, on the 28th day of May, 1900, this company was dissolved and a new company with the same name was, on the 29th day of May, 1900, organized under and pursuant to the laws of the State of Missouri. It was organized with a capital of four hundred thousand dollars by Mr. Pierce who subscribed and paid for the entire issue of stock. It took over all the property of the old company and gave notes in payment therefor which were subsequently honored at maturity.

At the time of the dissolution of the old Waters-Pierce Oil Company, the Standard Oil Company of New Jersey had acquired the 2,750 shares which had previously been owned by Hutchings & Thompson and Chess Carley & Company and their successors, the trustees under the Standard Oil Trust Agreement of January 2, 1882. It is not pretended that Mr. Pierce did not consult the owner of the majority of stock in disposing of the property of the old company and its acquisition by the new. Counsel reported to Mr. Pierce, after a consultation with counsel representing the larger interests, that it had been understood that if the Standard Oil Company should retain the same interest in the new company it had in the old, it could do so, and accordingly, in the following September, Mr. Pierce transferred to it in blank the same number of shares in the new company that it had held in the old with the understanding that the shares should remain in his name on the stock book so as to give him the technical as well as the actual control of the company.

After the new company was organized its affairs and policies were managed by an executive committee at St. Louis, composed of Mr. Pierce, Mr. Findley, Mr. Pierce's brother-in-law, Mr. Adams, who had been employed by Mr. Pierce in the old company, Mr. Gruet, who had also been employed by Mr. Pierce in the old company, Mr. Johnson, general counsel, who had been Mr. Pierce's personal attorney, Mr. Johnson, Mr. Pierce's brother-in-law, and Mr. Ackert, a relative of Mr. Pierce. Neither the old nor the new Waters-Pierce Oil Company was ever a producer or refiner of oils in the United States, but acted as merchant for the brands of oil which had been established by the old company, and were manufactured for it and the new company by the refineries of the Standard Oil Company; both of them refined in Mexico oils which were sold there from crude oils which were purchased from the Standard Oil Company.

Mr. Pierce owned no stock or other interest in any oil producing or merchandising company other than the Waters-Pierce Oil Company. His business life had been devoted to developing and building up the business and trade of the Waters Pierce Oil Company, and during all of the time of its existence he was the principal manager and director of its affairs and controlled its policies. Because of the large volume of business between the Standard Oil Company and the Waters-Pierce Oil Company, there was of necessity a great volume of correspondence between the St. Louis officers of the Waters-Pierce Oil Company and those of the Standard Oil Company at 26 Broadway, New York. This correspondence related to business dealings between the two companies of such character as would usually take place between persons engaged in constant trade as manufacturer and merchant. The Standard Oil Company of New Jersey was an owner of a little more than a two-third interest in the Waters-Pierce Oil Company, and had a just and legal right to be informed from the offices of the latter, or through appointed agents, of the financial and business condition of the Waters-Pierce Oil Company. The testimony is clear, conclusive and positive that, as to the purchasing of

oil and the sale of oil in its territory, the Waters-Pierce Oil Company's management was entirely independent of any control or agreement between it and the officers of the Standard Oil Company or any other company whatsoever. It was neither claimed nor proven that the Waters-Pierce Oil Company of 1900, since its organiztion, had combined or confederated with any person or corporation, either in Texas or elsewhere, to fix or maintain the prices of any commodities in which it dealt or became a member of any trust or pool through which it shared in the earnings of any competitor, or that in any manner or form it sought to limit or control the output of any commodities in which it dealt.

**The most important claim of infraction of either the Acts of 1899 or 1903, is that the Standard Oil Company of New Jersey owned about 60 per cent. of the shares of its capital stock.**

This plainly will appear from the charge of the court to the jury and the evidence. During the course of the trial, against the defendant's objections, the State offered in evidence an agreement commonly called the Standard Oil Trust Agreement, dated the second day of January, 1882, made "Exhibit A" to the bill and an agreement supplemental thereto, marked "Exhibit B." It was agreed that the Waters-Pierce Oil Company did not sign this agreement, neither did Mr. Pierce nor was Mr. Pierce's stock ever deposited under the agreement.

The Standard Oil Company could not do business in Texas without a permit. It never did any business in Texas and never applied for a permit to engage in business there. It was always a refining company from which the Waters-Pierce Oil Company purchased its supplies.

The petition of the State of Texas charged that the Waters-Pierce Oil Company had conspired with John D. Rockefeller, John D. Archbold, Henry M. Flagler and a number of other persons and corporations on, or about January 1st, 1870, for the purpose of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States and in the State of Texas; that the predecessor of this plaintiff-in-error, the (old) Waters-

Pierce Oil Company, incorporated in 1878, had become a party to said conspiracy, and had entered into contracts with certain corporations and individuals engaged in the business of selling petroleum and the products thereof in the State of Texas by the terms of which said plaintiff-in-error acquired the properties of said individuals and corporations, all for the purpose of monopolizing the business of selling petroleum and the products thereof within said State and suppressing competition therein. Said petition further alleged that the said Waters-Pierce Oil Company, plaintiff-in-error, had entered into an agreement with the Standard Oil Company, a corporation organized under the laws of New Jersey, for the further purpose of monopolizing the trade in petroleum and the products thereof in the State of Texas; and, for the further purpose of carrying out said contract and conspiracies, had permitted the said Standard Oil Company to acquire a majority of the shares of stock of the said Waters-Pierce Oil Company and had thereby transferred the management and control of the said Waters-Pierce Oil Company to the said Standard Oil Company of New Jersey; that the Waters-Pierce Oil Company, plaintiff-in-error, not only succeeded to all the property of its predecessor, the Waters-Pierce Oil Company, which voluntarily dissolved May 29, 1900, but also assumed all the contracts and agreements of said predecessor, especially those above referred to, with the Standard Oil Company of New Jersey and other corporations and individuals; and that said plaintiff-in-error had effected a mere nominal reorganization for the purpose of perpetrating a fraud upon the State of Texas, and to enable the company to maintain its business in said State, and that the permit of said plaintiff-in-error to do business in Texas was fraudulently obtained. Said petition further charged that the said Waters-Pierce Oil Company was dominated and controlled in its business by the Standard Oil Company of New Jersey; that through the contracts and conspiracies aforesaid a large number of individuals and corporations doing business in the sale of oil and petroleum products were excluded from doing business within said State, whereby competition was

suppressed and destroyed and a substantially complete monopopoly in petroleum products established. Said petition further alleged that said acts, conspiracies and agreements were done, continued and performed by plaintiff-in-error upon each and every day from the 31st day of May, 1900, to the 31st day of March, 1903, in violation of the Anti-Trust Act of 1899, and from the 31st day of March, 1903, up to the time of bringing this suit upon each and every day within said period in violation of the Anti-Trust Act of 1903. (Transcript, pp. 1 to 39.)

To the petition of the State of Texas, plaintiff-in-error made answer by general and special exceptions, general denial and certain special pleas wherein plaintiff-in-error denied the constitutionality of said Acts of 1899 and 1903 in so far as it was sought thereunder to hold plaintiff-in-error liable for the acts and things alleged and charged in said petition, and further defended that if the petition of the State of Texas and the prayer therein should be granted, this plaintiff-in-error would be denied the equal protection of the laws, be subjected to **ex post facto** laws, deprived of its property without due process of law, and have the obligation of its contracts impaired, all contrary to the express provisions of the United States Constitution. (Transcript, pp. 43 to 95.)

Trial was had at the May Term, 1907, of the District Court of Travis County, Texas, resulting, on June 1st, 1907, in a verdict in favor of said State of Texas and against this plaintiff-in-error for the sum of $1,623,900.00, and cancelling said permit of plaintiff-in-error to do business in the State of Texas, whereupon said District Court of Travis County, Texas, entered judgment in accordance with said verdict, that the State of Texas have and recover from plaintiff-in-error herein the sum set forth in said verdict, with interest and cost of suit and did order and decree that the permit of the said Waters-Pierce Oil Company, plaintiff-in-error, to do business in the State of Texas be cancelled and that the said Waters-Pierce Oil Company be perpetually enjoined and prohibited from doing any and all business, except interstate business, within the State of Texas. (Transcript, pp. 334 and 335.)

In due time, plaintiff-in-error filed its motion for a new trial, which motion was overruled by said District Court, whereupon plaintiff-in-error excepted and gave notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas. (Transcript, pp. 315 to 320.)

Subsequent to overruling the above motion for a new trial and before plaintiff-in-error had given its **supersedeas** appeal bond from said judgment against it, said District Court, upon motion of the State of Texas, filed in the main case, appointed a receiver of the property, assets and business of said Waters-Pierce Oil Company, situate in the State of Texas, to which action of said court this plaintiff-in-error duly excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Transcript, pp. 327 to 328.) The Court of Civil Appeals affirmed the judgment, decree and orders of the court below. (Transcript. p. 1162.)

In due time plaintiff-in-error filed with the Supreme Court of Texas its application for a writ of error to said Court of Civil Appeals, which said application was on February 26, 1908, refused by said Supreme Court of Texas. (Transcript, p. 1187.)

Whereupon, said Waters-Pierce Oil Company, plaintiff-in-error herein, applied for and obtained from this court a writ of error to said Court of Civil Appeals to review its judgment upon assignments of error which are substantially in part epitomized under the title of Points and Authorities.

## POINTS AND AUTHORITIES.

**1. The Waters-Pierce Oil Company cannot be held liable and punished for the acts or engagements of the Standard Oil Company which it was under no legal duty to examine and could neither order, forbid nor control.**

Capitol Traction Company v. Offutt, 17 App. D. C. 292; 53 L. R. A. 390;
Durkin v. Kingston Coal Company, 171 Penn. 193; 29 L. R. A. 808;
U. S. Const., Sec. 10, Article I.
U. S. Const., Sec. 1, 14 Adm.

**(*a*) The capacity of the Standard Oil Company to acquire and hold the stock of the Waters-Pierce Oil Company must be determined by its charter, and the conditions of subscription and the nature of certificates of stock according to the law of the State wherein said Waters-Pierce Oil Company was created, to-wit: the State of Missouri, and not the State of Texas.**

Black v. Zacharie, 3 Howard, 483;
Meramec Mining Co. v. Levy, 54 Penn. State, 227; 93 Am. Dec. 697;
Ireland v. Globe Milling & Reduction Co. (R. I. 1895); 32 Atl. 921;
Greenwood v. Curtis, 6 Mass. 358;
Boatmen's Bank v. Gillespie, 209 Mo. 217, l. c. 256;
Trust & Savings Co. v. Home Lumber Co., 118 Mo. 459;
Bank v. Durfee, 118 Mo. 442;
Watson v. Woody Printing Co., 56 Mo. App. 151;
O'Brien v. Cummings, 13 Mo. App. 197;
Carroll v. Savings Bank, 8 Mo. App. 249;
U. S. Const., Sec. 1, 14 Amd.

**(*b*) If the holding of stock by the Standard Oil Company of New Jersey in the Waters-Pierce Oil Company was unlawful,**

**it was an offense on the part of the holding company, and not of the company whose stock was so held, the acquisition of which it could neither lawfully forbid nor prevent.**

Texas Anti-Trust Act, 1903, Sec. 2;
Northern Securities Co. v. U. S., 193 U. S. 197;
U. S. Const., Sec. 1, 14 Amd.

(*c*) **In declaring it unlawful for the Standard Oil Company to own stock in the Waters-Pierce Oil Company, the latter is not only deprived of its property without due process of law, and denied the equal protection of the laws, but such directly impairs the obligation of a contract, in that it denies a stockholder of the Waters-Pierce Oil Company the right to transfer his stock to whom he pleases.**

Trisconti v. Winship, 43 La. An. 45; 26 Am. St. Rep. 175.
McNulte v. Corn Belt Bank, 164 Ill. 427; 56 Am. St. Rep. 203;
Weston's Case, L. R. 4 Ch. App. 20;
Farmers' Loan & Trust Co. v. C. P. & S. Ry. Co., 163 U. S. 31;
Rice v. Rockefeller, 134 N. Y. 174; 30 Am. St. Rep. 658.

2. **To punish the Waters-Pierce Oil Company because part of its stock was held by the Standard Oil Company, the same having been acquired long before the passage of the Texas Anti-Trust Acts of 1903 and 1899, and when such acquisition was wholly lawful, is to subject the Waters-Pierce Oil Company to an *ex post facto* law and deprive it of its property without due process of law.**

U. S. Const. Sec. 10, Article 1;
U. S. Const. Sec. 1, 14th Amd;
Calder v. Bull, 3 Dallas, 386;
Fletcher v. Peck, 6 Cranch, 87;
Watson v. Mercer, 8 Peters, 88;
Coffin v. Rich, 45 Maine, 507;
American Building & Loan Assn. v. Rainboat, 48 Neb. 434;

Stevens v. Southern Pacific Co. 109 Calif. 86; 41 Pacific 783; 29 L. R. A. 751.

(*a.*) **The *ex post facto* effect of a law cannot be evaded by giving a civil form to that which is essentially criminal.**

Huntington v. Attrill, 146 U. S. 657;
Wisconsin v. Pelican Ins. Co., 127 U. S. 265;
Boyd v. U. S., 116 U. S. 616;
Lees v. U. S., 150 U. S. 476;
U. S. v. Shapleigh, 54 Fed. Rep. 126;
Burgess v. Salmon, 97 U. S. 381;
U. S. v. Hughes, Fed. Cases No. 15,416;
Wilson v. Ohio Railroad Co., 64 Ill. 542;
Cooley, Const. Lim. (7th Ed.) p. 375. ff.

3. **The State of Texas cannot constitutionally enact a law which denounces as an offense an act committed in another state, and punish this plaintiff-in-error for an alleged offense, committed wholly outside of the jurisdiction of the State of Texas.**

The Appollon, 9 Wheaton, 362;
State v. Knight, (N. C., 1799) Taylor, 65;
In re Grice, 79 Fed. Rep. 627;
State v. Cutshall, 110 N. C. 538; 16 L. R. A. 130;
Allgeyer v. La. 165 U. S. 578;
Southerland, Stat. Const. (Lewis' edition) Vol. 1, Sec. 13;
Cooley, Const. Lim. (7th Edition) Page 176;
Story, Conflict of Laws, (1834) Sec. 620.

4. **The Waters-Pierce Oil Company cannot be held liable because of any alleged agreement between its predecessor, the old Waters-Pierce Oil Company, and the Standard Oil Company of New Jersey, solely on account of the purchase by the present Waters-Pierce Oil Company of its predecessor's business, property and good-will.**

Capitol Traction Co. v. Offutt, 17 App. D. C. 292; 53 L. R. A. 390;

Austin v. Tecumseh Nat'l. Bank, 49 Neb. 416; 68 N. Western, 628; 35 L. R. A. 444;
Wyman v. Hallowell, 14 Mass. 57; 17 Am. Dec. 194;
Bellows v. Hallowell & Augusta Bank, 2 Mason 31; Fed. Cases, 1279;
Gulf, Colo. & S. S. Railroad Co. v. Newell, 73 Texas, 334; 15 Am. State Rep. 788;
Houston Ice & Brewing Co. v. Stratton, 13 Tex. Cr. Rep. 887; 89 Southwestern 1111;
U. S. Const. Sec. 1, 14th Amd.

5. **Admitting the ownership of a portion of the stock of the Waters-Pierce Oil Company by the Standard Oil Company of New Jersey, this fact is not enough to establish the existence of a "combination" between the two corporations, within the meaning of that term as used in the Texas Anti-Trust Acts of 1899 and 1903, and to hold the Waters-Pierce Oil Company because of such ownership of stock by the Standard Oil Company guilty of entering into a combination with the Standard Oil Company, and punishing it therefor, is to deprive the Waters-Pierce Oil Company of its property without due process of law, deny it the equal protection of the laws, and hold it liable under *ex post facto* and retrospective laws.**

Commonwealth *ex rel.* v. Ponxsutawney Waterworks Co., 197 Pa. Stat. 569; 47 Atlantic, 843;
Gates v. Hooper, 90 Texas, 563; 39 Southwestern, 1079;
State v. Continental Tobacco Co., 177 Mo., 1; 75 Southwestern, 737;
U. S. Const. Sec. 1, Article 4;
U. S. Const. Sec. 10, Art. 1;
U. S. Const. Sec. 1, 14th Amd.

(*a*) **Nor does the fact of such ownership of a portion of the stock of the Waters-Pierce Oil Company by the Standard Oil Company of New Jersey warrant the conclusion that the Waters-Pierce Oil Company had brought its management and control under the management and control of the Standard Oil Company.**

6. **In the admission of incompetent, frivolous and immaterial evidence wholly foreign to any issues to the cause, arbitrarily admitted and without regard for the rules of law and constitutional rights of plaintiff-in-error to a fair and impartial trial of the issues raised, said evidence being calculated to excite, inflame and prejudice the minds of the jury against said plaintiff-in-error, the constitutional right of plaintiff-in-error to a fair and impartial trial was denied, and by the judgment upon the verdict in said cause plaintiff-in-error was deprived of its property without due process of law.**

Robinson, Am. Jurisprudence, Pages 238 to 57 to 59;
*In re* Ziebold, 23 Fed. Rep. 791;
*Ex parte* Va. 100 U. S. 346;
Bank of Columbia v. Oakly, 4 Wheaton, 235;
Cooley, Const. Lim. (7th Edition) Page 506;
Utah v. Bates, 14 Utah, 293; 47 Pacific 78; 43 L. R. A. 33;
San Jose Ranch Co. v. San Jose Land & Water Co., 126 Calif. 322; 58 Pacific, 824;
Pennoyer v. Neff, 95 U. S. 714;
U. S. Const. Sec. 1, 14th Am.

7. **The fine imposed is so grossly excessive as to deprive plaintiff-in-error of its property without due process of law.**

Cooley, Const. Lim. (7th Edition) Page 471;
Cutting v. Goddard, 183 U. S., l. c. 101;
Gates v. Hooper, 90 Texas, 563;
State v. Compress Co. 95 Texas, 603;
Ft. Worth & D. C. R. R. Co. v. State (Texas) 87 Southwestern, 336;
State v. Bates, 14 Utah, 293, 47 Pacific, 78, 43 L. R A. 33;
Texas Const. Sec. 13, Article 1;
U. S .Const. Sec. 1, 14th Amd.

(*a*) **In including penalties for Sundays, in the absence of proof showing the doing of business on such days, plaintiff-in-error is denied due process of law.**

8. **The Texas Anti-Trust Acts of 1899 and 1903 are so vague, indefinite, ambiguous and uncertain in terms as to fail to designate any offense with such certainty as to inform the public in advance of the constituents of the offense sought to be defined and punished, and the punishment of this plaintiff-in-error under said statutes deprives it of its property without due process of law.**

Augustine v. State (Texas), 52 Southwestern, 77;
Queen Ins. Co. v. State, 86 Texas, 250;
M. K. & T. Ry. Co. v. State (Texas), 100 Southwestern, 766;
Tozier v. U. S., 52 Fed. Rep. 917;
L. & N. Railroad Co. v. Commonwealth (Ky.), 35 Southwestern, 129;
Hughes Criminal Law, Sec. 2429;
Commonwealth v. Bradford, 9 Metcalf, 268;
Cutter v. State, 36 New Jersey Law, 125;
C. B. & Q. Railway Co. v. Chicago, 166 U. S. 226;
Hagar v. Reclamation District, 111 U. S. 701;
Niagara Fire Ins. Co. v. Cornell, 110 Fed. Rep. 816;
U. S. Const. Sec. 1, 14th Amd.

9. **The denial of any period of limitation in bar of a suit against plaintiff-in-error to recover fines or penalties or forfeit its permit is a denial of the equal protection of the laws, and deprives plaintiff-in-error of its property without due process of law.**

G. C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150;
Cutting v. Goddard, 183 U. S. 79;
*Ex parte* Converse, 137 U. S. 624;

Under Article 219, Texas Code of Criminal Procedure;
Klepper v. State, 4 Texas, 242;
Cyc. Vol. 22, Page 186;
Stucksbury v. Swan, 85 Texas, 563;
M. K. & T. Ry. Co. v. State (Texas), 100 Southwestern, 766;

Commonwealth v. Equitable Life Assurance Co. (Ky.); 38 Southwestern, 491;
U. S. v. Shapleigh, 54 Fed. Rep. 134;
*Ex parte* Lange, 18 Wallace, 163.

Under Article 3354 Revised Civil Statutes of Texas;
Stockwell v. U. S. 13 Wallace, 531;
Davidson v. Mo. Pac. Ry. Co. (Texas), 3 Willson's Cases, 216;
Lockwell v. Ohio, 11 Ohio, 130;
Buswell on Limitation. Sec. 97.

Under Article 3358, Revised Civil Statutes of Texas;
Boswell v. Robinson, 33 New Jersey Law, 273;
Cooper v. Lee, 75 Texas, 114; 12 Southwestern, 483;
Tevis v. Armstrong, 71 Texas, 59;
Railway v. Titterington, 84 Texas, 218;
Blount v. Bleker, (Texas), 35 Southwestern, 863.

10. **The appointment of a receiver and transfer to him of the property of plaintiff-in-error pending proceedings by way of appeal was wholly without authority and an arbitrary exercise of judicial power, and deprived plaintiff-in-error of its property without due process of law, and denied it the equal protection of the laws.**

Pomeroy, Equity Jurisprudence, Sec. 1330 and Equitable Remedies, Sections 62, 118, and 71;
Ry. Co. v. Jackson, 85 Texas, 605;
Havemeyer v. Superior Court, 84 Calif. 327; 24 Pacific, 121, l. c., 134, 135;
Revised Statutes of Texas, Articles 1177, 1181, 1191 and 1337;
Hall v. Jackson, 3 Texas, 305;
Nye v. Gribbell, 70 Texas, 458;
May v. Taylor, 22 Texas, 348;
Mann v. Falcom, 25 Texas, 276;
Bledsoe v. Wills, 22 Texas, 650;
U. S. Const. Sec. 1, 14th Amd.

(*a*) **The appointment of a receiver of plaintiff-in-error's property for the purpose of depriving it of the capacity for further or continued violation of the anti-trust laws of Texas without evidence of any such intended violation, and without evidence that it could not use its said property in compliance with law, constitutes a deprivation of said property of plaintiff-in-error without due process of law.**

Windsor v. McVeigh, 93 U. S. 274;
*Ex parte* Lange, 18 Wallace, 163;
Bigelow v. Forrest, 9 Wallace, 351;
Hovey v. Elliott, 167 U. S. 409.

11. **The Texas Act of April 11th, 1907, is null and void.**

(1.) **In so far as it attempts to create a lien upon the property of plaintiff-in-error for acts committed before said Act took effect.**

(2.) **In so far as under it, the right to appoint a receiver is limited to suits against corporations only.**

(3.) **In so far as it attempts to create a lien upon the property of plaintiff-in-error, in that the lien is not created by the terms of the act, based alone upon the commission of the offense, but is left to be created by the action of the prosecuting officer in filing suit to recover the prescribed penalties.**

Calder v. Bull, 3 Dallas, 388;
Cummings v. Missouri, 71 U. S. 277;
Fletcher v. Peck, 6 Cranch, 137;
Wilson v. O. & M. Railroad Co., 64 Ill. 542; 16 Am. Rep. 565;
Havemeyer v. Superior Court, 84 Calif. 347; 24 Pacific, 121;
Jackson v. Trunk Railroad Co., 85 Texas, 605;
G. C. & S. F. Railroad Co. v. Ellis, 165 U. S. 150;
Mayor of Baltimore v. Radecke, 49 Maryland, 217; 33 Am. Rep. 239;
Yick Wo v. Hopkins, 118 U. S. 266;
Barbier v. Connelly, 113 U. S. 27.

## ARGUMENT FOR PLAINTIFF-IN-ERROR.

It would appear to be appropriate and important at the beginning of the discussion of this case to examine and endeavor to comprehend the enactments of the legislature under which this proceeding was instituted. We will, therefore, consider the text of the Act of 1899 and the text of the Act of 1903 so far as the several provisions of those acts may be involved in this case.

The first and second sections, only, of the Act of 1899 are important now to be analyzed. There is no claim made against plaintiff-in-error that it has done anything which would violate the provisions of sections three, four and six of that act. The third section prohibits a manufacturer in the State of Texas from selling his products at less than cost or giving them away for the purpose of driving out competition or financially injuring competitors. And the fourth section prohibits such acts whether the product be manufactured in the State of Texas or elsewhere.

The sixth section prohibits two or more persons engaged in trade from entering into any pool, trust, agreement or combination to control or limit trade or to limit competition in trade by refusing to buy or sell to any person for the reason that such other person is not a member of or a party to such pool, trust, etc., from boycotting any person who is not a member of or a party to such pool, trust, etc.

As we said before, the important sections of this act are one and two because they are the ones upon which the petition is based and the charge of the court to the jury is predicated. Section one prohibits any person, partnership or corporation transacting business in the State of Texas from forming, entering into or becoming a party to any pool, trust, agreement, combination, confederation or under-

standing with any other person, partnership or corporation to regulate or fix the price or maintain the price when so regulated or fixed or to fix or limit the amount or quantity of any article or thing whatsoever.

It is to be noted, first, that the text of this act recognizes the legally established integers of trade; it recognizes the individual and the association of individuals in the legal form of partnerships, limited partnerships, joint-stock companies and corporations. It does not recognize the capacity of one of an association in the partnership or a shareholder in a joint stock company or a corporation to do the things forbidden by the act. Hence, it does not authorize an inquiry into the previous business relation or status of the members who may form a partnership or of the members of a joint stock company or the shareholders of a corporation. It accepts for the purposes of this prohibition the partnership in its legal unity and the corporation in its corporate entity. It authorizes no inquiry behind this legal structure. For the purpose of applying this statute, the individual, without his past associations, the partnership, without the past affiliations of those who constitute it, and the corporation, without the previous relation or attitude of its shareholders, must be taken as the beginning and the end of the court's inquiry. If a partnership, as a partnership, has not contracted in the prohibited respect with another person, partnership or corporation; if a corporation, taken as a legal entity, has not affiliated with another individual, partnership or corporation, in the manner prohibited by the statutes, then, there can be no application of the penalties whatever may have been and whatever may be the relation of the different elements which form these composite bodies. This is a penal statute. Its terms cannot be extended by construction. Its purposes must be enforced within the meaning of the text. It is as much beyond the power of a court to extend, by construction, the penal provisions of a

law as it is to create by judicial pronouncement an offense which had no existence by legislative authority.

Secondly, it will be observed that the things prohibited by these legally recognized and responsible integers are those things which require active and purposeful volition. The things prohibited cannot be done by omission or inadvertently.

"Contract" or "agreement" requires active co-operation and concurrence of minds of the parties engaging in the contract. "Understanding" is an informal contract or engagement and requires the same intellectual operation and assertiveness as contract or agreement. "Combination," "confederation" and "conspiracy" exact a knowledge of the thing to be done and an intellectual participation in the purpose to accomplish the end agreed upon. "Create and enter into" require conscious action. One cannot create a pool or trust or become a member of one without a conscious intention to do so. So that it must appear from the very language of this section that no one can be charged with guilt under it unless that person knowingly, consciously and wilfully commits the act prohibited by it.

The act does not define "pools" and "trusts." We are left, therefore, to construct our own definition of these two words. We think a "pool" means a combination intended by concerted action to make, regulate or control changes in market rates through a combination of the interests of several otherwise competing parties in which all take common ground as regard the public and distribute the profits of the business among themselves according to special arrangement.

A "trust" means an organization for the control of several corporations engaged in substantially the same business under one direction through the device of a transfer by the stockholders of each corporation of at least a majority of the shares of stock to a central committee or a board of trustees (who issue in return to such stockholders, re-

spectively, certificates showing that although they have parted with their stock and consequent voting power, they are still entitled to dividends or shares of the profit) so as to enable the trustees to elect the directors in all the corporations and through them regulate production and defeat competition.

The question then naturally follows: How may an individual, partnership or corporation do those things which would invoke the penalties of this act? Of course any individual competent to make a contract or do a criminal act might by doing the prohibited things subject himself to the penalties of this law. A member of a partnership, acting within the scope of the implied delegation of power given by each member of the firm to the other, might be committed by the conduct or action of any member of the firm. A corporation can only act legally: through its shareholders, its constituent assembly, under the authority of its by-laws and charter, or its board of directors or its authorized officers and agents acting within the scope of their delegated authority. Whatever, then, any of these parties may do acting in their authorized relation to the corporation must be held to be the act of the corporation, but in no other manner can the corporation be bound by their acts or conduct. No act of a shareholder, merely as a shareholder, who may own as much as three-fourths in value of the stock, can be potent to bind the corporation or strike down the interest of the remaining one-fourth.

We, therefore, say the true meaning of this section is: That before there can be guilt there must be a conscious, wilful commission of one of the prohibited things by the individual, by the partnership or by the corporation, as recognized legal integers in such capable manner as in law authoritatively binds. There is no authority in the act to go behind the partnership, the joint stock company, the corporation to visit upon them the sins, if any, of a part or all of their individual constituents. There is no provision for vicarious punishment.

The second section attempts to define and denounce a monopoly. The first clause of this section defines a monopoly to be any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill or acts by or between persons, firms or corporations or association of persons, firms or corporations "whereby any one of the **purposes** or **objects** mentioned in this act is accomplished or sought to be accomplished or whereby any one or more of said **purposes** are promoted or attempted to be executed or carried out or whereby the several **results** described herein are reasonably calculated to be produced."

So far this section is so uncertain and indefinite as to be unintelligible; and this defect, as we will perceive, is not cured by the luxurious verbiage of the latter part that attempts to elucidate the definition and add further provisions.

An act may be so uncertain and indefinite as to be no law. (State v. Ry. Co., 146 Mo. 155.) The words "purposes or objects mentioned in this act" and the words "results described herein" seem to be intended to be construed as synonyms. It is rather impossible to say whether coupled as they are by the disjunctive conjunction "or," they were intended to signify different things or the latter was intended to be definitive of the former. There are no "purposes or objects" proclaimed in the act, neither are there any "several results" described in the act. Certain things are prohibited in the act, but the act itself does not describe any "purposes or objects" which are sought to be accomplished by it nor is there the faintest resemblance to a description of "several results" in the act. If the words "purposes or objects mentioned in this act" and the words "results described herein" are to find any sort of relationship in the act, it must be in the first section which prohibits agreements, trusts or pools to fix and regulate the price and quantity of commodities and the results which would impliedly follow from such prohibited acts. But this would

add nothing to the efficiency of section one. It also denounces acts reasonably calculated to produce the "results described herein" or promote the purposes "mentioned in this act."

How far back we may go in the chain of causation in search of a cause reasonably calculated to produce a "result" described in the act or "promote" the "purposes mentioned in the act" is not indicated to us or how we may determine that such cause when discovered is direct or collateral, efficient or inefficient to produce the results is not avouched to us. Exactly in what line of reasoning the minds called upon to determine this important fact shall travel without straying is not assured to us. That different minds viewing the same concatenation of events might reach different conclusions as to its productive results does not seem to have occurred to the draftsman of this paragraph. Any union of capital, of credit, of property, of skill or acts between persons, firms or corporations whereby, if we are permitted to conjecture, the price or quantity of any commodity is fixed or limited or promoted or attempted to be executed or carried out is a monopoly; that is to say, endeavoring to extract some meaning from this mass of verbiage, if two individuals dealing in groceries in a single town should merge their capital into a partnership, such union would be denominated by this act a monopoly and the parties forming it, criminals. If two men engaged as painters, as artists, as sculptors in the same town should unite their skill in a partnership, they would have created a monopoly under this act. If two lawyers for the sake of economizing office rent should merge their professional fortunes into a partnership, they would have established a hateful monopoly under this act.

But the draftsman of this act, not being quite sure that he had covered sufficient ground by his definition, not feeling satisfied that he had been all-comprehensive in establishing a complete individualistic relation and entirely

destroying every possibility of business and intellectual co-operation, continues his definition by saying, a monopoly as thus "defined and contemplated" means so and so. How are we to determine the "contemplation" of the draftsman of this act except by what he says? And what he says is as nearly incomprehensible to us as the things he seems to contemplate and quite as absurd.

The last clause, professedly explanatory of the section, includes within the definition of monopoly all "aggregations," "affiliations" and "incorporations" of capital, skill, credit, "assets" property 'that **have been** or may be" created "for any one or more of the purposes named in this act."

We have just seen that the only "purposes" possible to extract from this act are those prohibitions mentioned in section one and by such reference no additional force or more comprehensive scope is given to the section. This provision is declaredly *ex post facto* or retroactive. It destroys partnerships previously innocuous and dissolves corporations lawfully existing by its fiat. So that if this section is to be given any meaning that meaning can only be held to refer to and reaffirm the prohibitions contained in section one. As to a status legally fixed and acts done, it is plainly retrospective and *ex post facto*. If it is to be taken independently of section one, it is palpably inefficient for the imposition of penalties because no one can be condemned by any law so indefinite that he may not read and know his guilt before a judge or jury coins it of their conception of what is and what is not the reasonable sequence of acts or the cause of events, in the midst of such complex factors.

## THE ACT OF 1903.

This act became effective on March 31, 1903. It manifests a very decided change of legislative understanding of many words and definitions employed in the Act of 1899,

which we have just considered, and still it is far from affording a definition which defines.

The first three sections of the act are the only ones which have to do materially with this case. The first section in seven paragraphs defines a trust; the second in two paragraphs defines a monopoly and the third in two paragraphs conspiracies in restraint of trade.

Turning now to section one, the preliminary clause mentions those who shall be capable under the act of doing the things prohibited by the act. It defines a trust to be a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons or either two or more of them for the certain named purposes. It does not say that an individual within himself, a firm within itself or a corporation within itself shall be capable of violating the prohibitions of the section. It accepts the individual as he is, the partnership as it is, and the corporation as it is. It justifies no inquiry into the personal constituency of either of these associations. It imposes no conditions or limitations upon the capital or powers of corporations within themselves, either foreign or domestic, that does not exist by the law of their being. Every corporation in its legal integrity and with its charter powers is fully and completely recognized and no authority is conferred for an examination into its antecedents or the antecedents of its constituency. Its legal existence under the law of its creation is as completely acknowledged and immune from attack as is the existence of a natural person with his acquirements and faculties. Each is recognized, so far as the prohibitions of the law are concerned, as single, individual integers. It only authorizes an inquiry into its relation as a vital entity, not dismembered, to another natural person or corporation. This act was not intended to prevent either formation of partnerships or corporations, in the creation of each of which there is an element of combination, or the purchase by one firm of the assets of an-

other or, when not prohibited, the purchase by one corporation of the assets of another in the lawful pursuit of its business, in which there is to a certain extent a diminution of competition. The purpose was to prevent either individuals or corporations, engaged in the same business, maintaining towards the public an independent business attitude though in fact bound by secret agreement which destroyed all competition between them.

What we have said of the first section of the Act of 1899 in this respect applies with equal force to section one of the Act of 1903, and this interpretation of the Act of 1899 is emphasized by the form of affidavit prescribed by section eight of the act. The affidavit there is required to be made by an officer on behalf of the corporation, speaking throughout for the corporation as a legal entity, without reference to the constituency of its shareholders or the persons who promoted its corporate existence.

The first clause of section one prohibits combinations between two or more persons, natural or artificial, "to create or which may tend to create or carry out restrictions in trade or commerce, etc., or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this state."

We pause here to note the use of the words "tend to create" in this paragraph. No one may know in advance what upon judicial inquiry may be held as tending to create restrictions in trade or commerce until the court has charged upon all of the testimony and the jury returned its verdict. Facts and acts that to one mind may be so remote in their influence upon each other as not to tend in the slightest degree to influence a certain result may be cogent and persuasive as proximate factors in bringing about that result in the mind of another. Different judges upon the same state of facts, different juries weighing the same facts, may reach diametrically opposite conclusions as to the tendency of these facts and acts

or in the eyes of different judges and different jurors the same individual may upon precisely the same state of facts be innocent of wrongdoing or a criminal; may be acquitted of forfeiture of property or bankrupt in fortune.

The second clause makes a trust a "combination of capital, skill or acts by two or more persons, firms or corporations, to fix, maintain, increase or reduce the price of merchandise," etc. This is all pervading. However innocent may be the combination of capital or skill, however beneficial may be to the public in the promotion of trade or commerce the union of capital or skill between two persons, however limited, may be the radius of influence of such a unification, the act is penalized by this clause.

It may be said of this clause, however, that its apparently unlimited scope will be reasonably limited by judicial construction, that that is certain which can be made certain by judicial determination, and that this act is no more general in its terms than the Sherman Anti-Trust law, which has been enforced by the courts. We do concede that an act so sweepingly general in its provisions may be made the predicate of a judicial proceeding, as in cases of injunction, by which the lines of conduct are clearly marked and defined in the decree, which could not be made efficient for the purpose of imposing a penalty or a criminal sentenee for an act done.

The remaining paragraphs of this section, except the seventh, are a reiteration in form of the general principles stated in section one of the Act of 1899. The seventh paragraph prohibits a combination to abstain from engaging or continuing in business or from purchases or sale of merchadise, etc., partially or entirely **within the State of Texas** or any portion thereof. This would seem clearly to limit the effect of this legislation to agreements between parties who are doing business at the time of the agreement within the territorial jurisdiction of the State of Texas.

Section two is only applicable in terms to combinations

or consolidations of corporations. When the affairs of two or more corporations are brought under the same management for the purpose of producing or which "tends to create a trust," as defined in the first section of the act it is called a monopoly. This is definitive of the thing produced by the combination and is not condemnatory of the factors whose combination produces the thing defined as a monopoly. It is also indefinite by reason of the use of the indefinite words "tends to create." It is also indefinite because of its reference to section one of the act which we have heretofore seen is indefinite and whatever of infirmity exists in section one by reason of its indefiniteness is imported into this paragraph of section two by reason of the reference.

The second paragraph pronounces any corporation which acquires the shares of stock or bonds or physical properties or a part of physical property of any other corporation for the purpose of preventing or lessening or where the effect of such acquisition tends to effect or lessen competition, whether the acquisition is accomplished by means of trustees or otherwise, a monopoly. This prohibition is leveled against the corporation which acquires the shares, not the corporation whose shares, bonds or property are acquired. It is indefinite also by reason of the use of the words "tend to effect or lessen." There is necessarily implied from these paragraphs that the combinations are prohibited only to those corporations that are engaged in a competitive business in the State of Texas; for if the corporations are not engaged in business in the State of Texas or if the business in which they are engaged is not competitive the prohibition cannot apply.

The two paragraphs of section three prohibit firms and corporations from entering into an agreement to refuse to buy or sell to another person, firm or corporation merchandise or produce or from boycotting or threatening to refuse to buy or sell to other persons, firms or corporations.

With respect to the provisions of the two acts which we have just considered, it is well to observe and bear in mind that in many places they specifically limit their scope to the transaction of business in Texas; for if not so limited by express terms, the scope of the acts is necessarily limited to the territorial jurisdiction of the State of Texas. Its sovereign powers are not efficient to control or regulate affairs which take place beyond its dominion and in other jurisdictions where the acts condemned by it may be authorized and allowed.

Having acquainted ourselves with the material provisions of the law under which the prosecution was instituted, it is well now to consider the interpretation of the law as made by the trial court in its charge to the jury and to determine whether the construction given by the charge is a correct interpretation of these acts. If the charge is a correct interpretation of the acts, we purpose to contend that its effect is to deprive this defendant of its property without due process of law. If it is not a correct interpretation of these acts, then we shall contend that the charge, being without authority of legislative law, being judicial legislation, deprives this defendant of its property without due process of law. Upon this broad text, we shall plant the several constitutional objections which we conceive to reach the vital parts of the case.

The essence of the charge comprising the only issues which were submitted to the jury for its determination is embraced in Paragraphs VII., VIII., IX., X., and XI.

Paragraph VII. authorizes the jury to return a verdict against the defendant if it should find that the defendant or its authorized agents became a party to an agreement or understanding with the Standard Oil Company of New Jersey on June 1st, 1900, "to fix or regulate the price in Texas of oil refined from petroleum and" * * * persisted in carrying out the same in Texas.

This charge is predicated on the first section of the Act of 1899, and my associates in their brief have argued that it refers to the agreement for the division of territory which was made by the old Waters-Pierce Oil Company with the Standard Oil Company of Ohio in 1878. This was the view of the instruction apparently taken by the Court of Civil Appeals, as appears from the seventh section of the opinion, where the court speak of an agreement "one object of which was to create a monopoly and control the price of petroleum oil and prevent competition in its sale in a large and specified territory, including the State of Texas." The decision of the court sustained the claim then made by the State, but as appears from the motion to dismiss or to affirm, filed in this court on the 12th of October, 1908, the State now abandons that position, and as appears from page 43 of that motion, now submit "that not a shadow of a cause of action or offense is submitted in either of these charges of the court growing out of any such division of territory." So that between the highest court of Texas and this court, the State seeks to change its position as to the construction of the court's charge.

If the charge does not refer to the agreement in question, it can only refer to the agreement implied from the conceded fact of the ownership by the Standard Oil Company of New Jersey of about sixty per cent of the shares of the stock of the Waters-Pierce Oil Company.

There was testimony tending to show and in nowise disputed that the Company bought nearly all of its supplies from the Standard Oil Company of New Jersey, and paid the price charged it for said supplies by the Standard Oil Company. It would seem absurd to contend that this instruction to the jury meant to imply that it was unlawful for the vendor of a commodity to fix the price at which it should be sold to the vendee, or that any agreement to fix the price can be inferred from the fact that the vendee paid the price which was charged by the vendor. The uncontradicted testimony is that the officers of the Waters-Pierce Oil Company at St. Louis fixed the price at which all of its commodities were sold throughout the territory in which it operated, and that neither the Standard Oil Company of New Jersey nor any other person had any part or voice in fixing the sale price of its commodities to the consumers in its territory.

In addition to the argument as made by my associates upon the construction of paragraph 7 of the charge, I would add that before the jury could reach any conclusion in regard to the agreement for the division of territory they should have been asked to find whether the Waters-Pierce Oil Company by any definite act or expression upon its part had made, approved or adopted the division of territory. An agreement to fix prices is quite different from an agreement as to the division of territory. If, however, the agree-

ment or understanding between the defendant and the Standard Oil Company of New Jersey to fix and regulate the prices of petroleum in Texas to which the court referred is any understanding or inference arising from or drawn from the fact of the ownership by the Standard Oil Company of New Jersey of a majority of the shares of stock in the Waters-Pierce Oil Co., I should say that no such inference is legitimately deducible from that fact.

In State v. Shippers' Compress & Warehouse Co., 69 S. W. Rep. 58 (1902), the Supreme Court of Texas, concerning a similar proposition, said:

> "The defendant-in-error claims that there is no evidence tending to prove that the incorporators secured the charter and organized this corporation to create and carry out restrictions in aids to commerce, and that the judgment should be affirmed, notwithstanding the state might have the right to forfeit the charter if the proof established a violation of the Anti-Trust Law. We are of the opinion that this contention is sound and that there is no evidence which tends to support the charge upon which the forfeiture of the defendant's charter is sought. * * * The charter expresses the purpose of the corporation in the very language of the statute, therefore it cannot be said that the purposes for which it was organized, as expressed in the charter, furnished any evidence of an intention to violate the law. The corporation could lawfully

do everything expressed in the charter and might lawfully buy all the compresses that it purchased. The right to forfeit the charter depends upon the intent with which it was procured and it devolved upon the state to establish an unlawful intent to justify the forfeiture claimed."

What is here said of the organization of a corporation under the laws of Texas must be equally true of the Waters-Pierce Oil Company organized under the laws of the State of Missouri, that no illegality and no illegal purposes can be drawn from its charter by the State of Texas.

This charge is unsound whether it refers to the agreement of 1878 concerning the division of territory, a view dealt with by my associates, or an agreement to be inferred from the ownership of stock of the Waters-Pierce Oil Company by the Standard Oil Company.

The eighth paragraph of the charge authorizes a verdict against the defendant if the defendant brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey whereby the price in Texas of oils refined from petroleum was sought to be fixed or regulated or whereby the trade in such oil in Texas was sought to be controlled or limited." This charge is under the second section of the Act of 1899. It challenges and denounces the majority ownership of

stock of the Waters-Pierce Oil Company in the Standard Oil Company as an infraction of this section. The ninth paragraph of the charge directs the jury to find a verdict against the defendant if the defendant entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating or "which tended to create or carry out in Texas restrictions in the free pursuit" of the business of selling oil or to fix or maintain or increase the price of oil or to prevent or lessen competition in the sale of oil or if the defendant "was a party to and acted under such combination." This charge is under the Act of 1903. It challenges as a breach of the Act of 1903 the single act of stock ownership by the Standard Oil Company of New Jersey.

The tenth paragraph directs a verdict against the defendant if "the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control * * * and that they were placed under such common management or control * * * by their respectively authorized officers under such circumstances that such common management or control * * * created or tended to create or carry out restrictions in the sale in Texas of oil * * * or to fix, maintain or increase the price in Texas of such oil or to prevent or lessen in Texas the competition in the sale of such oil." This direction of the court is intended to present concerning the same fact as the previous one the application of another section of the Act of 1903.

The eleventh charge to the jury authorizes a verdict against the defendant if the Standard Oil Company of New Jersey had "acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations * * * and that the stock was acquired and combination effected * * * with the purpose or intention on the part of the managing officers

and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned or that the effect of said combination * * * tended to affect or lessen the competition in the sale in Texas of said oil."

This charge directly presents as a controlling and dominating factor the acquisition of the majority stock of the defendant company by the Standard Oil Company of New Jersey and the intention of the Standard Oil Company of New Jersey in making this acquisition.

It ignores entirely the minority holding of the stock and the fact of actual control of the affairs of the Waters-Pierce Oil Company. It also affords an intimation, though not a clear definition, of the words "combination, agreement or understanding," used by the court in the different preceding paragraphs of the charge.

We are thus brought face to face with the question whether the two acts above referred to independently of any construction or interpretation of them are valid; whether the interpretation given to them under the conceded facts of this case is the correct one and, if correct, whether this defendant may not claim the punishment imposed by the trial court as without due process of law.

## DUE PROCESS OF LAW.

The principle of the essential charges to the jury is: **that the ownership of the majority shares of the stock of the Waters-Pierce Oil Company by the Standard Oil Company of New Jersey makes the former company a pool, trust or monopoly under the laws of Texas and its corporate organization a combination, confederation, conspiracy, agreement and understanding to fix, maintain and regulate the prices of oil in Texas, contrary to the Acts of 1899 and 1903.**

It is conceded by the bill that the defendant corporation was regularly organized on May 29, 1900, as a corporation

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under the laws of the State of Missouri. It is so averred in the bill and the defendant is so brought into court by process. Its character and status as a corporation is therefore unalterably fixed so far as this proceeding is concerned. (Distilling Co. v. People, 156 Ill. 448; Draining Co. v. State, 43 Ind. 236; People v. Sanford, 19 Pac. Rep. 693; Haskell v. Worthington, 94 Mo. 560; Catholic Church v. Tobbein, 82 Mo. 418; School District v. Hodgin, 180 Mo. 70.)

In Relfe v. Rundle (103 U. S. 222), this court said:

> "No state need allow the corporations of other states to do business within its jurisdiction unless it chooses, with, perhaps, the exception of commercial corporations; but if it does, without limitation expressed or implied, the corporation comes in as it has been created. Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence."

In the case of United States Vinegar Company v. Schlegel (38 N. E. Rep. 729), the Court of Appeals of New York said:

> "It is suggested as a phase of the defense that the promoters deceived the authorities of the State of Illinois as to their real purpose in forming the corporation and in that way procured them to file the necessary papers and take the necessary steps to give the plaintiff a corporate existence. The suggestion has little if any support in the evidence, but if the fact had been established it would constitute no defense to this action. That state must be left to vindicate its own honor and dignity. If it be true that its authority has been invoked and its laws abased for the purpose of creating and fostering a corporation that is detrimental to public interests, it has ample power at any time to proceed against it and decree its dissolution, but so long as the plaintiff exists and is recognized by the courts and authorities of that state it is entitled to the same recognition here unless it appears that it was formed for purposes illegal here or was doing acts prohibited by the laws of this state to its own citizens and corporations."

It is conceded that the Waters-Pierce Oil Company, organized on May 29, 1900, under the laws of the State of Missouri, applied for and obtained a permit from the proper authorities of the State of Texas to do business there. The law under which this permit was obtained is found in chapter 17, article 745, vol. 1, Sayles, Texas Civil Statutes, and merely requires a foreign corporation to file "with the Secretary of State a duly certified copy of its articles of incorporation and thereupon the Secretary of State shall issue to such corporation a permit to transact business in this state." The permit under this law was issued for a period of ten years. There is nothing in this law which authorizes or justifies the Secretary of State to whom the application is made to inquire into the personnel of the shareholders of any corporation which may seek the license to do business in Texas and we have seen from our analysis of the Anti-Trust Acts of 1899 and 1903 that there is nothing in them to justify any such inquiry. So far, therefore, as the laws of Texas are concerned no authority is given to institute an inquiry into the personnel of the shareholders of any corporation which may seek under its laws to do business there. The integrity of the corporate organization of the defendant company must be unassailable in this proceeding. Its corporate entity cannot be dismembered for purposes of condemnation and preserved for punishment. But it is said the old company was banished from Texas because of its misdeeds and its dissolution under the Missouri law was not efficient, and the new company was the old one in another garb. This was alleged, but there was no effort to prove the averment. Whether the old company was dissolved or not is entirely immaterial because, whether dead or alive, either status does not disprove the conceded regularity of the organization of the new company and its corporate being. That the new acquired all of the property of the old one is not inconsistent with either the life or death of the old one. Whether

the old company properly and regularly conveyed its assets and for adequate consideration to the **new** is a matter that only concerns the creditors and shareholders of the former. When the regularity of the organization of the **new** company is legally established, its corporate being is freed from all the sins of the old one. Neither the acquisition of the name of the old company nor its property nor the status of its shareholders could legally burden it with the transgressions of the old one. To hold the contrary, would convert the entire law of corporate entity into chaos.

Penn Match Co. v. B. S. Hatgood, 141 Mass. 145;
Carmody v. Power, 26 N. W. 801;
R. R. Co. v. Sage, 65 Ill. 328;
Long v. Bank, 8 Utah, 104;
Capital, etc., Co. v. Offutt, 17 App. D. C. 292;
Clark & Marshall, Private Corporations, Sec. 335.

"We know of no rule or principle of the common law which authorizes suit to be maintained against one person who is *sui juris* for the default of another person who is equally *sui juris* whether the persons be natural persons or corporations, for one corporation can no more be held for the default of another corporation than can one natural person for the default of another natural person." (Capital Traction Co. v. Offutt, *supra.*

"The succeeding corporation is not liable for the debts or on the general contracts of the old corporation or for its torts; nor is the property in its hands liable therefor (a) unless there is an express agreement to pay or assume the same; (b) or unless there are circumstances from which such an agreement may be implied; (c) or unless the circumstances are such as to render the transfer a fraud upon the creditors of the old corporation; (d) or unless the corporation is a mere continuance of the old corporation; (e) or unless liability is imposed by statute; (f) or unless the liability arises out of an obligation or covenant running with the property acquired." (Clark & Marshall, Private Corporations, *supra.*)

"The declaration alleges contracts made before the plaintiff had a legal existence and does not show any contract to which the plaintiff was a party." (Penn. Match Company v. Hatgood, *supra.*

"An agreement with individuals that when they become incorporated they will give plaintiff a certain amount of paid up stock cannot on any rule of law be considered as dealing with the corporation itself or as one which would bind the future corporation when organized. It is possible there may be cases where an existing corporation becomes incorporated bodily, but we have no statute which allows manufacturing companies to become incorporated except by the action of separate individuals acting in their individual capacity and acknowledging their articles. Any bargain made here which looks to a future incorporation must necessarily be a personal one." (Carmody v. Power, *supra.*)

But suppose we resolve the defendant company into its constituent shareholders, the condition which the State of Texas in this proceeding strenuously insists upon establishing. The old Waters-Pierce Oil Company had been driven out of Texas and was no longer permitted to do business there. We assume for the sake of this argument that the Standard Oil Company of New Jersey and Mr. H. C. Pierce were the promoters of the present Waters-Pierce Oil Company, the defendant in this case. It is conceded by stipulation that the Standard Oil Company of New Jersey had never aplied for or obtained a license to do business in Texas and had never done any business there. It is conceded that Mr. Pierce had never personally engaged in the oil business in the State of Texas or elsewhere and was not so engaged at the time of the organization of the defendant company. In the nature of this physical situation there could be no combination between Mr. Pierce and the Standard Oil Company to suppress competition between them in the State of Texas for neither of them at the date of the organization of the present defendant company had any business in Texas and there is no evidence that they in-

tended to have except through the instrumentality of the defendant. It cannot be that if two individuals never engaged in competing business anywhere should form a partnership to engage in business in Texas that it would be an infraction of the Anti-Trust Laws of that state.

The further position advanced by the State of Texas is, assuming that the Standard Oil Company is a combination in restraint of trade generally, that its ownership of two-thirds of the shares of stock of the Waters-Pierce Oil Company taints the latter company in its entirety with the same illegality. The Waters-Pierce Company gets neither credit nor consideration for the confessedly innocuous one-third holding of Mr. Pierce who concededly owns no other oil interests, or for its actual control by the Pierce interest as apart from the potential control of the majority. Circumstances might arise in the affairs of a corporation when the minority shareholder would be bound by the conduct imposed upon it through the influence of the majority share owners, or even the corporation itself so bound if the majority owners were pushing the management of the corporation beyond the powers conferred by its charter, compelling it to do some illegal act and the majority shareholder stood by without protesting against such conduct when it became his duty to speak in protection of his interest and the interest of the corporation—then he might suffer as a participant in the wrongful act of the majority. But so long as the corporation was pursuing its legitimate purposes within the bounds of its power, violating no law, incurring no guilt, legitimately and honestly conducting its own affairs, there would be neither duty nor opportunity for a minority shareholder to protest or act. Whatever may be the sins, whatever may be the evil purposes of the majority shareholder, if they find no expression in the act or conduct of the corporation as a corporation, the corporation cannot be tainted by such evil.

Cases may arise and have arisen in which the practically

unanimous action of the shareholders of a corporation, though not in regular convention, has been held to be the act of the corporation because equivalent to the power residing in the shareholders in a duly called shareholders' meeting. This was the situation in the case of the State v. Standard Oil Company, 49 Ohio State and People v. North River Sugar Refining Company, 121 New York, 582. But there is no suggestion in this case which parallels the facts in either of these two cases. The contrary is overwhelmingly true. The minority shareholder's influence has dominated and controlled the affairs of the Waters-Pierce Oil Company and kept its business relations free from any illegal entanglement with those of the Standard Oil Company or any other company. The Standard Oil Company of New Jersey is not a party to this suit. It has commissioned no one to appear for it. Whether it is a malefactor is purely a gratuitous issue. It ought not to be stigmatized as such until by due course of law it has enjoyed an opportunity to defend itself against such a charge. Until it is convicted of a conspiracy in restraint of trade in a case where it has an opportunity to be heard and until Mr. Pierce is so convicted, there is no warrant for imputing their misdeeds to the Waters-Pierce Oil Company of which they are shareholders.

If the Waters-Pierce Oil Company is to be punished, it must be punished for its own corporate misdeeds. It cannot legally be made to suffer for the misconduct of others which it has no right to control.

In Durkin v. Kingston Coal Company, 171 Penn. 193, an effort was made under a law of Pennsylvania to hold the coal company responsible for the negligence of an overseer, involuntarily placed in charge of its property. The Court said:

> "The first article of the constitution of this state known as 'Bill of Rights,' declares that all men are possessed of certain inherent and inalienable rights.

One of these is the right to acquire, possess and protect property. The preservation of this right requires both that every man should be answerable for his own acts and engagements and that no man should be required to answer for the acts and engagements of strangers over whom he has no control. * * * Incredible as it may seem, obedience on the part of the mine owner does not protect him; but if the mine foreman fails to do properly what the statute directs him to do the mine owner is declared to be responsible for all the consequences of the incompetency of the representative of the state. This is a strong case of binding the consequences of the fault or folly of one man upon the shoulders of another. This is worse than taxation without representation. It is civil responsibility without blame and for the fault of another."

The same court, in the case of Commonwealth v. Water Company, 119 Penn. 569, which was a proceeding in *quo warranto* against the defendant upon a supposition that it had fraudulently and unlawfully entered in a combination with the Lindsey Water Company to convey and vest in the latter the control and management of its franchises, property and waterworks and that in carrying out such combination it had lost its identity and virtually become extinct, said:

"The Lindsey Water Company, by acquiring a majority of the capital stock of the Punxsutawney Water Company, did not acquire the property and franchises of the latter. The transfer of a majority of the stock was not a transfer of the property of the company. The transfer was of the rights of the stockholders and the existence of the corporation was in no manner affected by it. It is being continued, subject to the supervision of the Commonwealth, with the right to go on in the exercise of its privileges and the performanc of its duties until by some act of its own, either of omission or commission, the penalty will be forfeiture. **No misconduct of the Lindsey Water Company, and nothing that one or more of a majority of the stockholders of the appellee may have done in disposing of their stock can be**

**charged to it. If it is to perish it must be for its own sins and not for those of another.** We have no concern on this appeal with what the Lindsey Water Company is alleged to have done."

No extended argument or illustration would make this principle more lucid than it has been made in the statement of the two preceding cases. Its statement at once appeals to the conscience and the intelligence of mankind. We have endeavored to show that neither the acquisition of its name nor the stock of the **old** Waters-Pierce Oil Company nor the previous condition of the shareholders of the old company nor the business relations of the shareholders instituted or promoted the corporate existence of the defendant; nor their personal acts, not manifested in the corporate acts of the defendant, could legally or justly be imposed upon the defendant to condemn it under the Anti-Trust Law of Texas; and that what really occurred in this case was an indictment of the Standard Oil Company of New Jersey, which was not brought into court for trial, and a conviction and punishment of the Waters-Pierce Oil Company upon that indictment. This, we contend, cannot be due process of law. It would be conviction without offense and death without sin, a result revolting to conscience and fair dealing.

## TO IMPOSE A PENALTY UNDER A LAW WHICH DOES NOT SPECIFY THE ACTS WHICH CONSTITUTE THE OFFENSE IS THE ENFORCEMENT OF AN *EX POST FACTO* LAW.

A law enacted to define and punish past acts as an offense is not different from one whose terms are so indefinite as not to enable one to know whether his act is criminal until its character is defined by the interests, opinions and prejudices of those called upon to sit in judgment on it, influenced it may be by the time, place and circumstances of the trial. The prohibition of an act only as it may appear unreasonable to the minds

of those charged with the final determination of the matter is essentially an *ex post facto* edict.

> "The laws which create crimes ought to be so explicit in themselves or by reference to some other standard that all men subject to their penalties may know what it is their duty to avoid." (U. S. v. Sharp, Peters 118.)

A law of Arkansas made it a misdemeanor to commit any act injurious to the public health or morals, etc. A complaint charged Andrew Jackson with offending this law by leaving his wife. The accused petitioned the Supreme Court of Arkansas for release under a writ of *habeas corpus*. In granting it, the court said, referring to the statute:

> "For want of something more definite the Justice of the Peace has brought it now to bear upon Andrew Jackson and it must be noticed. We cannot conceive how a crime can on any sound principle be defined in so vague a fashion. Criminality depends under it upon the moral idiosyncrasies of the individuals who compose the court and jury. The standard of crime would be ever varying and the courts would be constantly appealed to as instruments of moral reform changing with all fluctuations of moral sentiment. The law is simply null. The constitution which forbids of *ex post facto* laws could not tolerate a law which could make an act a crime or not according to the moral sentiment which might happen to prevail with the judge and jury after the act had been committed." (*Ex parte* Andrew Jackson, 45 Ark. 158.)

The Court of Appeals of Kentucky, in discussing a statute which fixed a penalty for charging more than a just and reasonable rate of toll, said:

> "If the infliction of the penalties prescribed by this statute would not be the taking of property without due process of law, and in violation of both state and federal constitutions, we are not able to comprehend the force of our organic laws. In Louisville & N. R. Co. v. Railroad Commission of Tennessee, 16 Am. & Eng. R. Cas. 15, a statute very similar to the one under consideration was thus disposed of by the learned judge (Baxter): 'Penalties cannot be thus inflicted at the discretion of a jury. Before the property of a citizen, natural or corporate, can

be thus confiscated, the crime for which the penalty is inflicted must be defined by the lawmaking power. The legislature cannot delegate this power to a jury. If it can declare it a criminal act for a railroad corporation to take more than a "fair and just return" on its investments, it must, in order to the validity of the law, define with reasonable certainty what would constitute such 'fair and just return.' The act under review does not do this but leaves it to the jury to supply the omission. No railroad company can possibly anticipate what view a jury may take of the matter, and hence cannot know, in advance of a verdict, whether its charges are lawful or unlawful. One jury may convict for a charge made on a basis of 4 per cent., while another might acquit an accused who had demanded and received at the rate of 6 per cent., rendering the statute, in its practical working, as unequal and unjust in its operation as it is indefinite in its terms.' The Supreme Court of the United States, in Railroad Commission Cases, 116 U. S. 336, 6 Sup. Ct. 334, 348, 349, 388, 391, 1191, refers to this Tennessee case, and substantially approves it by distinguishing the case then before the court from the Tennessee case. This case is also used to support the text in 8 Am. & Enc. Law p. 935, where it is said: 'Although a statute has been held to be unconstitutional which left it to the jury to determine whether or not a charge was excessive and unreasonable, in order to ascertain whether a penalty is recoverable, yet where the action is merely for recovery of the illegal excess over reasonable rates, this is a question which is a proper one for a jury.' Mr. Justice Brewer, in the case of Railways Co. v. Dey, 35 Fed. 866, had under consideration the provisions of a statute similar to the one we have before us, and, while the statute was upheld, it was only because there was a schedule of rates provided in the act which rendered the test of reasonableness definite and certain. The learned judge there said: 'Now the contention of complainant is, that the substance of these provisions is, that, if a railroad company charges an unreasonable rate, it shall be deemed a criminal, and punished by fine, and that such a statute is too indefinite and uncertain, no man being able to tell in advance what in fact is, or what any jury will find to be, a reasonable charge. If this were the construction to be placed upon this act as a whole, it would certainly be obnoxious to complain-

ant's criticism, for no penal law can be sustained unless its mandates are so clearly expressed that any ordinary person can determine in advance what he may and what he may not do under it. In Dwar. St. 652, it is laid down 'That it is impossible to dissent from the doctrine of Lord Coke that acts of parliament ought to be plainly and clearly, and not cunningly and darkly penned, especially in legal matters.' (Citing cases.) And the learned judge concludes that there is very little difference between a provision of the Chinese Penal Code, which prescribed a penalty against any one who should be guilty of 'improper conduct,' and a statute, which makes it a criminal offense to charge more than a reasonable rate.' The same learned judge, discussing the kindred subject of unreasonable differences in rates, in Tozier v. U. S., 52 Fed. 917, said: 'But, in order to constitute a crime, the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. There must be some definiteness and certainty." (L. & N. R. Co. v. Commonwealth, 35 S. W. 129).

Great volumes of judicial opinions, expressing great contrariety of views, admonish us that trained minds are quite prone to have different judgments often upon the same state of facts as to what will and what will not constitute agreements in restraint of trade at common law. How much more subject to variation must be untrained minds, called upon to solve the same question. And especially is this true when they are called upon to determine the proximate cause in a chain of events, complicated by many factors and extending over a period of twenty-five or thirty years.

By the eighth paragraph of the charge in this cause, the jury was told to convict the defendant if "it brought about or permitted any combination, etc. whereby the price in Texas, of such oil would be reasonably calculated to be fixed or regulated or whereby the trade in such oil* * * * * * * * was sought to be controlled or limited." The jury was not given any definition of "combination" nor what was meant by "permitted." It was left to erect its own standard of legal definition of "combination." How the defendant may responsibly

permit a combination was not told them. Whether it would be guilty by mere negative action when it was under neither a legal nor moral duty to protest was not told them. The real vice of the charge consists in the use of the words "reasonably calculated" and these are substantially the words employed in the statute. "Reasonably" means with good sense or judgment." "Calculated" means "computed by weighing related facts or circumstances in the mind." The good sense or judgment brought to bear upon the solution of any state of facts in approval or disapproval depends to the largest extent upon the particular tendencies and mental skill of each individual. What might appear reasonable to one mind might appear unreasonable to another and whether an act was calculated to produce a given result would depend upon the breadth of comprehension and logical training of the mind appealed to for determination of the matter. One mind might reasonably look only at the facts immediately connected with the transaction. Another might penetrate far into the past and consider as potential many things in no wise related as cause and effect. Thus you would have, perhaps upon the same state of facts, a pronouncement of innocence and guilt. A conclusion logically argued, from well sustained facts, might subject a person to conviction at the hands of minds less intelligent a nd astute called upon to administer the law.

This language lacks the element of precision and definiteness necessary to create a criminal offense or impose a penalty. It leaves the judge and the jury to legislate, and they are as much bound by the constitutional prohibition against *ex post facto* legislation as is the legislature.

It is said, however, that the Sherman Act is not less definite than this in some of its provisions. We are not advised of any sustained convictions under the criminal provisions of the Sherman Anti-Trust Act. It may be made the basis of injunctive relief although obscure and ambiguous in definition; or by the decree, a rule of conduct prohibited is clearly marked out and defined.

In the case of Swift & Co. v. U. S., 196 U. S. 401 *l. c.*, this

court struck from the decree the words "or by any other method or device the purpose and effect of which is to restrain commerce as aforesaid," because of its indefiniteness, saying:

> "The defendants ought to be informed as accurately as the case permits what they are forbidden to do."

If terms so indefinite must fail in a prohibitive decree because of their indefiniteness and lack of advice as to what is forbidden to be done, they must certainly fall in a statute which imposes criminal penalties.

H. S. PRIEST,

*Of Counsel for Plaintiff-in-Error.*

FILED
OCT 13 1908
JAMES H. McKENNEY
Clerk

# In the Supreme Court of the United States

OCTOBER TERM, 1908

No. 360

WATERS-PIERCE OIL COMPANY, PLAINTIFF-IN-ERROR

AND

STATE OF TEXAS, DEFENDANT-IN-ERROR

## MOTION

OF THE PLAINTIFF IN ERROR TO CONSOLIDATE THIS CAUSE WITH No. 359

## AND BRIEF

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(21,131)

# In the Supreme Court of the United States

OCTOBER TERM 1908

No. 360

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WATERS-PIERCE OIL COMPANY . . . PLAINTIFF-IN-ERROR

AND

STATE OF TEXAS . . . . . DEFENDANT-IN-ERROR

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## MOTION

It is moved on behalf of the Plaintiff-in-Error the Waters-Pierce Oil Company that this cause may be consolidated with the cause No. 359 of this term now pending in this Court between the same parties and entitled *Waters-Pierce Oil Company* plaintiff-in-error v. *State of Texas* defendant-in-error and that the record in the last-mentioned cause may be treated as part of the record in this cause and that the said two causes may proceed henceforth in this Court as one consolidated cause.

Both of the said causes arise upon appeals in one and the same action in the District Court of Travis county in Texas, No. 24,551, which was brought by the State of Texas against the said Waters-Pierce Oil Company to recover penalties for supposed violations of the "Anti-Trust Laws" of Texas (*Record*, No. 359, p. 2), and in that court there was only one record upon which all the questions involved in both of them appear.

Judgment in the action was given in that court on the 1st June 1907 upon a verdict against the Waters-Pierce Oil Company for penalties in the sum of $1,623,900 (*Rec.* No. 359, p. 314), and the Waters-Pierce Oil Company appealed from that judgment to the Court of Civil Appeals and gave a bond with sureties in the sum of $3,275,000 to supersede proceedings upon the judgment pending the appeal (*Rec.* No. 359, p. 319–322).

In the same action immediately after this judgment and on the same day, but after a motion for a new trial had been filed by the defendant (*Rec.* No. 359, p. 315), an application was made by the State for the appointment of a receiver of the property of the Waters-Pierce Oil Company (*Rec.* No. 359, p. 323; *Rec.* No. 360, p. 1), alleging among other things that the State would have no means of collecting the judgment if the property of the Company were removed from Texas, and that the State had a lien upon the property to secure payment of the judgment by virtue of an act of April 11th, 1907, then recently passed (printed in *Rec.* No. 360, p. 42–43). Upon this application the District Court made an order appointing a receiver (*Rec.* No. 359, p. 327–329; *Rec.* No. 360, p. 5–8), and in doing so proceeded entirely upon the ground that the judgment had been rendered in the action, of which the Court took judicial notice, as appears by the bill of exceptions signed by the judge (*Rec.* No. 359, p. 341, 349; *Rec.* No. 360, p. 19–20, 27). The Waters-Pierce Oil Company also appealed from this order to the Court of Civil Appeals and gave a further bond with sureties in the sum of $100,000 to supersede proceedings under the order (*Rec.* No. 359, p. 327–329, 349; *Rec.* No. 360, p. 6–8, 28).

The two appeals were filed simultaneously in the Court of Civil Appeals on the 10th September 1907 and were treated in that court as two cases, the appeal from the judg-

ment on the verdict being No. 4212 (*Rec.* No. 359, p. 395, 1141) and the appeal from the order appointing the receiver being No. 4213 (*Rec.* No. 360, p. 36).

After the judgment and order of the District Court had been affirmed by the Court of Civil Appeals upon both appeals, and applications for writs of error had been refused by the Supreme Court in both cases (*Rec.* No. 359, p. 1187; *Rec.* No. 360, p. 82), the writ of error in No. 359 in this Court was brought upon the judgment of the Court of Civil Appeals in No. 4212 (*Rec.* No. 359, p. 1213), and the writ of error in No. 360 was brought upon the judgment in No. 4213 (*Rec.* No. 360, p. 108).

The record in the former of the two appeals (No. 4212) comprised all the proceedings in the action No. 24,551 in the District Court, including the proceedings relating to the appointment of the receiver, as appears by the certificate of the clerk (*Rec.* No. 359, p. 395). The record in the latter appeal (No. 4213) contains only the part of the proceedings in the action that relates especially to the appointment of the receiver, as appears by the clerk's certificate (*Rec.* No. 360, p. 36). This part of the proceedings in the District Court is printed on pages 1–30 of the record in No. 360 in this Court, which are identical with pages 323–352 of that in No. 359.

The Court of Civil Appeals advanced the appeal from the order appointing the receiver (No. 4213) for hearing before the appeal from the judgment on which it was founded (No. 4212), and refused a motion to consolidate it with the latter appeal (*Rec.* No. 360, p. 55), and on the 23rd October 1907 affirmed the order appointing the receiver (*id.* p. 56). A motion was made for a rehearing (*id.* p. 59), and was overruled on the 11th December 1907

(*id.* p. 64), and on the same day a mandate was issued from that court to the District Court (*id.* p. 73).

This mandate could only have been so issued on the assumption that the order appointing the receiver was an interlocutory order, for, if the order was final in its nature, the Supreme Court had jurisdiction to review it upon a writ of error and the mandate could not properly be issued until the expiration of the time allowed for an application to that court for a writ of error.

Accordingly the Waters-Pierce Oil Company applied to the Supreme Court by motion to direct that the mandate be recalled, and the motion was granted (*Rec.* No. 360, p. 73) for the reasons set out in the opinion of that court printed in the same record (p. 75–76). In stating these reasons the court said (p. 75)

> "The order appointing the receiver, although made subsequently to the date of the judgment, but at the same term, might have been reviewed in the appeal of the principal case. The parties have treated this as a separate proceeding presenting separate records to the Court of Civil Appeals, and that court has passed upon it as a separate and distinct case from the main suit, *but the separation of the two cannot deprive appellant of the benefit of a review of the order;* this court has jurisdiction of the case as presented.
>
> "It is also objected by the state's counsel that this court has no jurisdiction of this branch of the proceeding, because the order appointing the receiver is an interlocutory order, and this court has jurisdiction only of final judgments of the Court of Civil Appeals. If this be an interlocutory order, then the objection is well taken, for this court has no jurisdiction to review such an order of the District Court and of the Court of Civil Appeals. . . . . The order clearly comes within the definition of a final decree or order, for, so far as the defendant was concerned, it finally disposed of the matter then before the court, which was, the appointment of a receiver to take the property into his

custody *as a consequence* of the complete determination of the controversy. If the contention were sustained, the defendant would be deprived of the right to have that order reviewed by this court. . . . . ."

It is plain therefore that the judgment and order involved in the two appeals were parts of a single case. Both appeals might properly have been dealt with upon one record of the whole case in the Court of Civil Appeals, and the separation of them in that court did not deprive the defendant of any right to have the order reviewed as if they had not been separated.

As the Court of Civil Appeals had previously refused for some undisclosed reason to consolidate the appeals (*Rec.* No. 360, p. 55) and entered separate judgments, and there were two separate records in that court, it was necessary for the defendant to bring separate writs of error in this Court. But the record in one case (No. 359) contains all the proceedings in the District Court, as well those by which the judgment was obtained as those relating to the appointment of the receiver, while the record in the other (No. 360) contains only the proceedings immediately relating to the appointment of the receiver. If the judgment is reversed by this Court in the former case, the order appointing the receiver, which is dependent on that judgment, must fall with it and be reversed, as prayed at the end of the assignment of errors (*Rec.* No. 359, p. 1208). Otherwise the defendant would not "be restored to all things which it hath lost by reason of the said judgment" (as it is entitled to be in such a case, 2 Wms. Saund. 101 *gg*), and would be in the same position as if an order for the issue of an execution were left in force after the judgment of which it was a consequence had been reversed. But this disposition of No. 359 would not by itself dispose of the judgment of the Court of Civil Appeals in No. 360,

which separately affirmed the order appointing the receiver. In order that it may have this effect, the cases ought to be consolidated, so that the record containing all the proceedings may be joined to the record that contains only a part of them. The errors affecting the judgment upon which the appointment of the receiver depended would then appear in both cases, and the same disposition would be made of both.

It would be an absurdity, if this Court, after reversing the original judgment and the order appointing the receiver in No. 359, were obliged to say that the record in No. 360 did not disclose any of the errors for which the judgment was reversed and that the judgment of the Court of Civil Appeals affirming the same order must therefore be affirmed. Yet this difficulty may arise as a result of splitting one record into two, unless it is removed by consolidating the proceedings. For the whole of the record of the Court of Civil Appeals in the latter case has been brought here by the writ of error in No. 360, but it contains only a part of the record of the District Court.

The difficulty has arisen from the separation of the appeals in the Court of Civil Appeals, which is a thing that ought not to have been done, as appears by the decision of the Supreme Court. The defendant was obliged to appeal from the order appointing the receiver, as well as from the judgment upon which it was founded, and to file both appeals in the Court of Civil Appeals. Otherwise the order appointing the receiver, which was in the nature of an execution upon the judgment, might have been put in force and the defendant's property would have been seized by the receiver, although the judgment upon which the order was dependent had been suspended by the previous appeal. It was to prevent this, that the defendant ap-

pealed from the order appointing the receiver and gave the second supersedeas bond in the amount fixed by the judge, who ordered that thereupon further proceedings be suspended pending the appeal (*Rec.* No. 359, p. 329–330; *Rec.* No. 360, p. 8). When the two appeals were filed in the Court of Civil Appeals, they ought to have been treated as two successive appeals contained in one record. The manner in which they were entered and dealt with by the officers of the court was not in the control of the defendant. The defendant ought not to be prejudiced by such action (*Minot* v. *Mastin*, 95 Fed. R. at p. 739 (C. A.)). When the mistake had been made of separating the two appeals, the Court of Civil Appeals should have set the matter right by granting the motion of the defendant to consolidate the cases. Instead of doing so (*Rec.* No. 360, p. 55), that court took the extraordinary course of advancing the appeal from the order appointing the receiver (*ibid.*), and of affirming the order (*id.* p. 56) seven weeks before deciding that the judgment upon which the order was dependent was valid, and while proceedings on the judgment were suspended by the appeal (*Rec.* No. 359, p. 1162).

As the whole record of the District Court, as well as the record of the proceedings of the Court of Civil Appeals upon both appeals, is here in the two causes, this Court has power to consolidate them and to dispose of them as parts of one case, which they really are.

R. S. s. 921.

*The North Star*, 106 U. S. at p. 27.

*Lant* v. *Kinne*, 75 Fed. R. 636 (C. A.).

*U. S.* v. *Union Pacific Rld. Co.*, 98 U. S. at p. 604–605.

There are no rights of the State that can be prejudiced by consolidating the cases.

The application for the appointment of the receiver *alleged* other grounds for the appointment besides the recovery of the judgment (*Rec.* No. 359, p. 323; *Rec.* No. 360, p. 1). Those allegations were all denied (*Rec.* No. 359, p. 325; *Rec.* No. 360, p. 4) and the issue was never tried. When the application came on for hearing, the judge, without hearing any evidence, announced his conclusion that he should take judicial notice that *the judgment* had been rendered, and, although the defendant had appealed from the judgment and he assumed that the proper supersedeas bond would be given, yet, as it had come to his attention through the newspapers that the defendant by its counsel had declared its intention of carrying on its business pending the appeal in the same manner as before notwithstanding the judgment of conviction [which was questioned by the appeal and suspended while it was pending], he would appoint a receiver to take charge of its property and deprive it of the instrumentalities by which it violated the law (*Rec.* No. 359, p. 341; *Rec.* No. 360, p. 19–20), "and *without any evidence being submitted* to the court in connection with said application, the court thereupon announced that it would grant the said application and appoint a receiver as therein prayed for" (*Rec.* No. 359, p. 342; *Rec.* No. 360, p. 20), as more fully appears by the bill of exceptions signed by the judge.

The proceeding for the appointment of a receiver being supplemental to the judgment, the cases ought to be consolidated so that this Court may enter a decree finally disposing of all the matters involved in both appeals.

MOORFIELD STOREY
J. L. THORNDIKE
E. B. PERKINS

# In the Supreme Court of the United S

OCTOBER TERM, 1926.

No. 3[illegible]

WATTERS-PIERCE OIL COMPANY [illegible]

vs.

STATE OF TEXAS, Defendant in Error.

ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR ON [illegible] CAUSE.

[illegible]

[illegible]

[illegible]

# In the Supreme Court of the United States,

**OCTOBER TERM, 1908.**

**No. 360.**

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WATERS-PIERCE OIL COMPANY, PLAINTIFF IN ERROR,

vs.

STATE OF TEXAS, DEFENDANT IN ERROR.

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ANSWER TO MOTION OF PLAINTIFF IN ERROR TO CONSOLIDATE CAUSES.

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In answer to the motion of plaintiff in error to consolidate this cause with Cause No. 359, defendant in error, the State of Texas, says that said motion should be denied and in all things overruled for the following reasons, towit:

1. The said motion and brief in support thereof disclose no sufficient grounds for the consolidation of said two causes.

2. It appears from said motion, the records in said two causes, and the nature of the questions involved therein, that no saving of time, labor or expense will be accomplished in any appreciable degree by consolidating the same.

3. Said two causes, as brought to this court by writs of error and to the Court of Civil Appeals and Supreme Court of Texas by appeal and writ of error, respectively, constitute two separate and distinct suits on appeal, made so by the acts and policy pursued by plaintiff in error, and this court should not disturb that status upon motion of plaintiff in error alone.

4. For this court to consolidate the two causes would be to review and reverse the rulings of the two State courts, towit, the Court of Civil Appeals (which overruled a similar motion made by plaintiff in error, Rec. No. 360, p. 55), and the Supreme Court of Texas (which, by denying a writ of error, decided that the Court of Civil Appeals properly overruled the motion to consolidate, Rec. No. 360, p. 82); and such would be the result, although

no assignment of error complaining of such action by the State courts was made and none appears in the record.

5. The appeal in this cause involves alone the validity of the order of the trial court in appointing a receiver for the property of plaintiff in error; and by the decisions of this court the mere appointment of a receiver by a State court raises no Federal question; therefore, to grant this motion to consolidate, would be to burden this cause with a Federal question (if one is raised by the record in Cause No. 359), which result this court, in the exercise of a discretionary power, should not bring about.

6. To grant the motion to consolidate would be unreasonable and a great disadvantage to defendant in error in this: Under the Texas statutes, the appointment of a receiver by the trial court was not dependent upon the judgment in the main case alone, but could have been lawfully made in such a suit whenever the interests of the State seemed to require such action; but if said motion be granted and the main case (No. 359) should, for any reason, be reversed, then the order appointing a receiver might be reversed with it, although this court should be of the opinion that no reversible error was shown in the appointment of a receiver, from the record in this cause.

It must be conceded that this court, under Revised Statutes, Section 921, and perhaps by virtue of its inherent power, has the authority to consolidate the causes; but such course is not a matter of right to plaintiff in error. It is a discretionary power only, usually invoked to save time, labor or expense, where cases of like nature are pending in the same court. Here there will be little saving of either, as the records in both causes are filed and briefs practically ready, if not entirely so. If desired by the court, or requested by counsel and approved by the court, submission and argument of the two causes may be had at the same time, without any order of consolidation.

The status of these two causes in this court as separate and distinct appeals, with different records, is in nowise attributable to defendant in error, but arise solely from the action of attorneys for plaintiff in error. They can not successfully contend that they had no control over the matter of docketing the appeals as separate causes, because it was the plain duty of the clerk of the Court of Civil Appeals to enter them upon the docket as separate causes when separate and distinct records were filed with him.

When the appeals from the judgment in the main case and in the receivership case were perfected, instead of incorporating the proceedings in one record, which the Supreme Court of Texas held might properly have been done, and which would have made but one case on appeal, plaintiff prepared and filed in the appellate court two separate and distinct and different records. By this action the Waters-Pierce Oil Company caused two cases to be made on appeal, and now asks this court to relieve it from the legal consequences of its mistake, if such it be. The usual grounds for asking the court to consolidate causes are not the real reasons for this motion. The actual motive is disclosed in the argument contained in the first paragraph beginning on page 6 of the brief in support of the motion. The fear is that this court, passing upon the record in this cause (made by plaintiff in error), may affirm the order of the trial court appointing the receiver, but may also reverse the main judgment. In that event, the State receiver might take charge of the business of the plaintiff in error, pending the final determination of the litigation. It is earnestly insisted on behalf of the State that if such result might follow from a denial of the motion to consolidate, it is nothing more than the right to which the State is entitled. It would afford no just or reasonable ground for this court to deprive the State of an advantage which the course of the Waters-Pierce Oil Company, in taking two appeals, had given it. On the contrary, it furnishes every reason why the rights of the State should be preserved and protected, especially in view of the fact that the contingency can arise under separate consideration of the two appeals, wherein the receivership case might be decided prior to a decision on the merits of the main case, and, in view of the further fact that the property of the plaintiff in error, as shown by the record, consists of volatile oils subject to seepage, leakage and evaporation, and the further fact that it is necessary to keep the business of the plaintiff in error a going concern in order to preserve the value of its property, i[illegible]siness and its business connections, and in view of the further fact that the property is now in the hands of a Federal receiver, which case is pending before this court, and of which you will take judicial notice for the purpose of considering the question here raised. We make the point that in the event the case of Bradley W. Palmer against the Waters-Pierce Oil Company is affirmed by this court and the Federal receiver ordered dis-

charged in accordance with the judgment of the United States Circuit Court of Appeals, it would produce the situation wherein the property would be forced back into the hands of the Waters-Pierce Oil Company, which, according to the record, has shown that it can not operate it or preserve the value of the property by reason of the fact that it can not secure agents to handle its business on account of the provisions of the anti-trust laws of the State of Texas subjecting agents of trusts to punishment by confinement in the penitentiary.

Should the court consolidate this cause, as prayed for, with the main case, and in due course of its business affirm the case of Bradley W. Palmer vs. Waters-Pierce Oil Company, there would be no one to take charge of the property and prevent the losses which would result in case the plaintiff in error should be compelled to take possession of its property before the litigation in the main case for ouster and penalties was finally adjudicated.

It also appears from the record that the State is asserting a lien upon this property, and, moreover, it is shown by the record that the plaintiff in error's property situated in Texas is not sufficient to pay the judgment secured against it in this case. Therefore, the State of Texas has a material interest in preserving the value of the property, to prevent loss to the stock in trade consisting of perishable goods, by keeping the business a going concern and preventing a depreciation in the value of the business connections which plaintiff in error avers is valued at $2,000,000. Consequently, these two causes should not be consolidated for the reason that if no error appears in the record appointing said receiver, the State is entitled to an affirmance of that judgment so that someone authorized to take possession of the property could do so in the event the judgment in the case of Bradley W. Palmer against Waters-Pierce Oil Company is affirmed and the receiver therein appointed discharged.

This being a substantial right of the State, it appears that under such circumstances this court will not deprive the State of such right by consolidating these two causes with the possibility of producing the situation pointed out.

The section of the Revised Statutes regulating consolidations of causes in United States courts contains this limitation: "* * * and may consolidate said causes *when it appears reasonable to do so.*" Would it be reasonable to consolidate these causes

in view of the responsibility for the present status and taking into consideration the possible injury the State might suffer thereby, as suggested above? We think not.

Another phase presented by this motion, if granted by the court, is the practical effect of such action upon the rulings made by the Texas appellate courts upon a similar motion in these very causes. While it must be conceded that the granting of the motion by this court would not, in itself, formally reverse the judgments of either Texas court, yet it is equally true that such would be its effect. A motion was made in the Court of Civil Appeals by the Waters-Pierce Oil Company to consolidate the two appeals, which motion was overruled by that court (Record No. 360, p. 55). The Waters-Pierce Oil Company applied for a writ of error to the Supreme Court of Texas, which was refused by the latter court (Record No. 360, p. 82). Under the Texas practice the appellate courts had the power to consolidate these causes, but the Court of Civil Appeals expressly refused to do so, and the Supreme Court, by overruling the application for a writ of error, and by itself treating the two appeals as two separate causes when they reached that court, sustained the ruling of the Court of Civil Appeals. The authority of those courts over the question of consolidation of causes was a discretionary one, just as it is here, and was not required by any statutory direction.

It is earnestly insisted by plaintiff in error in the brief in support of this motion that the two appeals were essentially one case, but this contention was overruled by the Court of Civil Appeals in refusing to consolidate them. That position was taken by the plaintiff in error in the Supreme Court of Texas in its motion for the recall of the mandate issued by the clerk of the Court of Civil Appeals in the receivership case. Counsel for the State then contended that if the two appeals were in fact but one case, the application for a writ of error to the Supreme Court in the receivership matter and the said motion also were prematurely filed, because the main case was still pending in the Court of Civil Appeals, no motion for rehearing having been yet filed in that court. To this contention the Supreme Court of Texas replied:

"On hearing of the motion of the Waters-Pierce Oil Company to recall the mandate of the Court of Civil Appeals from the district court, it was objected by counsel for the State that if the Waters-Pierce Oil Company be correct in its contention, that this

was not an independent suit, but only an incident of the main controversy, a writ of error could not be separately prosecuted, therefore, the case was not properly before this court. It is sometimes the case that there may be more than one appeal in the same case when orders are made at different times which finally dispose of the subject matter of that particular order. A familiar instance is a case of partition wherein there may be a decree which determines the rights of the parties in the property and is a final judgment upon the merits of the case. From this an appeal may be taken leaving the case before the court for the purpose of actual division of the property among the claimants according to the decree entered. When the partition shall have been made and the decree of partition entered there is another final judgment or order from which an appeal may likewise be taken. (White vs. Mitchell, 60 Texas, 164; Moor vs. Moor, 63 S. W. Rep., 357.)

"The order appointing the receiver, although made subsequently to the date of the judgment, but at the same term, might have been reviewed in the appeal of the principal case. The parties have treated this as a separate proceeding presenting separate records to the Court of Civil Appeals and that court has passed upon it as a separate and distinct case from the main suit, but the separation of the two can not deprive appellant of the benefit of a review of the order; this court has jurisdiction of the case as it is presented." (Rec. No. 360, p. 75.)

The Supreme Court then decided that the order appointing a receiver was not an interlocutory but a final decree from which an appeal might reach the Supreme Court in due course. (Rec. No. 360, pp. 75 and 76.) Upon that ground the Supreme Court took jurisdiction of the motion and writ of error filed by the Waters-Pierce Oil Company. From this it is clear that the Supreme Court, while holding that the order appointing a receiver was, in a broad sense, part of the main case, decided that plaintiff in error had legally prosecuted a separate appeal from the order of the trial court, and was entitled to the benefit of the review of the same before the Supreme Court. The decision meant nothing more, and the Supreme Court treated the separate appeal as a separate case when it took jurisdiction of said motion, and when passing on the two applications for writs of error which were separately docketed in that court and separately overruled on the same day. (Rec. No. 360, p. 82; Rec. No. 359, p. 1187.) Thus

we have the judicial determination of the Supreme Court of Texas that while the Waters-Pierce Oil Company could not be denied the benefit of a review of the order appointing a receiver, the appeal therefrom should be continued as a separate case just as the Waters-Pierce Oil Company had brought it up on the record.

Again, not only did the Court of Civil Appeals overrule the motion of the oil company to consolidate the causes, but in deciding the receivership appeal used the following language:

"That branch of the case in which the receiver was appointed is merely an arm of the main case, and is incidental to that proceeding. Both of the statutes quoted and mentioned authorize and empower, if they do not expressly direct, the trial court to appoint a receiver when the State obtains its judgment cancelling the permit. And there is another provision of the Act of 1907 which authorizes a receiver to be appointed when the interests of the State might require it to be done. In view of these statutes, it is folly to say that the trial court must lose sight of the main controversy when he undertakes to appoint a receiver; that before that jurisdiction can be exercised he must again rehear and review the facts that were established in the original case upon which the receivership depends, and we are of the opinion that the court was correct in the conclusion that it could take judicial knowledge of the facts established in the main case and the judgment based thereon. The appellant has seen fit to perfect a separate appeal from the order appointing a receiver, and it has no statement of facts in the record showing that the facts which the court took judicial knowledge of did not exist and were not sufficient to authorize the action of the court in making the appointment. The effect of the action of the court was to hold that the facts that he took judicial knowledge of were sufficient to authorize and justify the appointment. The record here shows that the State has actually recovered a judgment for penalties and for cancellation of the permit to do business. The presumption will be indulged in favor of the action of the trial court, and no fact appearing in the record brought up here by the appellant which would negative and destroy the force of this presumption, we must hold that we have in this record facts sufficient to justify the judgment below." (Rec. No. 360, pp. 57 and 58.)

Again, in the decision in the main case, the Court of Civil Appeals also used the following language:

"In reference to the assignments of error complaining of the order of the court appointing a receiver, it is sufficient to say that appellant has exercised its right to prosecute a separate appeal from that order, and this court, in considering that appeal, has decided against appellant. It is not entitled to have the order appointing a receiver reviewed by this court twice, or in two distinct proceedings." (Rec. No. 359, p. 1152.)

The effect of the decisions of the Court of Civil Appeals was plainly to make the Waters-Pierce Oil Company responsible for the legal consequences of taking a separate and distinct appeal in the receivership case and to refuse to interfere with that status over the objections of the State. While we are aware that no case can probably be found in which the discretion of the trial court in consolidating causes has been revised by this court; on the other hand, we know of no instance where this court has, in effect or terms, overruled the action of a State court in refusing to consolidate causes where the relief asked is not a matter of right. Nor do we believe that this court will now take such action in view of the considerations urged above.

Davis vs. St. L. & S. F. Ry. Co., 25 Fed. Rep., 786.

Mercantile Trust Company vs. M., K. & T. Ry. Co., 41 Fed. Rep., 8.

Toledo, St. L. & K. C. R. R. Co. vs. Continental Trust Company, 95 Fed. Rep., 505 and 506.

Central Trust Company vs. Madden, 70 Fed. Rep., 451.

Jacksonville, T. & K. W. Ry. Co. vs. American Construction Company, 57 Fed. Rep., 56.

Trustees vs. Greenough, 105 U. S., 527.

Standley vs. Roberts, 59 Fed. Rep., 836.

Young vs. Gray, 65 Texas, 100.

We next come to the consideration of the ground of objection to this motion that the appeal in this cause involves alone the validity of the order of the trial court in appointing a receiver for the property of plaintiff in error; and by the decisions of this court the mere appointment of a receiver by a State court raises no Federal question; therefore, to grant this motion to consolidate would be to burden this cause with a Federal question (if one is raised by the record in Cause No. 359), which result this court, in the exercise of a discretionary power, should not bring about.

If we do not misconstrue the case of St. L. Ry. Co. vs. Merriam, 156 U. S., 478, it is authority for the proposition that an order by which property is directed to be placed in the hands of a receiver presents no Federal question for the decision of this court. The only question really raised by the assignments of error in this appeal is the validity of the order of the trial court appointing a receiver, plaintiff in error contending that said order encounters certain clauses of the Fourteenth Amendment to the Federal Constitution, which provide that no person shall "be deprived of life, liberty or property without due process of law," and that no State shall "deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Upon the other hand, in the main case (No. 359) there are various errors assigned which purport to raise Federal questions of a different character and applicable only to the main judgment. Therefore, it follows that if this court should grant the motion to consolidate, it will have the effect of making this cause (No. 360) an inseparable part of the main case (No. 359), and a reversal of the main judgment would carry with it a reversal of the receivership order; or by combining the two records, this court might find reversible error as to the receivership order, when no such error was disclosed in the record brought up in this cause. In effect, this would be to burden this case with Federal questions not raised in the record of this case by which plaintiff in error should be bound as made. Such a r[illegible] It seems so unreasonable and unjust that we can not think this court will make it possible by granting this motion.

On page 6 of the brief for plaintiff in error it is argued that:

"It would be an absurdity if this court, after reversing the original judgment and the order appointing the receiver in No. 359, were obliged to say that the record in No. 360 did not disclose any of the errors by which the judgment was reversed, and that the judgment of the Court of Civil Appeals affirming the same order must therefore be affirmed; yet this difficulty may arise as a result of splitting one record in two, unless it is removed by consolidating the proceedings. For the whole record of the Court of Civil Appeals in the later case has been brought here by a writ of error in No. 360, but it contains only a part of the record of the district court."

We submit that such a difficulty could not arise if this motion

be denied. If this court should, in the main case, reverse the order appointing a receiver upon the record in that case, it would not be driven to the absurd and anomalous position of affirming the order appointing a receiver in this case. The court is the custodian of its own records and will take judicial notice of what they contain as well as its own judgments; and in such event it would make the judgment in this case conform to the legal effect of the judgment in the other. The only question which could arise would be one of costs.

In considering the last ground of objection to the motion, we think it will be an aid to this court, and especially in understanding the great importance of this motion to the State, to set out here a brief statement of the nature of the main case and of the proceedings involved in the appointment of a receiver. The State's petition alleged a conspiracy formed in the year 1870 between John D. Rockefeller, John D. Archbold, and others, to monopolize all the oil business in the United States, including Texas, and in other countries, and that to accomplish this purpose they organized the Standard Oil Company of Ohio in that year. That in pursuance of the conspiracy, the Waters-Pierce Oil Company was organized in 1878, and sixty per cent of its capital stock went into and was held by the trustees of the Standard Oil Trust, which came into existence in 1882. That in the territory sought to be exploited by the conspirators were many independent and competing firms and corporations engaged in the oil business. That the plan pursued by the conspirators was to acquire a controlling interest in these competing businesses and to place these controlling interests in the hands of a single holding company of trust known at different times by different names, among them the Standard Oil Company of Ohio, the Standard Oil Trust, and the Standard Oil Company of New Jersey. In time this plan was carried out and successfully accomplished, practically all competition being destroyed; that the Waters-Pierce Oil Company became a party to the trust in 1878 and had ever since remained a party thereto, pursuing and engaging in the common plan to destroy competition and fix and maintain prices for the sale of oil, especially in Texas. That a majority of its shares of stock were held by the Standard Oil Trust until it was dissolved. That in pursuance of the conspiracy the agreement was made between the defendant

and the other conspirators to deliver over to the Waters-Pierce Oil Company the States of Texas, Arkansas, the Territories of Oklahoma and Indian Territory, and parts of the States of Missouri and Louisiana, and the Republic of Mexico, within which territory the defendant agreed to confine its business. That the Standard Oil Company and subsidiary corporations agreed, and it was understood by and between them and defendant, that they should not sell any oil in the said territory of the Waters-Pierce Oil Company; that as a part of said contract, agreement, understanding and conspiracy, and as a consideration for the setting aside of the territory aforesaid for the exclusive use and enjoyment of the Waters-Pierce Oil Company, that company agreed to buy all of its supplies from the Standard Oil Company and companies controlled by the same. That the Standard Oil Company of New Jersey took over and acquired the Waters-Pierce Oil Company stock previously held by the Standard Oil Trust; that since the year 1892 the Standard Oil Company had owned and controlled a majority of the stock of the Waters-Pierce Oil Company, directed its affairs, limited its operations without the protest of said corporation or any corporate action on the part of the defendant resisting said control, but, on the contrary, at all times with its sanction and acquiescence and with the knowledge and consent of the stockholders. That the Standard Oil Company acquired the direction and control of a large number of corporations and firms engaged in the oil business which, but for this control, would have been competing for that business in Texas. That among the companies controlled were the Standard Oil Company of Indiana, Standard Oil Company of Ohio, Standard Oil Company of Kentucky, the Republic Oil Company, the Continental Oil Company, Waters-Pierce Oil Company, Standard Oil Company of Iowa, and many others. That the effect of such control was to destroy competition between said companies with their acquiescence and consent, and especially in the State of Texas. That said division of territory was enforced and insisted upon by the Waters-Pierce Oil Company, and acquiesced in and preserved by the Standard Oil Company and its subsidiary corporations since May 31, 1900, to the filing of plaintiff's petition. That reports were made by the Waters-Pierce Oil Company to the Standard Oil Company of all matters required to be reported by the latter comapny; that auditors were sent by the Standard Oil Company to the general offices of the

Waters-Pierce Oil Company, and checked up the books and accounts of the latter company, and said auditors made reports thereof to the Standard Oil Company showing every detail of the business of the Waters-Pierce Oil Company, all of which was done with the knowledge and approval of the defendant. That the Standard Oil Company established their refineries in Texas and that, in pursuance of the agreement and understanding above stated, the Standard Oil refineries in Texas have not been permitted and have not sold their products therein to any company except to the defendant. That by these methods the Waters-Pierce Oil Company had made itself a party to a combination to monopolize the oil business in territory which includes all of the State of Texas, and that in accordance with the plans of that combination it had actually and continuously monopolized the oil business in Texas in violation of law, from the date it received its permit to the day of trial.

This will serve to give a general outline of the State's case and the record in the main appeal contains ample evidence to support the verdict of the jury.

On the same day that the verdict was returned into court (June 1, 1907), the State applied for a receiver, the application containing among other grounds, the following:

"Fourth.—That under the judgment of ouster rendered in this cause, the defendant has no right to do business in this State and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State."

On June 10th the application of the State, and the answer and response of the Waters-Pierce Oil Company were read and considered by the court, and "the court thereupon proceeded to announce his conclusions with respect to said application and defendant's objections thereto, and stated that the court would take judicial notice of the proceedings in the main case and of the rendition of judgment against the defendant for violating the anti-trust laws of the State, as charged against it in plaintiff's said second amended original petition, and that it had been found guilty of violating the said anti-trust laws on each and every

day from the 1st day of June, 1900, to the 29th day of April, 1907, and that its permit to do further business in the State had been forfeited and canceled by reason of said violations, and that defendant had since May 31, 1900, been a member of an agreement which had its very existence in Texas, in violation of the civil and criminal laws of Texas, and that it had been and still is in possession of certain instrumentalities by means of which it, in violation of the public welfare and interests, intended to continue its violation of law pending appeal from the judgment of conviction, and that the court would assume that the defendant would file its proper supersedeas bond for the said judgment of conviction, but that, notwithstanding defendant's right to so file said supersedeas bond within the time provided by law, the court was of the opinion that the Legislature had provided as a remedy or means of preventing defendant from the continued violation of the law, that a receiver should be appointed to take charge of its property and business and deprive it of the instrumentalities by which it had so violated the law, and would continue to violate the law; and that because of said statute and of the declared purpose of defendant, speaking through its general counsel, John D. Johnson, in newspaper interviews which had been brought to the attention of the court, in which said Johnson had discussed the effect of the aforesaid judgment of conviction against defendant, and had declared the purpose of defendant to appeal from said judgment of conviction and to continue to carry on its business in the same manner that it had theretofore done, notwithstanding such judgment of conviction; and without any evidence being submitted to the court in connection with said application, the court thereupon announced that it would grant said application and appoint a receiver as therein prayed for."

On June 13th the court appointed a receiver. (Rec. No. 360, pp. 21 and 22.) On June 19th the Waters-Pierce Oil Company filed its appeal bond, appealing from the order appointing the receiver. (Rec. No. 360, p. 29.)

The Court of Civil Appeals held that the act of the Texas Legislature of April 11, 1907, authorized the course pursued by the trial court in appointing a receiver and further held that independent of said act of the Legislature the court had authority to appoint a receiver under the third subdivision of Article 1465, Sayles' Civil Statutes of Texas, which subdivision is to the effect

that a receiver may be appointed where a corporation is dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights. (Rec. No. 360, pp. 56 and 57.) The provisions of said Act of 1907 are fully set out in the record. (Rec. No. 360, pp. 42 to 44.) By the fourth section of that act it was made cumulative of all other laws and did not repeal or affect older laws.

We desire here to call the attention of this court to the fact that none of the assignments of error in this record purporting to raise a Federal question assail the validity of the State statute existing before and after the passage of the Act of 1907, which the Court of Civil Appeals held to authorize the trial court to appoint a receiver independent of the later statute. Said assignments are devoted entirely to an attack on the Act of 1907 and the alleged action of the court thereunder, although the appointment of the receiver could be justified under the older law alone This was expressly decided by the Court of Civil Appeals and by the Supreme Court in denying a writ of error in the receivership appeal. (Rec. No. 360, pp. 57 and 82.) Such being the state of the record, can it be that this court will aid the plaintiff in error in raising some possible Federal question by consolidating the causes and making this case dependent upon the action in the main case in spite of the separate appeal prosecuted to this court by a separate writ of error upon the sole responsibility of the Waters-Pierce Oil Company? We can not believe this court will jeopardize the rights of the State or deprive it of an advantage made possible by the act of plaintiff in error itself.

Again, if the appointment of a receiver depended alone upon the Act of 1907, above referred to, still this court should not consolidate the causes for the reason that under the provisions of that act the appointment of a receiver was authorized in a pending suit with or without judgment, *"whenever the interests of the State may seem to require such action."* Under that authority alone the court's action in appointing a receiver was proper and legal, and, therefore, this court should deny the motion, it being based entirely upon the theory that if the main judgment can not stand the receivership order must fall with it.

The bill of exceptions filed by plaintiff in error shows clearly that the court had in mind the clause just quoted as a basis for his action in appointing a receiver. (Rec. No. 360, pp. 19 and 20.)

The Act of 1907 was not alone intended to authorize the appointment of a receiver of a corporation in cases where the State, as a lien creditor, had such an interest in its affairs as to render that course necessary, because, if so, there was no reason or excuse for its enactment, for all lien creditors had, under such circumstances, the right to procure the appointment of a receiver by the terms of the pre-existing law. Moreover, the language of the statute negatives this idea. It provides that "the court may, in any case wherein the State is suing any such corporation for the forfeiture of its permit to do business in this State, * * * appoint a receiver for such corporation whenever the interests of the State may seem to require it." In such case the State could not procure a judgment for money, and, therefore, it is plain that said statute did not confine the grounds for appointment of a receiver to mere rights of the State as a creditor. The statute by its terms authorizes the appointment of a receiver in any case of the nature mentioned, whenever the interests of the State may seem to require such action. The trial judge sat in the case throughout a prolonged trial and heard all the evidence offered by either party which was deemed relevant. He must, therefore, when he passed upon the motion for appointment of the receiver, have been in a position where he could judge intelligently and honestly exercise discretion vested in him by law to determine whether the "interests of the State" seem to require such appointment. It thus appeared to him that from the evidence the appellant had made itself a party to a combination to monopolize the oil industry in Texas. That in pursuing the plans of that combination, it had actually and continuously monopolized that business in Texas for many years, and was still doing so. That the nature of the combination into which it had entered was such that the managing officers of the Waters-Pierce Oil Company were powerless to withdraw therefrom and to conduct its own business, pending the litigation in accordance with law, even if they so desired; and it must also, from the evidence, have appeared to him that the people of Texas would, in the future, be subjected to the unlawful exactions of the oil trust, either until the business of the Waters-Pierce Oil Company was placed in the hands of one who was willing and able to conduct it in accordance with law, or until its permit to do business in the State was foreited by the final result of the litigation.

From these considerations, it results that the interest of the State might be seriously affected by the granting of this motion, especially in a matter of paramount importance to its people. If the main judgment should be reversed and this litigation is to continue over a long period of time, as would then seem probable, the instrumentalities of plaintiff in error for conducting its business should be in the hands of a receiver appointed by the State court, to the end that such business might be conducted agreeably to the laws against monopolies and conspiracies in restraint of trade, until the suit is finally determined. Otherwise, the oil company could continue to use its established business, amounting to 85 per cent of the entire oil business in Texas, and the means of carrying on same in violation of the Anti-trust Law of 1903 at the paltry risk of forfeiting $50 a day in penalties under the provisions of that act.

For all the reasons given above and in no spirit of captious opposition, but for the protection of what we regard as substantial rights of the State, we respectfully ask this court to deny the motion of plaintiff in error.

Robert V. Davidson
Attorney General of Texas.

Jewel P. Lightfoot
Assistant Attorney General.

John W. Brady
County Attorney of Travis County.

R. R. Batts

Geo. Allen
Counsel for Defendant in Error.

# RECEIVERSHIP CASE.

WATERS-PIERCE OIL COMPANY,
Plaintiff in Error,
vs.
THE STATE OF TEXAS,
Defendant in Error.

PENDING IN THE SUPREME COURT OF THE UNITED STATES; OCTOBER TERM, 1907.

And now comes the State of Texas, defendant in error, in the above entitled and numbered cause, and moves this court to dismiss the writ of error sued out in this cause to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, for the reason that it appears on the face of the record that there is no substantial Federal question involved in this cause, and that the attempted raising of a Federal question is frivolous and without merit.

## STATEMENT.

This controversy was originally inaugurated by the filing on June 1, 1907, in the case of the State of Texas vs. Waters-Pierce Oil Company, pending in the district court of Travis county, Texas, of a motion or application as follows:

"And now comes the State of Texas, acting by and through her Attorney General, and the county attorney of Travis county, Texas, acting under the direction and supervision of said Attorney General, and shows to the court:

"First. That on the first day of June, 1907, in this court, in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, the Waters-Pierce Oil Company, for the sum of one million six hundred and twenty-three thousand nine hundred dollars ($1,623,900), and said judgment further providing for the cancellation of the permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the anti-trust law of the State of Texas.

"Second. That in a certain suit pending in the State of Missouri wherein the State of Missouri is plaintiff and the said above named defendant, the Waters-Pierce Oil Company, among others, is defendant, a suit was instituted for the forfeiture of the charter of said defendant,

Waters-Pierce Oil Company, for prohibiting it doing business in said State, said suit being instituted in the Supreme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a commissioner to hear the testimony and make his report and findings of fact, and recommendation of law thereon; that, after hearing the testimony, the said commissioner found in favor of the State of Missouri on all issues in said cause, and recommended to the said Supreme Court of Missouri that the charter of the said Waters-Pierce Oil Company be canceled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of said defendant, Waters-Pierce Oil Company.

"Third. That the penalties recovered in this cause by plaintiff, the State of Texas, can not be collected outside the State of Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the payment of said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal, movable property, and if carried beyond the limits of this State can not be pursued by the State of Texas, and the State would have no way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

"Fourth. That under the judgment of ouster rendered in this case the defendant has no right to do business in this State, and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

"Wherefore plaintiff requests the court to appoint a receiver to take charge of all the property and assets of every kind, character and description of the defendant situated within the State of Texas; pending the hearing of this application, that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employes, or any of them, from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas."

After a hearing, certain orders were made by the court, which were amended by an order entered on June 15, 1907, which amended order is as follows:

"And now, on this 15th day of June, A. D. 1907, at a regular term of this court, it is considered, ordered, adjudged and decreed by the court that the orders of this court made and entered in said cause on the 10th day of June, A. D. 1907, and on the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

"And now, on this 10th day of June, 1907, at a regular term of this court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters-Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters-Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets, and hold the same subject to the further orders of this court, and said receiver is hereby directed and instructed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas, with the right, power and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion, and to require such bonds and security to himself as receiver from any of the present employes or those thereafter engaged by him as he may think expedient and proper; and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver, and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business, so that said business may be kept up to its present condition as near as may be; and the said receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the court may authorize, and all the expenses of said receivership, including taxes, insurance premiums, attorneys' fees,

his own compensation and all expenses of said receivership to be paid as a part of the court costs of the suit. That the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be, and the same is hereby, continued in force until the further orders of this court.

"To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the Court of Civil Appeals of the Third Supreme Judicial District of Texas.

"And on this 13th day of June, A. D. 1907, the court confirming said order, and in pursuance thereof, names and appoints as receiver herein of the property in said order described Robert J. Eckhardt, who is a resident of the county of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such receiver at two hundred and fifty thousand dollars ($250,000), to be made payable to the judge of this court, and his successors in office, for the use of all parties interested in said property and this suit."

From this order appointing a receiver, the Waters-Pierce Oil Company prosecuted an appeal to the Court of Civil Appeals, assigning as errors committed the following, which were all the errors assigned which undertook to raise a Federal question:

> "The court erred in disregarding the supersedeas bond filed by defendant in connection with its appeal from the main judgment recovered against it on June 1, 1907, and in requiring defendant to file the additional bond in the sum of $100,000, to supersede the orders appointing the said receiver and to avoid having to surrender its property to said receiver by reason of said appointment; and this action on the part of the court was without lawful warrant and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that the effect of such action by the court was to deprive the defendant of its property without due process of law and to deny to it the equal protection of the law."
>
> "The said act of the Legislature of the State of Texas, approved April 11, 1907, is unconstitutional, null and void, in so far as it attempts to create a lien upon appellant's property for the alleged violation of the anti-trust laws of said State, in that the lien is not created by the terms of the act, based alone upon the commission of the offense, but is left to be created by the action of the prosecuting officer in filing suit to recover the prescribed penalties."
>
> "The statute, therefore, does not prescribe a fixed and uniform rule of law, applicable to all persons alike, but is a delegation to create the lien, or not create it, and discriminate between persons at will; and the appointment of the receiver to take charge of appellant's property under this statute results in depriving appellant of its property without due process of law, and in denying to

it the equal protection of the law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provisions of the Constitution of the United States are here urged and relied upon by appellant as against the validity and application of said act of the Legislature of the State of Texas to the matters involved in this case, and to the act of the court in appointing the said receiver thereunder."

"The act of the Legislature of the State of Texas approved April 11, 1907, under which the court acted in appointing the said receiver, is unconstitutional, null and void in so far as it attempts to create a lien upon this defendant's property for acts committed before the said act took effect, in violation of Section 16, Article 1, of the Constitution of the State of Texas."

"The act of the Legislature of the State of Texas approved April 11, 1907, under which the court acted in appointing the said receiver, is unconstitutional, null and void in that it attempts to create a lien upon this defendant's property for acts committed before said act took effect, in violation of Section 10 of Article 1, of the Constitution of the United States, which denies to any State the right to pass an *ex post facto* law, and the court erred in considering said act as the basis of its orders appointing the said receiver."

"The said act of the Legislature of the State of Texas, approved April 11, 1907, under which the court acted in appointing the said receiver, is unconstitutional, null and void in so far as it authorizes the appointment of a receiver in a suit brought to recover a personal judgment in which no lien upon defendant's property was set up and adjudicated, and the action of the court in appointing the said receiver in this cause was in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it results in depriving defendant of its property without due process of law and in denying to defendant the equal protection of the laws."

"The said act of the Legislature of the State of Texas, approved April 11, 1907, under which the court acted in appointing the said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated in the opinion of the court at the time said appointment was made, was unauthorized in law, and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that the result of said action was and is to deprive the defendant of its property without due process of law and to deny to defendant the equal protection of the laws."

"The court erred in appointing the said receiver without any evidence being introduced before it at the time said appointment was made, to show that defendant did not intend to change its

status and methods of doing business so as to conform to the laws of the State of Texas, and without evidence affirmatively showing that defendant could not make use of its property and carry on its business in accordance with law, and in holding that the court was authorized to so appoint a receiver for defendant's property in the State of Texas and deprive defendant of the instrumentalities by which it had been convicted of violating the laws of said State, based upon its past conduct and the said judgment of conviction rendered against it on June 1, 1907."

"Wherefore, defendant says that the said action of the court was unauthorized and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and has the effect of depriving defendant of its property without due process of law and in denying to it the equal protection of the laws."

"The act of the Legislature of the State of Texas, approved April 11, 1907, being Chapter 87 of the General Laws of the State of Texas, passed by the Thirtieth Legislature at its regular session, in so far as it authorizes the appointment of a receiver of appellant's property in this suit or prosecution instituted against appellant prior to the passage of said act, and for offenses alleged to have been committed prior to its passage, is unconstitutional, null and void, in that it violates the tenth section of Article 1 of the Constitution of the United States, which provides that no State shall pass a bill of attainder or an *ex post facto* law."

Upon a hearing of the cause, the Court of Civil Appeals rendered an opinion affirming the judgment of the district court in appointing a receiver in the following language:

"Fisher, C. J.—This is an appeal by the appellant from an order entered by the trial court appointing a receiver for the properties of the appellant company situated within the State of Texas. The history of the proceeding and the subject matter of controversy and the result reached by the trial court is fully explained and set out in the opinion of this court handed down in this case on June 28, 1907. There is also set out in that opinion the act of the Legislature of April 11, 1907, which we there construed and held to authorize the course pursued by the trial court, which is objected to in the appeal we are now considering. It is unnecessary for us to recapitulate what was stated in the opinion referred to. We there, in effect, held that the act of the Legislature referred to was constitutional, which ruling, after further consideration, we adhere to. The act in question clearly authorized the procedure pursued by the trial court, and the spirit, meaning, and purpose of the act authorized the court, upon dissolution of the permit to do business within this State of the appellant's company at the instance of the suit by the State, to appoint a receiver for its property within its jurisdiction. The reason for this conclusion we undertook to state in the opinion referred to, which agrees with the conclusion of the trial judge,

as stated in the bill of exception which is a part of the record in this case.

"Independent of the power conferred by the act of the Legislature reviewed, we are of the opinion that the court had the authority to appoint a receiver by virtue of Subdivision 3 of Article 1465, Sayles' Civil Statutes, 1897. That subdivision is to the effect that a receiver may be appointed where a corporation is dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights. The corporate right of the appellant company to do business within this State was by virtue of a permit that had been granted to it by the State, and, when an action is brought by the State to cancel and dissolve that permit, it is a proceeding which in our opinion comes within, if not the exact letter, the spirit and meaning of that part of the subdivision of the statute which relates to the forfeiture of the corporate rights of the corporation.

"It is contended by the appellant that in the appointment of the receiver the trial court proceeded without pleading and evidence. The record and proceedings brought to this court by the appellant for our review contains no statement of facts, but there is a bill of exception which was approved by the court, in which it is stated that the court, in passing upon the question of the appointment of the receiver, took judicial notice of the facts exhibited in the main case upon which the receivership is predicated, and of the judgment and decree rendered in that case, wherein it appears from the record in this case the judgment against the appellant corporation was for a large sum, and also for forfeiting its permit to carry on and conduct its business within this State. That branch of the case in which the receiver was appointed is merely an arm of the main case, and is incidental to that proceeding. Both of the statutes quoted and mentioned authorize and empower, if they do not expressly direct, the trial court to appoint a receiver when the State obtains its judgment canceling the permit. And there is another provision of the Act of 1907 which authorized a receiver to be appointed when the interests of the State might require it to be done. In view of these statutes, it is folly so say that the trial court must lose sight of the main controversy when he undertakes to appoint a receiver, and that before that jurisdiction can be exercised he must again rehear and review the facts that were established in the original case upon which the receivership depends; and we are of the opinion that the court was correct in the conclusion that it could take judicial knowledge of the facts established in the main case and the judgment based thereon. The appellant has seen fit to perfect a separate appeal from the order appointing a receiver, and it has no statement of facts in the record showing that the facts which the court took judicial knowledge of did not exist and were not sufficient to authorize the action of the court in making the appointment. The effect of the action of the court was to hold that the facts that he took judicial knowledge of were sufficient to authorize and justify the appointment. The record here shows

that the State has actually recovered a judgment for penalties and for cancellation of the permit to do business. The presumption will be indulged in favor of the action of the trial court, and, no fact appearing in the record brought up here by the appellant which would negative and destroy the force of this presumption, we must hold that we have in this record facts sufficient to justify the judgment below.

"It is contended by the appellant not only that the facts are not sufficient, which contention we have just disposed of, but that the appointment was made by the court without being predicated upon any pleading in the nature of a petition or bill by the State asking for and showing grounds for the appointment of a receiver. The document filed by the State upon which the court acted in making the appointment we construe to be of the nature of a pleading. It is addressed to the court, and states facts under the statutes discussed that would authorize the court to appoint a receiver. A general demurrer was interposed, it seems, to this application, and was overruled. It states grounds and reasons why the court should make the appointment, and some of these reasons stated are of the nature embraced in the statutes upon which a court may act in making the appointment. But, however, if it could be held that the application of the State could not be regarded as a petition or a bill or something in the nature of a pleading requesting the appointment of a receiver, or if an instrument of this character but fatally defective, then the question in the case of forfeiture of the franchise or permit and the power of the court to appoint a receiver is set at rest by the case of San Antonio Gas Co. vs. State, 22 Texas Civ. App., 118, 54 S. W. Rep., 293. It is there, in effect, held that where there is a judgment forfeiting the corporate rights the court can, independent of the request of any one, exercise his judicial discretion as to whether he will or will not appoint a receiver. It is unnecessary to repeat that the court in that opinion says upon the subject. The proposition is forcibly discussed, and the ruling is squarely to the effect that the court can, without request, make the appointment in such a case.

"As said before, we find no constitutional objection to the statutes under which the court acted in making the appointment. What we have said is all that we think necessary to be said in disposing of this appeal."

Thereafter, the Waters-Pierce Oil Company filed a motion for a rehearing of the cause in the Court of Civil Appeals, in which they for the first time undertook to raise a Federal question on the action of the court in appointing a receiver by virtue of Subdivision 3, Article 1465, Sayles' Civil Statutes of Texas, their assignments calling in question the action of the court in this regard, being as follows:

"This court erred in holding that the said district court was authorized to appoint a receiver to take charge of appellant's

property by virtue of Subdivision 3, Article 1465, Sayles' Civil Statutes of Texas, which is to the effect that a receiver may be appointed where a corporation has forfeited its corporate rights, because treating, as the court did, the cancellation of the permit of appellant to do business in the State of Texas as the forfeiture of the corporate rights of appellant, such forfeiture was made by virtue of the judgment of said district court entered June 1, 1907, in the main suit convicting appellant of violating the anti-trust laws of the State of Texas, and was a part of that judgment; and further because the appellant having superseded the execution of said judgment in such manner that no process could be issued or proceedings had in aid of its enforcement from the date of its rendition, the appointment of the receiver to take charge of appellant's property was without authority; and because further to sanction and sustain the appointment of the receiver and to hold that said appointment has any legal effect, results in denying to appellant the benefit and protection which all other litigants enjoy under the laws of the State of Texas by superseding a judgment, and would, therefore, be unconstitutional and in violation of that part of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws."

"This court erred in holding that Subdivision 3, Article 1465 of the Revised Statutes of the State of Texas has any application to the appointment of the receiver involved in this appeal, because the said subdivision of said article has no application to the cancellation of the permit of appellant as a foreign corporation, and it has the right to continue in possession and enjoy the use of its property after the cancellation of its permit, and may conduct a business protected under the Commerce Clause of the Constitution of the United States, and may sell or remove its property at will, and to deny to it the possession and use of its property for these purposes by the appointment of a receiver to take charge of its property, as was done under the orders of the said district court and affirmed by the judgment of this court, results in depriving appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States."

"This court erred in holding that the appointment of the receiver in this proceeding at the suit of the State was authorized by the said act of the Legislature of the State of Texas, approved April 11, 1907, and also under the provisions of Subdivision 3, Article 1465 of the Revised Statutes, independent of the rights of the State as a creditor having a legal interest in appellant's property, and since the judgment of the State against appellant was secured by the supersedeas bond given by appellant upon said judgment, as required by law, the State had no such interest in appellant's property as to authorize the appointment of a receiver, and both of said statutes, when construed as authorizing the appointment of a receiver for appellant's property, are unconstitu-

tional, and this action of the court based thereon results in depriving appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States."

"This court erred in its findings and conclusions of law in holding that the district court was authorized at the hearing of the application for the appointment of a receiver in this proceeding, to consider the evidence which was submitted in the main cause, and that the appointment of the receiver herein should be affirmed, based upon the presumption that sufficient evidence was introduced at the hearing of the main cause to show that the interests of the State of Texas required such appointment. This holding on the part of the court was erroneous because if the trial court could take judicial notice of what occurred in the main cause, this court is also required to take like notice thereof, and this can only be done by considering the appointment of the receiver in connection with the appeal in the main cause now pending before this court. This holding is also erroneous because the application upon which the appointment was made did not set out any facts showing that the State had any interest requiring the appointment of the receiver beyond the collection of its judgment, and the act of this court in sustaining the appointment based upon the presumption that something may have been shown at the hearing of the main case, although it was not set out in the application, results in depriving appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States."

This motion was overruled without any written opinion.

After the overruling of the motion for rehearing in the Court of Civil Appeals, an application was made for a writ of error to the Supreme Court of the State of Texas, and this application was denied without any written opinion. The Waters-Pierce Oil Company thereupon presented to one of the Justices of this court a petition for writ of error to the Court of Civil Appeals, which was granted, and this cause is here for submission upon the above set out assignments of error.

## Argument.

The question is, in view of what is in controversy in this cause: Is there a substantial Federal question involved in this proceeding? The court will bear in mind that the purposes sought to be accomplished by the receivership were several:

1. To preserve the property of the Waters-Pierce Oil Company, so that the State could have something out of which to make its claim when the litigation was finally terminated.

2. To enforce the judgment of ouster that had been rendered.

3. To preserve the property for the benefit of all interested parties, pending the final disposition of the cause.

As will be noted from the opinion of the Court of Civil Appeals affirming the order appointing a receiver, it is said that, independent of any powers conferred on the trial court by the act of the Legislature of the State of Texas, approved April 11, 1907, the trial court had authority to appoint a receiver by virtue of Subdivision 3 of Article 1465 of the Revised Civil Statutes of Texas, which is as follows:

"Receivers may be appointed by any judge of a court of competent jurisdiction in this State in the following cases: * * *

"3. In cases where a corporation has ben dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights."

This act was passed in 1887, thirteen years before the Waters-Pierce Oil Company applied for a permit to do business in Texas, its permit having been granted on May 31, 1900.

The court by its order appointing a receiver did not *take* the property of the Waters-Pierce Oil Company. It simply ordered it seized or sequestered in the interest of all parties concerned, and give instructions for its proper management and preservation, pending the final disposition of the whole matter. There was no divestiture of title. Indeed, we can perceive of no case where a receiver is appointed in the ordinary way simply to preserve and hold the property subject to final adjudication as to who is entitled to it, that can ever raise a Federal question, because it is not taking property or depriving any one of property, but it is preserving it to await the future action of the proper tribunals.

As will be noticed in the original assignments of error upon which the case was submitted in the Court of Civil Appeals, no attempt whatever is made to raise a Federal question as to the authority of the court to appoint a receiver by virtue of Subdivision 3 of Article 1465 of the Revised Civil Statutes of Texas, and the attempt to raise such question, we think, comes too late in a motion for a rehearing when it does not appear that the Court of Civil Appeals considered and passed upon said attempted raising of a Federal question. But even if they could be considered, it is apparent that there is no substantial Federal question involved.

But it is insisted in the original assignments of error raised in the Court of Civil Appeals that there was a Federal question involved, in that the acts of the Legislature of April 11, 1907, were in violation of the Constitution of the United States, in that it was an *ex post facto* law and undertook to deprive the Waters-Pierce Oil Company of its property without due process of law and denied it the equal protection of the law, in that said act undertook to give a lien for penalties that had accrued prior to its passage. It is only necessary to say that the question

is not involved in this case, because it was not passed on either in the trial court or in the Court of Civil Appeals, and will arise only when the court comes to pass upon the lien claimed by the State of Texas upon the property of the Waters-Pierce Oil Company. That occasion may never arise, and until the State courts have passed upon the question of the constitutionality of that act, in so far as it attempts to assert such lien, there is no Federal question to be reviewed by this court.

It is not an answer to say, that the judgment or order directing the appointment of a receiver must depend upon the validity of the judgment in the main case. It does not depend upon the validity of the judgment in the main case. If the Waters-Pierce Oil Company had wanted to have the Texas courts and this court review in one proceeding all the questions involving the validity of the judgment and the statutes upon which it was based in the main case, it could have done so by prosecuting one appeal, as has been held by the Supreme Court and the Court of Civil Appeals of the State of Texas. They did not choose to do so, but prosecuted separate appeals, treating the order appointing a receiver as an independent proceeding, separate and distinct from the judgment of ouster and for penalties. This they had a right to do, as stated, and, therefore, nothing can be considered in the record in this case, except what actually appears therein. A sworn petition, whose material allegations were not denied, was presented to the court. This petition showed every ground which authorized the appointment of a receiver under Subdivision 3 of Article 1465 of the Revised Statutes of Texas, namely, (1) insolvency, because it was shown that the debt of the State exceeded its assets, so far as the State of Texas was concerned; (2) imminent danger of insolvency, because of the character of the property of the defendant; and (3) forfeiture of its corporate rights.

It is unnecessary to speculate as to what the judgment of this court will be in the main case, because, if the judgment of the State courts be reversed, it will only be as to penalties, because this court has already held in the case of Waters-Pierce vs. The State of Texas, that even though the anti-trust acts under which a foreign corporation was being prosecuted were unconstitutional and void, yet a judgment of ouster could be sustained and would be sustained, because the State had the authority to arbitrarily cancel a permit granted to a foreign corporation to do business in the State. (See Waters-Pierce Oil Company vs. The State of Texas, 177 U. S., 28.) Now we can, therefore, assume that, irrespective of any questions raised in the main case, the judgment of ouster will stand, it having been affirmed by the highest courts in the State of Texas, and it will, therefore, be necessary and proper for a receiver to wind up the affairs of this corporation, so far as the State of

Texas is concerned, and have its citizens and all the claimants, including the State of Texas, given the right to assert and litigate their claims in the receivership. This would be proper even should the Waters-Pierce Oil Company today abandon its appeal in the main case and pay off that judgment, because it is for the State court that has seized the property in the first instance to pass upon and decide all questions relating to the disposition of the property and the winding up of its affairs, and hear and settle any controversy affecting such property of the Waters-Pierce Oil Company as comes under the custody or control of the State courts, and it would be for that court to decide when the proceedings should be terminated and its receiver discharged. So it is no answer to the contention of the State to say, that it is amply secured by a bond, because this bond only secures this judgment and does not protect or secure any other creditors whose claims might have arisen in the State of Texas and over which the State court could and would assume jurisdiction.

We, therefore, respectfully ask that the writ of error be dismissed.

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Office Supreme Court, U. S.
FILED.
OCT 19 1908
JAMES H. McKENNEY,

# In the Supreme Court of the United States

OCTOBER TERM, 1908

No. 359 AND 360

WATERS-PIERCE OIL COMPANY . PLAINTIFF IN ERROR

AND

STATE OF TEXAS . . . . . DEFENDANT IN ERROR

## BRIEF FOR THE PLAINTIFF IN ERROR

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# In the Supreme Court of the United States

OCTOBER TERM 1908

Nos. 359 and 360

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WATERS-PIERCE OIL COMPANY . . . PLAINTIFF-IN-ERROR

AND

STATE OF TEXAS . . . . . DEFENDANT-IN-ERROR

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## BRIEF FOR THE PLAINTIFF-IN-ERROR

These two causes arise upon two successive appeals in an action (No. 24,551) in the District Court of Travis county in Texas brought by the State of Texas against the Waters-Pierce Oil Co., which was incorporated under the laws of Missouri on the 29th May 1900, for cancellation of its permit to do business in Texas and for penalties on account of acts alleged to have been done by it in violation of the Texas "Anti-Trust Laws" of 1899, c. 146, and 1903, c. 94 (*Record*, No. 359, p. 2).

These two statutes are set out in full in an Appendix at the end of this brief, pp. 213, 220.

Judgment in the action was given against the Waters-Pierce Oil Co. on the 1st June 1907 for penalties in the sum of $1,623,900 and for cancellation of its permit to do business in Texas (*Rec.* No. 359, p. 314). The defendant appealed from this judgment to the Court of Civil Appeals and gave a supersedeas bond in the sum of $3,275,000 (*id.* p. 319–322).

In the same action after the original judgment the District Court made an order appointing a receiver of the property of the Waters-Pierce Oil Co. (*Rec.* No. 359, p. 327–329; *Rec.* No. 360, p. 5–8), the judge stating that he

did so in order to deprive the defendant of the instrumentalities by which it would otherwise continue its violations of law which had been established by the judgment (*Rec.* No. 359, p. 341; *Rec.* No. 360, p. 19–20). The Waters-Pierce Oil Co. appealed from this order to the Court of Civil Appeals and gave a further supersedeas bond in the sum of $100,000 (*Rec.* No. 359, p. 327–329, 349; *Rec.* No. 360, p. 6–8, 28).

In the Court of Civil Appeals one transcript of the whole record was filed containing all the proceedings in the action, including both appeals (*Rec.* No. 359, p. 395), and another transcript of only so much of the record as relates especially to the appointment of the receiver (*Rec.* No. 360, p. 36). That court, having refused a motion to consolidate them, advanced the second appeal for hearing upon the latter transcript and affirmed the orders regarding the receiver (*Rec.* No. 360, p. 55–57, 64), and afterwards heard the matters contained in the transcript of the whole record and affirmed the judgment of the lower court (*Rec.* No. 359, p. 1162, 1187).

The Supreme Court refused applications for writs of error (*Rec.* No. 359, p. 1187; *Rec.* No. 360, p. 82), and the writ of error in No. 359 (*Rec.* p. 1213) in this Court was brought upon the judgment of the Court of Civil Appeals upon the transcript of the whole record, and that in No. 360 (*Rec.* p. 108) upon the judgment of the same court upon the transcript of the part relating to the receiver.

Although the two appeals were thus separated by the Court of Civil Appeals, the Supreme Court of the State afterwards held that the appeal from the order appointing the receiver might have been dealt with in the appeal of the principal case and that the separation of the two did not deprive the defendant of the benefit of a review of the order accordingly (opinion in *Rec.* No. 360, p. 75).

As there were thus two separate records in the Court of Civil Appeals in which that court had given separate judgments, it was necessary for the defendant to bring two writs of error in this Court, so that the order appointing the receiver, which was in the nature of execution upon the judgment, might not be put in force while this Court was considering the validity of the judgment upon which it depended. But a motion has been made in this Court to consolidate the two causes so that they may be considered as one cause, as they ought to have been in the Court of Civil Appeals.

The claim of the State is set out in a petition originally filed in the District Court on the 22nd September 1906 (*Rec.* No. 359, p. 1), and amended on the 29th April 1907 (p. 2), which describes the defendant (p. 2) as "the Waters-Pierce Oil Company, acting as and purporting to be a corporation, and claiming, acting and purporting to be incorporated under and by virtue of a charter granted and issued by the State of Missouri on the 29th day of May A. D. 1900, and doing business in Texas and claiming to have authority to do business in Texas by virtue of a permit issued by the Secretary of State of the State of Texas on the 31st day of May A. D. 1900." The petition alleges,

> That about January 1st 1870 J. D. Rockefeller, J. D. Archbold, H. H. Rogers, W. Rockefeller, H. M. Flagler, and a number of other persons (the names of some of whom are mentioned at p. 3), conceived the scheme of monopolising and controlling the business of refining, transporting, and selling petroleum and its products throughout the United States, including Texas, and to that end they entered into a conspiracy and a series of conspiracies among themselves and by and with other individuals and corporations, *including the defendant* corporation, from that time up to the date of filing the amended petition (*id.* p. 2);
>
> That to that end about May 7th 1878 those parties and W. H.

Waters and H. C. Pierce and the Chess-Carley Co. and the Standard Oil Co. (of Ohio) entered into a further conspiracy as afterwards set out (*id.* p. 2–3);

That on May 7th 1878 W. H. Waters and H. C. Pierce were engaged in the business of refining and selling petroleum and its products in Missouri and Texas and elsewhere and the Chess-Carley Co. and the Standard Oil Co. (of Ohio), the last-named being controlled by the conspirators first-named, were engaged in the sale of the same in Missouri and Texas and elsewhere (*id.* p. 4), and on that day they entered into a conspiracy to control and monopolise the oil business in that section, including Texas, and to control the price of oil and eliminate competition there, and for that purpose formed a corporation by the name of the Waters-Pierce Oil Co. under the laws of Missouri, its charter being issued on May 7th 1878, and the capital being $100,000 divided into 1000 shares of $100 each, of which 400 shares were issued to W. H. Waters and H. C. Pierce, 400 shares to the Chess-Carley Co. and 200 shares to the Standard Oil Co. (*id.* p. 5);

"That the company then organised *is in fact the same company* doing business under a reputed reorganisation with a charter dated May 29th 1900; that *allegations* of facts occurring *prior to* May 29, 1900, are with reference to said company under its original charter, and occurring *since* then with reference to the company as acting under the charter of that date; and the company as reorganised *adopted* all the acts, *carried out* and is carrying out all the contracts, schemes and conspiracies of the company as originally organised, and in every way *has taken the place* of the company as originally organised" (*id.* p. 5);

[*Note.*—In accordance with this interpretation clause, the allegations of the petition must not be taken as referring to *the defendant* unless the matters alleged occurred on or after the 29th May 1900, when the defendant first came into existence. As to all other matters the allegations relate to the *former company* of the same name, which will be designated in this brief as the *old* Waters-Pierce Co. or by a similar expression.]

That prior to this date the conspirators had organised the Standard Oil Co. (of Ohio) and secured control of a large num-

ber of corporations and firms and apportioned the territory of the United States to such corporations as they saw fit for the transaction of the oil business (*id.* p. 5);

That in pursuance of the plan and conspiracy, when the [old] Waters-Pierce Oil Co. was formed, it was agreed and understood (and the agreement has been *acquiesced in and acted upon* by the defendant since its organisation) that the former company was to confine its business to the states of Texas, Arkansas, the territory of Oklahoma and Indian territory and parts of Missouri and Louisiana, and Mexico, and was not to do business in other parts of the United States or elsewhere, and that the Standard Oil Co. (of Ohio) or any of its dependent companies or other companies set forth in the trust agreement of 1882 should not sell any oil or products of petroleum or do any business in products of oil in this territory of the [old] Waters-Pierce Co. (*id.* p. 6);

That as a part of the agreement and as a consideration therefor the [old] Waters-Pierce Co. agreed to purchase all its supplies from the Standard Oil Co. and companies controlled by it, which agreement was *enforced* and has always been *observed* by the defendant since its incorporation (*id.* p. 6);

That in pursuance of the conspiracy certain *trust agreements* were entered into by certain persons, firms, and corporations, including the [old] Waters-Pierce Co., on or about the 2nd and 4th January 1882. By the former (*id.* p. 7, A), which was expressed to be intended to embrace (1) all the members of certain corporations and limited partnerships and of such others as might join, (2) certain individuals, and (3) a portion of the members of specified corporations and limited partnerships, among which was the [old] Waters-Pierce Co., it was agreed that a corporation should be formed in each of the states of Ohio, New York, Pennsylvania, and New Jersey, and also, when it seemed advisable to the trustees, in other states, to be known as the Standard Oil Co. of that state, but any existing charter might be used for the purpose (*id.* p. 8–9), that all the property in each state of the corporations and limited partnerships mentioned in class 1 and of the individuals in class 2 should be transferred to the Standard Oil Co. of that state, for which shares of that company equal at their par value to the appraised

value of the property transferred were to be issued to trustees and trust certificates were to be issued by the trustees to the persons entitled thereto, and the persons in class 3 should transfer all their shares in the corporations or limited partnerships to the trustees and receive for them the value in trust certificates at par (*id.* p. 9–10), and it was made the duty of the trustees to receive all the interest and dividends and to distribute the money received by paying dividends as they judged proper (*id.* p. 13). By the other agreement (*id.* p. 16, B) it was provided that the trustees might decide what companies should convey their property as provided in the previous agreement and when they should do so, and in the meanwhile each company should remain in existence and retain its property and business, and the trustees should hold the stocks thereof as provided in the previous agreement;

That the *defendant* [meaning the *old* Waters-Pierce Co.] *so entered into and became a party* to the conspiracy and observed and performed the same up to the present time, and that the stock held by the Chess-Carley Co. and the Standard Oil Co. was transferred to the trustees under the agreements (*id.* p. 18);

[*Note.*—It was agreed at the commencement of the trial (*id.* p. 399) that the old Waters-Pierce Co. did not sign either of these agreements, and that H. C. Pierce, who then owned 40 per cent. of the stock, did not sign either of them or deposit any part of his stock, and that H. A. Hutchins and W. P. Thompson, who owned 40 per cent., and the Chess-Carley Co., who owned 20 per cent. of the stock, deposited their shares under the agreement, and that the Standard Oil Trustees from that time until 1892 held 60 per cent. of the stock.]

That on the 13th June 1882 the [old] Waters-Pierce Co. increased its capital from $100,000 to $400,000, and the new 3000 shares were issued as to 600 shares to the Chess-Carley Co., 1200 shares to W. H. Waters, and 1200 shares to the Standard Oil Trustees, who from the time of the agreements chose such directors of the company as they saw fit and controlled its actions and the management of its business (*id.* p. 18–19);

That the [old] Waters-Pierce Co. *never took any corporate action* or made any complaint against its stockholders or officers

entering into the trust agreement or surrendering their stock and receiving the trust certificates, nor against any of the acts recited in the petition, but on the contrary the company in its corporate capacity has, and all its officers and stockholders have *acquiesced* in such transfer and exchange as well as the other acts (*id.* p. 19);

That the Standard Oil Trustees controlled and managed the affairs of the [old] Waters-Pierce Co. without protest or resistance by the company, but on the contrary with its sanction and acquiescence, and the consent of its stockholders up to March 2nd 1892, when the Standard Oil Trust was ousted from Ohio by a judgment and voted to go into voluntary dissolution (*id.* p. 20);

That the Standard Oil Co. of New Jersey (name subsequently changed to Standard Oil Co.) then took over the entire holdings of stock, including that in the [old] Waters-Pierce Co., previously held by the trustees, and thereafter and up to this time has performed the functions of the trustees, and controlled the affairs of the "defendant" with its sanction and acquiescence and the knowledge and consent of its stockholders (*id.* p. 20);

That prior to the 6th July 1889 and continuously thereafter until the 31st May 1900 the [old] Waters-Pierce Co. did business in Texas, having in accordance with law secured a permit for that purpose, and, while so engaged in business, violated the statutes against illegal combinations and thereby incurred a forfeiture of its permit, and a judgment cancelling its permit was rendered by the District Court of Travis county, which was affirmed by the Court of Civil Appeals, and afterwards on March 19th 1900 by this Court (*id.* p. 21) [*Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28];

That for the purpose of maintaining the monopoly and defrauding the State of Texas and fraudulently rendering ineffective the judgments of the courts, the officers of the Standard Oil Co., the [old] Waters-Pierce Co., and H. C. Pierce, and the other conspirators determined to go through the *form of dissolving* the [old] Waters-Pierce Co. and of *creating a new corporation* for the transaction of its business (*id.* p. 21);

That a paper was prepared certifying the dissolution of the [old] Waters-Pierce Co. and filed with the Secretary of State of

Missouri May 29th 1900, "and *another charter* was taken out by the old stockholders, giving the same name, and the purposes, and *being in fact* the same corporation" (*id.* p. 21–22);

[*Note.*—The plaintiff then alleges that the old Waters-Pierce Co. was not dissolved in accordance with the laws of Missouri, and sets out certain statutes, which are alleged to provide the only way whereby a corporation could be dissolved there, and which were not complied with (*id.* p. 22–23). But *the answer* alleges that by another statute a corporation could be dissolved by unanimous consent of its stockholders and that the old Waters-Pierce Co. was dissolved accordingly on the 28th May 1900 (*id.* p. 93–95), and that the plaintiff was precluded from questioning the dissolution by a judgment dated the 5th November 1900 in an action by the plaintiff against the old Waters-Pierce Co. by which it was held that that company had been legally dissolved (*id.* p. 85; copy of judgment at p. 95). No *evidence* was adduced by the State in support of its allegations that the *old* Waters-Pierce Co. was not properly dissolved.]

That the stock of the [old] Waters-Pierce Co. at the time of the dissolution was held, as to 1250 shares by H. C. Pierce, as to 2750 shares by the Standard Oil Co. of New Jersey (*id.* p. 23);

That in the charter issued May 29th 1900 the five directors were the same as in the old company with one exception, and that "of the new stock, as of the old, H. C. Pierce was to own 1250 shares and the Standard Oil Co. of New Jersey was to own 2750 shares, all of which was effected" (*id.* p. 23–24);

That for the nominal capital under the new charter the cheque of H. C. Pierce was given for $400,000; that the company at the time of the dissolution had in cash more than $400,000 which was nominally paid to the stockholders as a dividend and afterwards returned to the new company for the discharge of the $400,000 capital; that "H. C. Pierce was reimbursed by the Standard Oil Co. for the entire amount of money *advanced* by" him in his cheque [*i. e.* for the 2750 shares for the Standard Oil Co., see the evidence, *id.* p. 489, 493]; that the cheque was given by H. C. Pierce "to deceive the public and cover up the real transaction and fraud perpetrated upon the State of Texas" (*id.* p. 24);

That, in pursuance of a previous understanding that "the 2750 shares theretofore owned by the Standard Oil Co." should be transferred to it immediately after the reorganisation, the 2750 shares of the alleged new incorporation "were endorsed in blank by said H. C. Pierce and placed under the control of the Standard Oil Co.," but they remained on the books of the company in the name of H. C. Pierce until June 1904, except two shares which were held by two representatives of the Standard Oil Co. in the directorate; and from May 29th 1900 to June 1904, while the stock so stood in his name, H. C. Pierce, in order to deceive the public and secrete the true ownership of the 2750 shares, collected the dividends both on his own 1250 shares and the 2748 shares standing in his name and owned by the Standard Oil Co. and transmitted to the Standard Oil Co. the dividends belonging to it; and all this was done "with the knowledge and sanction of the defendant" (*id.* p. 24–25);

That in June 1904 the 2748 shares were transferred on the books of the defendant into the name of M. M. Van Beuren, who has since held them for the benefit of the Standard Oil Co., and that all the aforesaid transactions were effected with the knowledge and sanction of the defendant (*id.* p. 25);

That the conduct of the business "was in no sense changed by or after the nominal reorganisation," the same office, books, and equipment were kept, the employees were the same, the same property, methods, and appliances were used, the same accounts were kept, the same reports were made to the Standard Oil Co. and the same instructions were received from it and the same control exercised as before, and "the old contract and understanding and agreement *about the division of territory* was maintained and respected and enforced" (*id.* p. 25);

That contemporaneously with this reputed reorganisation H. C. Pierce filed an affidavit with the secretary of state of Texas that the Waters-Pierce Oil Co. incorporated under the laws of Missouri on the 29th May 1900 had not entered into any such combination or conspiracy as therein mentioned [the affidavit fills more than a page of the record and is there set out at p. 26–27], and the secretary of state granted the permit dated May 31st 1900, and all the representations made by H. C.

Pierce in the affidavit were false and fraudulent (*id.* p. 26–28, VI);

[*Note.*—The defendant excepted to these allegations regarding the affidavit on the ground that they were immaterial (*id.* p. 46, 47, 71, 75, exc. 4, 5, 67, 81), and the exceptions, among others, were overruled (*id.* p. 97), but at the trial the affidavit was excluded (*id.* p. 518).]

That by the machinery before described "the conspirators herein named" have taken over and acquired a large number of companies and businesses [some of which are named] for the purpose of destroying competition, and especially competition with the Waters-Pierce Oil Co. [there is nothing to indicate whether the *old* or the *new* company is intended], which was a party to the acquisition and arrangement (*id.* p. 28, VII);

That an organisation is maintained at 26 Broadway, New York (*id.* p. 28, VIII), constituting a committee, of which H. M. Tilford was a member (*id.* p. 31), who have brought under their control a large number of corporations, including the defendant, engaged in buying and selling oil and other products of petroleum, who but for this control would be competing companies in Texas, and by this control all competition between them, especially in Texas, is destroyed, and certain sections of the United States are assigned to them for business, and the Waters-Pierce Oil Co. is permitted to do business in Texas, and with its consent and upon its demand all other companies under this control are excluded from Texas, and by reason of the control these companies, including the defendant, are required to secure the oil used and sold by them from such refineries and at such prices as are determined by the organisation, whereby a monopoly is accomplished and the price is affected and increased (*id.* p. 29);

That since the reputed reorganisation of the Waters-Pierce Oil Co. of May 29th 1900, that company has continuously violated the laws of Texas in these particulars: [there is no particular (1) in the petition] (2) the Standard Oil Co., through the several corporations it has acquired, controls substantially all the oil business of the United States, including Texas, which are parcelled out at its pleasure to the several corporations under

its control and all competition between them is destroyed; (3) the Standard Oil Co. has exercised control of the Waters-Pierce Oil Co. at all times, except when prudential or political reasons rendered it advisable for H. C. Pierce to control, and this was done with the sanction of the defendant; (4) in carrying out the unlawful agreements H. C. Pierce and the managers of the Standard Oil Co. have frequently come in conflict, but in all things relating to the monopolisation of the oil business and destroying competition, all have acted in harmony, and H. C. Pierce has never taken any step to protect the defendant from the control of the other company, but acquiesced in the acquisition of that control; (5) the division of territory previously mentioned has been insisted on by the defendant and acquiesced in by the Standard Oil Co. and the price of oil has thereby been maintained; (6) the Standard Oil Co. placed on the pay-roll of the defendant R. H. McNall, as commercial agent, and named his place of business as 75 New Street, which is the back door of 26 Broadway, and he had been and continued to be a clerk under control of H. M. Tilford, one of the organisation there, and he received there the reports required of the defendant by the Standard Oil Co.and signed and forwarded the letters of instructions to the defendant prepared by the officers of the Standard Oil Co., and this was done to render more difficult the discovery of the falsity of the affidavit of H. C. Pierce and to hide the unlawful character of the business; (7) the Standard Oil Co. has continuously since May 31st 1900 with the acquiescence of the defendant sent auditors to the officers of the defendant and checked up its books and accounts and made reports of the details of its business to the Standard Oil Co.; (8) by the control of the 2750 shares in the Waters-Pierce Oil Co. fraudulently and fictitiously held in the name of H. C. Pierce and M. M. Van Beuren, the Standard Oil Co. has controlled the defendant with its acquiescence; (9) since May 28th 1900, as before, the agreement theretofore entered into by the old Waters-Pierce Co., that it should not buy oil or other products of petroleum except from the Standard Oil Co. or corporations designated by it, has been *carried out and acted upon* by those companies in Texas (*id.* p. 30–32);

That the Standard Oil Co. owns and controls the Corsicana

Refinery and the Security Oil Co., which are refiners in Texas of crude petroleum, and under the terms of the agreement they have not sold their products to any company operating in that state other than the defendant (*id.* p. 32);

That under the terms of the agreement the price at which the defendant buys oil is fixed by the Standard Oil Co. (*id.* p. 32–33);

That the defendant since May 31st 1900 has *observed* an agreement or understanding with the Standard Oil Co. that it would not sell any oil to ships in any port of Texas on its own account (*id.* p. 33);

That the defendant continuously since May 31st 1900, for the purpose of securing a monopoly in Texas, has maintained at a number of points concerns in apparent opposition to it, has made *exclusive contracts* with merchants preventing them from handling the products of other companies, has cut prices below cost until competition was destroyed and then recouped by extraordinary increase of prices, has given rebates, gratuities, and bribes, has maintained a system of spies, has corrupted the employees of railroads and other concerns (*id.* p. 33);

[*Note.*—No evidence was adduced of any such *exclusive contracts*, and no issue regarding them was submitted to the jury.]

That "the Waters-Pierce Oil Co. hereinbefore referred to" bought out competing businesses in Texas and maintained at a number of points oil selling concerns apparently in opposition to it, in this, to wit (*id.* p. 33); it [the *old* Waters-Pierce Co.] entered into certain exclusive contracts (dated Sept. and Oct. 1894, and set out, *id.* p. 39–43) with the Eagle Refining Co. and A. W. Clem and others, and in 1896 bought out the business of the Texas Oil & Gasoline Co. and Roy Campbell, and entered into contracts with them for conducting their business as a competing concern, and the defendant assumed and carried out the contracts (*id.* p. 33–34);

[*Note.*—The judge at the trial charged the jury that the evidence did not show that the defendant had acted under these contracts and that they should find for the defendant on the issues relating to them (*id.* p. 291–292, XII).]

That the defendant, "in the conduct of *unfair competition*" and "in the further unfair destruction of competition," has given rebates secretly and unfairly and secretly reduced prices at certain points "to less than schedule price" on account of competition, and used "secret and questionable means" in obtaining information concerning the business of competitors, some details of which are set out (*id.* p. 34–36);

That by these means the price of oil has been maintained at an exorbitant figure, competition has been suppressed and business destroyed in the state, and a substantially complete monopoly in petroleum products has been established (*id.* p. 36);

That the defendant was granted a permit to transact business in Texas, as before alleged, and in granting it the State conferred upon the defendant the right to exercise there only such powers as are granted by law to such corporations; that the defendant in pursuance of its business established stations and officers throughout the state, and in abuse of its powers maintained "a war of extermination of all competitors" within the state and has by a system of unfair competition and by devices before set forth destroyed the business of its competitors (*id.* p. 36–37);

And the State claimed judgment for penalties of $5000 a day under the act of 1899 from the 31st May 1900 to the 31st March 1903 and $50 a day under the act of 1903 from the 31st March 1903, to the time of filing the amended petition, and cancellation of the defendant's permit, and an injunction against doing any business other than interstate business within the state (*id.* p. 38–39).

The defendant by its answer (*id.* p. 43) set up several matters in abatement (*id.* p. 43–45), and then alleged various exceptions (*id.* p. 45–77) to the petition, which were overruled (*id.* p. 97), and among them the following, upon which error was assigned in the court below (*id.* p. 353–358) and in this Court,

9. To the parts of the petition claiming penalties and cancellation of the permit under the act of 1903 on account of the *owner-*

*ship* by the Standard Oil Co., of a majority of the stock of the defendant, because the same was so *owned long before the passage of the act*, and the act, if given the effect of making it an offence on the part of the defendant for such holding to continue, was ex post facto in its operation and would deprive the defendant of its property without due process of law contrary to the Constitution of the United States (*id.* p. 49; assnt. errors, par. 4, *id.* p. 1190, *post* p. 58);

10. To the parts claiming penalties and forfeiture of the permit because of the alleged *agreement or understanding* that, in consideration of the defendant purchasing all its supplies from the Standard Oil Co., the defendant should be permitted to sell its products in Texas without competition by that company, because it appeared that the Standard Oil Co. had never entered Texas to do business there, and the agreement could not violate the laws of Texas without giving them an extra-territorial effect and with respect to *interstate commerce* and in violation of the said Constitution (*id.* p. 49–50; assnt. errors, par. 22, *id.* p. 1204, *post* p. 74);

20. If the petition was construed as alleging that the defendant is the same corporation as the old Waters-Pierce Co. (as it did), then to the allegations claiming penalties under the act of 1899 on account of the ownership by the Standard Oil Co. of the stock of the defendant or on account of the alleged agreements, because it appeared that the *ownership* existed and the *agreements* were made *before the passage of the act*, and if the act authorised a recovery of penalties on account of the continuation of them, it would violate the said Constitution in being retroactive, and impairing the obligation of contracts, and denying to the defendant the equal protection of the laws, and taking its property without due process of law (*id.* p. 53; assnt. errors, par. 5, *id.* p. 1190, *post* p. 59);

21. To the allegations claiming penalties under the act of 1903 on account of such *ownership* of stock or the alleged *agreements*, upon the like grounds as are mentioned in 20 (*id.* p. 53–54; assnt. errors, par. 6, *id.* p. 1192, *post* p. 60);

25, which objected that each of the acts of 1899 and 1903 was so *indefinite, vague, and uncertain* that it could not be ascertained from its language what acts fall within the prohibitions

and constitute an offence subjecting the offender to punishment, and therefore to subject the defendant to penalties and forfeiture of its permit would be taking its property without due process of law and denying to it the equal protection of the laws contrary to the said Constitution (*id.* p. 55–56; assnt. errors, par. 7, *id.* p. 1193, *post* p. 61);

52 and 53, which objected as to each of the acts of 1899 and 1903 respectively, that by reason of its being so *indefinitely framed* and of such doubtful construction that it cannot be understood and by reason of its failure to designate an offence by the plain import of its words, the infliction of the penalties prescribed would be the taking of property without due process of law contrary to the said Constitution (*id.* p. 68; assnt. errors, par. 8, *id.* p. 1193, *post* p. 62);

28 and 38, which objected that the recovery of penalties for acts done more than two years before the action was barred by art. 219 of the Code of Criminal Procedure (*id.* p. 56, 60); 30, 31, 40, and 41, which objected that, if that limitation was not available, the defendant would be denied the equal protection of the laws contrary to the said Constitution and the statutes of 1899 and 1903 would therefore be invalid respectively (*id.* p. 57, 60); 32 and 42, which objected that the recovery of penalties for acts done more than two years before the action was barred by art. 3354 of the Texas Revised Statutes (*id.* p. 58, 61); 34 and 44, which objected that if this limitation was not available, the defendant was denied the equal protection of the laws contrary to the said Constitution and the statutes of 1899 and 1903 were therefore invalid respectively (*id.* p. 58, 61); 35 and 37, which objected that the recovery of penalties under the statute of 1899 was done more than four years before the action was barred by art. 3358 of the same Revised Statutes, and, if this limitation was not available, the defendant was denied the equal protection of the laws contrary to the said Constitution (*id.* p. 59) (assnt. errors, par. 21, *id.* p. 1203, *post* p. 74).

The answer then denied all and singular the allegations in the petition and alleged that the defendant was not guilty of any of the acts or wrongdoings therein charged against it (*id.* p. 78).

The answer then proceeded to set up specially among others the following matters, viz., 1–21, the statutes of limitations, making the like claims as have been already mentioned in the exceptions (*id.* p. 78–84);

24. That, if the defendant ever entered into and became a party to any *agreement*, combination, *or understanding* with any other corporation, individuals, and persons or was a party to a union and combination of capital between persons and corporations for any of the purposes denounced as illegal by the act of 1899, or became a party to a combination of capital, and entered into a combination and united its interests with other corporations and persons for any of the purposes denounced as illegal by the act of 1903, all of which was denied, the same were made *outside of the state of Texas* and with reference to commerce between states other than Texas, and, if the same affected commodities in Texas, it has been in respect to commerce therein between the state of Texas and some other state, and the acts of 1899 and 1903 had no application to them because the laws of Texas had no *extra-territorial operation*, and, if those acts had any such application, they would also violate the provisions of the said Constitution regarding interstate commerce (*id.* p. 86–87);

25. That the defendant was a corporation chartered in Missouri and it was not within the constitutional powers of Texas to make it an offence against its laws by reason of *ownership of stock* in that corporation by persons or corporations prohibited by the laws of Texas, and such construction of the said statutes would deprive the defendant of its property without due process of law and deny to it the equal protection of the laws contrary to the said Constitution (*id.* p. 87);

26. That the *ownership* of stock in the defendant corporation was subject to the exclusive jurisdiction of Missouri, and, if the Standard Oil Co. ever became the owner of such stock, the same was acquired under a *contract* valid *in Missouri* where it was made and where the stock had its situs, and it was not within the constitutional powers of Texas to make it an offence for the Standard Oil Co. so to own such stock, and, if either of the acts of 1899 and 1903 was held to give the right to penalties against this defendant on that account, such act would

impair the obligations of a contract, and deprive the defendant of its property without due process of law, and deny to it the equal protection of the laws, contrary to the said Constitution (*id.* p. 88);

27. That, if it is held that the Waters-Pierce Oil Co. chartered May 7th 1878 was not legally dissolved and that this defendant is in legal effect the same corporation and required to answer for the doings of that company, the said former company was also created under the laws of Missouri and the ownership of stock in the company by the Standard Oil Co. as alleged in the petition was based upon the acquisition of such stock by that company upon contracts antedating the acts of 1899 and 1903, which contracts were valid when made and where the stock had its situs, and the said statutes, so far as they can be held as making the defendant liable to penalties for that reason, violate the provisions of the said Constitution referred to in par. 26 and also the provision forbidding any state to pass *ex post facto* laws (*id.* p. 88);

28. That the act of 1903, if applicable to any holding of such stock by the Standard Oil Co. on March 31st 1903, or continued after that date, was unconstitutional, because, if such stock was so held, it was under contracts made prior thereto which were valid when made, and to attempt to hold the defendant liable to penalties on account of such holding would deprive the defendant of its property without due process of law, and deny to it the equal protection of the laws, and would impair the obligations of the contract under which the stock was acquired and held, and would render the defendant liable because of something occurring prior to the passage of the act, contrary to the said Constitution (*id.* p. 89);

29. That the act of 1899 was unconstitutional, because of its terms and in the construction of its language as applied to the facts alleged in the petition it was so vague, indefinite, and uncertain of meaning that it was impossible for the defendant in advance of its construction and application to any state of facts by the verdict of a jury and the ruling of the court, to understand its meaning and legal effect, or to know what was lawful and permissible and what was unlawful, and that the same would, if the defendant was convicted, deprive the defen-

dant of its property without due process of law and deny to it the equal protection of the laws contrary to the said Constitution (*id.* p. 89);

32. That the act of 1903 was unconstitutional for the like reasons (*id.* p. 90–91);

35. That the enforcement of the acts of 1899 and 1903 respectively against the defendant by making the penalty for the violation thereof cumulative with a separate penalty for every violation on every day would be confiscatory and would result in the infliction of unusual and excessive punishment for the violation of statutes of doubtful meaning, the validity, import, and scope of which could not be ascertained by the defendant without being subjected to the practical confiscation of its property while the meaning and scope was being judicially ascertained, and that to subject the defendant to penalties as claimed would result in the infliction upon it of unusual and excessive fines and penalties contrary to the Texas constitution, art. 1, s. 13, and deprive it of its property without due process of law and deny to it the equal protection of the laws contrary to the Constitution of the United States (*id.* p. 92);

36. That the State of Texas on the 31st May 1900 granted the defendant a permit to do business in that State for ten years from that date in consideration of $180 then paid, being the fees and franchise tax chargeable and then payable therefor, the only condition attached thereto being that the defendant should annually pay the annual franchise tax, which it has annually paid at the proper time, and that the State of Texas thereby entered into a valid contract with the defendant entitling the defendant to conduct its business within the State for the ten years, and that the act of 1903 was passed after the making of that contract and was unconstitutional in all respects wherein it undertook to restrict the ownership of stock in the defendant and to make the existence and performance of contracts theretofore legal a violation of its terms, and that it had no force as affording grounds for cancellation of the said contract, and that to allow the State to cancel the said permit upon any of the grounds alleged in the petition and arising under the act of 1903 would violate *the obligation of the said contract* contrary to the Constitution of the United States (*id.* p. 92–93).

A motion was made on behalf of the defendant for a change of venue, for the reason that there existed in Travis county where the case was pending, so great a prejudice against the defendant that it could not obtain a fair and impartial trial there (*id.* p. 97). This motion was refused (*id.* p. 103).

The evidence upon the hearing of this application is set out in a bill of exceptions (*id.* p. 113–283), and shows the state of feeling existing in Travis county about the case, which was made part of a violent political contest there regarding the election of a U. S. senator, and was the subject of vehement discussion in the newspapers. Letters written by the Attorney-General of the State about the case and its connection with the political contest and published in the newspapers in the autumn preceding the trial are set out in the bill of exceptions (*id.* p. 219–226, 232–236), with the newspaper comments upon them.

At the trial of the action, which began on the 21st May 1907 (*id.* p. 396), the plaintiff adduced evidence, which was admitted against the objection of the defendant, of the following matters, viz.,

The incorporation of the Standard Oil Co. under the laws of Ohio, January 10th 1870 and the subsequent increase of its capital (*id.* p. 396, 998) [No evidence was adduced of the *conspiracy* alleged (*id.* p. 2) to have been entered into about January 1st 1870];

The incorporation of the old Waters-Pierce Oil Co., May 1st 1878, and the increase of its capital to $400,000 on June 13th 1882 (*id.* p. 397–398, 1005–1009);

The Standard Oil Trust Agreement of January 2nd 1882, and the supplemental agreement of January 4th 1882 (*id.* p. 398–400, 7–16), with an agreement of counsel (*id.* p. 399) that the old Waters-Pierce Co. did not sign either of them, and that H. C. Pierce, who then owned 40 per cent. of the stock, did not sign

either of them or deposit any part of his stock under them, and that H. A. Hutchins and W. P. Thompson, who owned 40 per cent., and the Chess-Carley Co., who owned 20 per cent. of the stock, deposited their shares under the agreement, and that from the organisation of the trust the Standard Oil Trustees held substantially 60 per cent. of the stock under the agreements until 1892;

The incorporation of the Standard Oil Co. of New Jersey, August 1st 1882, and the increase of its capital and the change in its name by omitting therefrom the words "of New Jersey," and amendment of the objects of the company in 1892 and 1899 (*id.* p. 400–402, 1011);

The deposition of *Ida M. Butts*, of Marietta, Ohio (*id.* p. 403–424), who testified to the proceedings by the Attorney-General of Ohio in the state courts to force the Standard Oil Co. of that state out of the Standard Oil Trust or cause it to cease doing business in the state, in which the decision was in favor of the State (*id.* p. 405), and the subsequent transactions by which the property held by the trustees was transferred to the Standard Oil Co. (of N. J.) (*id.* p. 422);

The incorporation of the following companies, viz.,

Standard Oil Co. (of Kentucky) November 1, 1886 (*id.* p. 426, 1031),

Standard Oil Co. (of Pennsylvania) August 15, 1868 (*id.* p. 427, 1042),

Standard Oil Co. (of Indiana) June 11, 1889 (*id.* 427, 1045–1046),

Standard Oil Co. (of Iowa) June 10, 1885 (*id.* p. 428, 1037),

Standard Oil Co. (of N. Y.) August 10, 1882 (*id.* p. 428, 1057),

Atlantic Refining Co. (of Pennsylvania) April 29, 1870 (*id.* p. 429, 1078).

An agreement of the parties, subject to all legal objections, (1) that the Standard Oil Co. of N. J. was a corporation organised under the laws of New Jersey, and since its organisation in 1882 had not conducted any business in Texas or had a permit to do business there; (2) that this Standard Oil Co. owned in the *old* Waters-Pierce Co. 2747 out of the total of 4000 shares, and since about the 24th September 1900 has owned 2748 out

of the total of 4000 shares of the *new* Waters-Pierce Oil Co.; (3–8) that the same Standard Oil Co. owns a majority of the shares in the Standard Oil Co. of *Indiana*, the Standard Oil Co. of *New York*, the Standard Oil Co. of *Kentucky*, the Continental Oil Co. (of Iowa), the Republic Oil Co. (of N. Y.) and that these companies had never transacted any business in Texas or had a permit to do so (*id.* p. 424–426, Stipulation No. 1);

(The defendant did not object to the admission of the 1st of the matters in this agreement (*id.* p. 424);

[It was not suggested that H. C. Pierce, or the defendant, was concerned in the formation of any of these companies or had any interest in them.]

The judgment of the District Court of the 15th June 1897 revoking the permit of the old Waters-Pierce Co. to do business in Texas (*id.* p. 439, 1083);

The mandate of this Court, reciting that the said judgment was affirmed by the Court of Civil Appeals on the 9th March, 1898, and that the judgment of that court was affirmed by this Court on the 19th March 1900 (*id.* p. 439, 1088) [*Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28];

The affidavit of the dissolution of the old Waters-Pierce Co. on the 28th May 1900, a copy of which was filed with the Secretary of State of Texas (*id.* p. 439, 1083);

Also, without any objection on the part of the defendant,

The articles of association and certificate of incorporation on the 29th May 1900 of the defendant the Waters-Pierce Oil Co. (*id.* p. 439, 1085–1087);

The permit to do business in Texas issued to the present Waters-Pierce Oil Co. on the 31st May 1900 (*id.* p. 439, 1088);

The plaintiff also put in evidence portions of a deposition of *H. C. Pierce* (*id.* p. 440–511), taken at St. Louis on the 19th March 1906 and subsequent days down to the 10th September 1906 in a case of the State of Missouri against the Standard Oil Co., the Waters-Pierce Oil Co., and the Republic Oil Co. (which it was agreed might be used as if taken in this case), and in which he testified,

That the number of shares in the present Waters-Pierce Oil

Co. standing in the name of M. M. Van Beuren, and being the property of the Standard Oil Co., was substantially 2746, and H. C. Pierce himself owned 1250 (*id.* p. 441);

In 1877–1878 he organised under the laws of Missouri the first Waters-Pierce Oil Co., which succeeded to the business of Waters, Pierce, & Co. The original capital was $100,000, of which Waters, Pierce, & Co. subscribed 40 per cent., H. A. Hutchins and W. P. Thompson 40 per cent., and Chess, Carley, & Co. 20 per cent. Some time afterwards Hutchins and Thompson and Chess, Carley, & Co. transferred their 40 and 20 per cent. to the Standard Oil Trust, and H. C. Pierce purchased the interest of W. H. Waters (in 1890, *id.* p. 446), and when on May 29th, 1900, the first Waters-Pierce Oil Co. was liquidated, the assets were distributed in these proportions (p. 441, 497);

When the Standard Oil Trust was organised, he was urged to place the company in the trust, but refused to do so, and, even after the other 40 and 20 per cent. had been placed in the trust, he still refused to place his stock in the trust (*id.* p. 497);

When the licence of the first Waters-Pierce Oil Co. to do business in Texas was revoked, he was told that the people of that state would not tolerate the methods of the Standard Oil Co. and that no corporation controlled by that company would be permitted to carry on business there. He explained this to the executive committee of that company and they agreed that he should organise a new company, the stock of which he should hold, and that he should manage and control the company absolutely free from any dictation or direction of the Standard Oil Co. (*id.* p. 441–442, 507–508). This was done, and in order that the company should transact its business in strict accordance with the laws of every state, he placed the attorney of the company on the executive committee (and he continued to be one of the directors till 1904, *id.* p. 447) with instructions to examine all reports and transactions so that no law should be violated (p. 498);

Up to the spring of 1904 the Standard Oil Co. made no attempt to interfere with his control, but at that time they transferred the stock that had stood in his name to M. M. Van Beuren and began in other ways to assume a control over the affairs and operations of the company. He protested against this conduct

as a violation of the agreement with him and as contrary to the representations he had made to the people of Texas. After frequent discussions, the management was again committed to his direction, and his son C. A. Pierce was now president of the company and conducting it as an independent business (*id.* p. 442, 498–499);

In 1878, when he organised the first Waters-Pierce Oil Co., its predecessors Waters, Pierce, & Co. and H. C. Pierce & Co. had already established business in all the territory in which the present Waters-Pierce Oil Co. now operates, and it was agreed between him and the Standard Oil Co. of Ohio (then the only one in existence) that the first Waters-Pierce Oil Co. would confine its operations within the territory in which Waters, Pierce, & Co. and H. C. Pierce & Co. had transacted their business. In pursuance of this understanding certain lines were agreed upon in Illinois (*id.* p. 442);

The line in Missouri commenced just south of Hannibal and ran according to county lines south-west to the western border of Missouri, bordering upon Kansas a short distance south of Fort Scott, and included Arkansas, the Indian territory and Oklahoma, Texas, Louisiana west of the Mississippi, and Mexico. There has been no change in that territory, and the Waters-Pierce Oil Co. confined its operations to building up the trade within it (*id.* p. 443);

The old Waters-Pierce Co. organised in 1878 succeeded the partnership of Waters, Pierce, & Co., which had succeeded the firm of H. C. Pierce & Co. (*id.* p. 443). His business in this territory extended over 37 years (p. 445), going back to 1869 (p. 502), and commencing with W. H. Cobb & Co. (p. 500);

The old Waters-Pierce Co. at the time of its organisation obtained its supplies of refined oils from the Standard Oil Co. and has done so since, and neither the old nor the present company refined any oil or manufactured products of petroleum in the United States, but did manufacture lubricating oils and greases. It established refineries in Mexico and got the crude petroleum for refining from the Standard Oil Co., as crude petroleum was not produced in Mexico (*id.* p. 444, 476–477);

The first refineries from which the old Waters-Pierce Co. received its oil were all at Cleveland, *Ohio*. Afterwards, when

oil was discovered in *West Virginia*, then certain supplies came from Parkersburg, W. Va. Later, when crude oil was discovered in *Ohio* and *Indiana* and a refinery was established at Whiting, at a less distance, a large percentage came from Whiting, Ind. Those three points were the sources from which the Waters-Pierce Oil Co. received its supplies up to the last three or four years. They now come from Kansas, Texas, and other points (p. 476–477).

The present Waters-Pierce Oil Co. in 1900 succeeded to an established business of the old company and has since confined itself to building up the business within the territory formerly occupied by the old company. The gross sales amounted in 1902 to 2,677,362 barrels of 50 gallons each (*id.* p. 445, 506);

During this time there was no source, other than the Standard Oil Co., from which a sufficient quantity of merchandise could be obtained to supply the market demand in that territory (*id.* p. 499, 509). The Waters-Pierce Oil Co. has never owned or been interested in any oil wells or oil-producing property in the United States (p. 499, 504);

The firms which preceded the old Waters-Pierce Co. purchased crude oil and petroleum from parties other than the Standard Oil Co., which did not then have an existence, and refined such crude oils at their refineries in St. Louis and sold the oil where it could. When the firm of W. H. Cobb & Co. was organised in 1869, succeeding J. R. Finlay & Co., it for a time continued the same method, but, when the Standard Oil Co. came into existence, the firm commenced purchasing crude petroleum and its refined products from that company and also continued purchasing from others, and this continued until the organisation of the old Waters-Pierce Co. in 1878. Since 1878 the Waters-Pierce Oil Co. has acted within its United States territory, almost solely as merchandisers of the Standard Oil Co., and in Mexico has purchased crude oil from that company and manufactured and sold it there (*id.* p. 449);

Since 1878 no attempt had been made to sell oil or transact business outside of the territory in which the present Waters-Pierce Oil Co. now operates (*id.* p. 448). He, as manager, did not deem it expedient to do business beyond the territory wherein the company was thoroughly and fully equipped. He did not

deem it expedient, from the standpoint of to-day, to extend to other points in Missouri, because the company was not equipped to do business at Kansas City, and it had not been equipped because the original Waters-Pierce Co. had agreed to confine its operations to the territory in which it and its predecessors have transacted business. That was the initial reason, but the main reason was the one first mentioned. As to the Standard Oil Co. he did not know the reasons of its operations (*id.* p. 450);

The present company succeeded by purchase to the plant of the old company and has confined itself to building up its business in that territory with the plant it so acquired. Since that time there has never been any understanding or discussion with respect to the division of territory (*id.* p. 506);

The present company never had any understanding or agreement with any other company or person for the purpose of fixing or intending to fix or maintain the price of any of the products of petroleum (*id.* p. 500, 507);

His share in the old Waters-Pierce Co. was practically 40 per cent. and the assets were divided upon that basis. On the reorganisation of the company on May 29th 1900, he owned 100 per cent. of the stock, for which he subscribed and paid, and he received the certificates in his name and held them for several months [till September 4th, 1900, *id.* p. 458, 460], when he endorsed in blank and delivered the certificates for 68½ per cent. of the stock (*id.* p. 451, 453). The transfer was made in accordance with an understanding at the time of the organisation of the company (*id.* p. 452) that they should be transferred to the Standard Oil Co. (*id.* p. 460). At the time when he handed over the certificates, he received a cheque for the par value, $274,800 (*id.* p. 489). The stock continued to stand in his name till June or July, 1904, when it was transferred into the name of M. M. Van Beuren (*id.* p. 442, 452–453, 455). Meanwhile the stock continued to stand in the name of H. C. Pierce for the purpose of enabling him absolutely to control the company according to the agreement (*id.* p. 461–462);

After the transfer to Van Beuren in 1904 the Standard Oil Co. began to assume a control by ousting directors H. C. Pierce had elected and sending men there [to St. Louis] to manage the

company and into the territory of the company (*id.* p. 463). Mr. Tinsley came in April, 1904 (p. 483), and openly assumed charge in the fall of 1904, and afterwards made improper changes, against which H. C. Pierce protested in May and June 1905 (p. 485–487), and about this time Mr. Tinsley was removed (p. 483, 485);

The old Waters-Pierce Co. had made reports to the various heads of departments of the Standard Oil Co. of whatever was desired regarding its business, and, after the new company was organised in 1900, the business had increased so much, that R. H. McNall was appointed Commercial Agent of the new company, who was to have his office at 26 Broadway, N. Y., the home of the Standard Oil Co., and through whom communications between the two companies should pass (*id.* p. 466–467). The right of the Standard Oil Co. as the majority stockholder to have such information as it desired was recognised, and H. C. Pierce instructed the heads of departments of the Waters-Pierce Oil Co. to send such information as was asked for (*id.* p. 471). The Standard Oil Co. audited the books as often as it saw fit (*id.* p. 464). Daily cash statements were always sent (p 482);

The dividends of the new company have been from 600 to 700 per cent. (*id.* p. 472). The new company does about 80 or 85 per cent. of the business in the territory where it does business (p. 478); the percentage is less than it was formerly, owing to the discovery of crude oil in Texas, Louisiana, Kansas, and the Indian Territory and Oklahoma (p. 479), which has caused the starting up of a great number of small refineries (p. 479, 510).

He attributed the large percentage of business to the better facilities that the company could furnish to the consumer (*id.* p. 505, 511). He described the manner of equipping it (*id.* p. 501–502). He valued the equipment and plants at about $5,000,000 (*id.* p. 503) and the tangible assets apart from the good-will at about $12,000,000 (*id.* p. 507) and the whole of the assets and good-will from $45,000,000 to $55,000,000 (*id.* p. 506).

He had never owned any interest in the Standard Oil Trust or been a shareholder in the Standard Oil Co. or any oil company other than the Waters-Pierce Oil Co. (*id.* p. 496).

*It was agreed* by counsel (*id.* p. 532) that a letter dated July 7th 1899 and five letters dated from February 8th 1901 to November 10th 1903 were written at the instance of the Standard Oil Co. by their general auditor Wade Hampton to the president or vice-president of the old and present Waters-Pierce Oil Companies respectively for the purpose of getting such information as would be revealed by an audit of the books and accounts of the latter. Each of these letters introduced a person going to St. Louis to audit the books, and each letter, except the first, requested that he be placed on the pay-roll as an employee of the Waters-Pierce Oil Co. (p. 533–536).

*Wade Hampton*, whose deposition was taken and put in evidence by the State (*id.* p. 512, 532), testified that he had been the general auditor of the Standard Oil Co. for over eleven years and his office was at 26 Broadway, N.Y., room 800 (*id.* p. 514), that the books of the present Waters-Pierce Oil Co. had not been audited by him or under his direction (p. 517), but prior to May 29th 1900 the books of the old Waters-Pierce Co. were audited by him or under his direction (p. 518) and the reports of the audit were submitted to him in person (p. 519). After that date the books were not audited under his direction, but by auditors of his employed by the Waters-Pierce Oil Co. direct (p. 520). He sent the persons mentioned in the letters to be employed by the Waters-Pierce Oil Co. to audit their books, and they were to be paid by that company because they were performing work for it (p. 521).

(These answers were offered on the special ground that they were *in conflict* with the admission in the agreement above-mentioned regarding the letters and therefore showed an effort of the witness to conceal the facts when his deposition was taken, and that he was *charged* as "one of the conspirators" (p. 512–513). The use of the testimony for this purpose was objected to by the defendant on the grounds that the witness was not an agent of the defendant, and the general allegation (*id.* p. 3) that he was one of the conspirators did not make the testimony pertinent to such an inquiry (p. 512), and that there was no conflict between the testimony and the admission, and that it was of no importance whether the auditors were

sent by the Standard Oil Co. or the defendant (p. 530–531). The judge overruled the objection and left it to the jury to say whether there was any conflict between the testimony and the agreement.)

[There was *no evidence* of *the conspiracy* charged or of anything that would have made the defendant responsible for any acts of the witness.]

The depositions of the following witnesses for the State were put in evidence, the defendant objecting that the matters testified to were irrelevant, viz.,

*E. M. Wilhoit*, who had lived 3½ years at Springfield, Mo., and before that at Joplin [time not stated], and 4 years at Topeka as agent of the Standard Oil Co. before coming to Joplin, and *prior to* this employment at Topeka was employed by the Consolidated Tank Line Co. at Wichita, Kansas (*id.* p. 430), which was absorbed by the Standard Oil Co. while he was there; while he was at Wichita, orders received from the Indian territory were filled in the name of the Waters-Pierce Co., which did business there and were charged to that company (p. 431). Some orders from the Panhandle country in Texas were filled by him, but he was told that it had been discovered by the Waters-Pierce Co. and he could not make further shipments (p. 432). He had never known them to market oil in the same territory or come in competition in any other place (p. 433).

*C. F. Hatfield*, who had employments with the Waters-Pierce Co. from 1889 to 1904, the first six months in Texas and afterwards at St. Louis, testified that before he was so employed he was private secretary to W. P. Thompson, in Standard Oil Block, 26 Broadway, N. Y., and by handling the correspondence of Mr. Thompson he had a general knowledge regarding the territory of the Waters-Pierce Co. and Mr. Thompson adjusted a dispute by having a map made showing the dividing lines in Missouri (*id.* p. 434–435). While he was in Texas there was a dispute about the exact dividing line in southern Louisiana which was adjusted (p. 436). The Waters-Pierce Co. had a general knowledge of the movements of competitors, and the data were systematically compiled (p. 435–436).

*M. Mazon* (*id.* p. 536), manager for the Consolidated Tank Line Co. at Decatur, Illinois, from 1887 to 1892, when its business was taken over by the Standard Oil Co. (Ky.) and afterwards manager or special agent there of that company till 1902 or 1904, testified that, after 1895 his territory came in contact with that of the Waters-Pierce Co. in Illinois and he was not allowed to sell oil beyond the line in Missouri or Illinois, all orders being referred to the Waters-Pierce Co. (p. 538–539).

*G. J. Steigerwald* (*id.* p. 539), clerk for a firm in the oil business at Cleveland, Ohio, from 1891 to 1901, and treasurer of the Scio Refining Co. about five months, and traffic manager of the Republic Oil Co. at Cleveland from June 1901 to April 1904, testified that the Republic Oil Co. was formed in 1901 and took over the business of the Scio Refining Co. (p. 541–542), which was the principal competitor of the Standard Oil Co. and the Waters-Pierce Oil Co. in the middle west but did not do much business in Texas (p. 542), and after the lapse of a year or more there came an apparent change in the method of doing business, particularly where sales would affect the business of those two companies, and salesmen were not allowed to sell certain grades of oil in towns where the Standard Oil Co. had exclusive tank wagon distribution facilities (p. 543), and several smaller stations in the territory of the Standard Oil Co. and one at Springfield, Mo., in that of the Waters-Pierce Oil Co. were closed (p. 547). The president of the Republic Oil Co. had his office at 75 New Street, N.Y., which was the back or New Street entrance to the Standard Oil Building, 26 Broadway (p. 544).

*A. H. Gardner* (filed Nov. 1906, *id.* p. 548) testified that he was in the oil business and had lived at Kansas City, Mo., 14 years and prior to that time at Denver, Col., where he was "connected with" the Continental Oil Co. which sold oil in Colorado, New Mexico, Utah, Montana, Wyoming, and represented the Standard Oil Co. there, and did not sell in any territory where the Waters-Pierce Oil Co. sold oil (p. 548). At Kansas City, he was connected with the National Oil Co. (p. 550), and was in active competition with the Republic Oil Co. which sought to procure their business "by giving of *rebates*, they to do the dirty work

and the Standard to maintain prices," then the National went to the Standard's outside stations and made a similar reduction, and afterwards the matter would be arranged between them, and prices restored (p. 550–551). He had never come in competition with the Waters-Pierce Oil Co. and the Standard Oil Co. at the same place (p. 551).

*E. P. Pratt* (*id.* p. 551), manager of the Consolidated Tank Line Co. at Des Moines, Iowa, till about 1892 and then at Kansas City, Mo., until November 1896 (p. 551–553), testified that his territory consisted of part of Kansas and Missouri and his company did not do business in the territory of the Waters-Pierce Co. ("It was according to our instructions to confine our business to what was known as our territory") (p. 552). In 1896 his company was succeeded by the Standard Oil Co. of Ky., and afterwards by the Standard Oil Co. of Indiana, of each of which he was manager, and his territory was the same as before (p. 553). The Waters-Pierce Co. did not do any business in it, and if an order was received from a dealer in Waters-Pierce territory, the course was to send the order to the Waters-Pierce Co. at St. Louis or to make the shipment and report it to the head office at Cincinnati (p. 554). His company had a system of obtaining information of shipments received by competitors, by taking numbers of cars, and this information was transmitted to the general offices (p. 555).

[When the objection to the two last depositions was made on the grounds that they related to matters out of Texas and between other companies than the defendant, and to transactions with which the defendant was not connected, the judge asked "Are they the companies alleged to be *conspirators?*" and, on counsel for the plaintiff answering Yes, the objection was immediately overruled (*id.* p. 548, 551).]

*A. V. Jockel* (*id.* p. 556), a bookkeeper of the Standard Oil Co. June to December 1904, then transferred to Waters-Pierce Oil Co. at Oklahoma city till February 1905, testified that he saw in the office of the latter at St. Louis persons who had been connected with the business of the Standard Oil Co. at New York, and that he installed at Oklahoma the Standard Oil report forms

(p. 557). When he was transferred, he was told to forget that he had been with the Standard Oil Co. (p. 558). The Waters-Pierce Oil Co. obtained the oil sold at Oklahoma city from the Standard Oil Co. and Galena Oil Co. (p. 559).

*H. E. Platt* (*id.* p. 559), clerk for Union Tank Line at 26 Broadway, N.Y., in February 1902 or 1903 for four months, then for Standard Oil Co. for two years (p. 560–562), said that the Union Tank Line furnished some cars to the Waters-Pierce Oil Co. and received reports from it showing arrival, loaded or empty, and when shipped, and by what railroads, and, after he was transferred to the Standard Oil Co., he was in Mr. Tilford's office, and he knew R. H. McNall, who had a desk in the same room (p. 560) and received reports from the Waters-Pierce Oil Co. which were taken to the office of the comptroller of the Standard Oil Co. (p. 561). He had seen unsigned letters sent to McNall from various departments at 26 Broadway on stationery of the Waters-Pierce Oil Co. and McNall had signed them and forwarded them to that company (p. 564).

*A. A. Smith*, stenographer in offices of Standard Oil Co. at 26 Broadway, May 1903 to June 1905 (*id.* p. 564–565), testified that reports from the Waters-Pierce Oil Co. were received at the office, and letters to that company were dictated to him and written by him on that company's letter-heads which he got from R. H. McNall, and were sent to McNall to be signed (p. 566–568).

*F. D. Carley* testified that he was in the oil business from 1865 to about 1884 and was connected with the firm and then the corporation of Chess, Carley, & Co. of Louisville, Ky., and sold oil in Texas and discontinued that business and joined in forming the old Waters-Pierce Co. (*id.* p. 569). He owned shares in the old Waters-Pierce Co. which were bought by someone introduced to him in the building of the Standard Oil Co. (p. 571).

*W. N. Davis* was connected with the Interstate Oil Co. till 1897 and did business, among other places, in Missouri, where

he met the Waters-Pierce Co. and the Standard Oil Co. but never both in the same place (*id.* p. 572). Prior to that time he was manager for seven years at Kansas city of the Consolidated Tank Line Co. which to the best of his knowledge was the Standard Oil Co. (p. 573), and he never permitted his men to seek patronage in Waters-Pierce territory; he employed a man to visit railway platforms and take the names of consignees from barrels sent by competitors, and travelling men visited the consignees to secure their business, with instructions to make a cut in price if necessary (p. 574).

*W. A. Morgan* was connected with the Standard Oil Co. from December 1898 to October 1900, first a travelling salesman in Missouri and then local station agent at Sedalia, Mo., and while travelling salesman never came in competition with the Waters-Pierce Co. (*id.* p. 575), and once or twice was reprimanded for going into their territory (p. 576). He had been selling oil for about five years since his connection with the Standard Oil Co. ceased, and had not met any competition from the Waters-Pierce Oil Co. in the Standard Oil Co.'s territory (p. 577–578).

*H. R. Knollenberg* said he was travelling salesman for the Waters-Pierce Co. in Illinois and Missouri from 1893 to 1898 or 1899 (*id.* p. 578), and never met any competition in his territory from the Standard Oil Co., the only information he had as to division of territory was that he was told not to go beyond certain limits (p. 579). He was sometimes assigned to territory of the Standard Oil Co. in Illinois and then made his reports to that company (p. 580–581).

*T. R. Hopkins* testified that he was agent of the Waters-Pierce Oil Co. at places in Missouri 1887 to 1903, and remembered the controversy with the State of Texas, and he received a letter discharging him and another re-employing him, and no change was made in the course of business (*id.* p. 582). He had no competition with the Standard Oil Co., he had once sold outside of his territory and was told by the manager not to do so any more, for, if the Standard Oil Co. found it out, we would

have to make up the difference of price (p. 583). While he was at Pierce city, the price there was 1½ to 3 cents higher than at Carthage, Joplin, Webb city, and Springfield, because there was competition at those places and none in his territory (p. 584). Orders received from Standard Oil Co. territory were sent to the office of the Waters-Pierce Co. who sent them to the Standard Oil Co. (p. 585).

The State also put in evidence the deposition of *R. H. McNall* taken in New York on behalf of the State (*id.* p. 429, 585–646), who testified that he had been in the oil business at 26 Broadway for about 20 years (*id.* p. 585), and was assistant to H. M. Tilford from 1895 to 1900, and was employed from 1900 to 1906 by the Waters-Pierce Oil Co. as its Commercial Agent with a desk in Mr. Tilford's office (p. 586–587), and he explained the details of the business he did in that capacity (p. 589). The Waters-Pierce Oil Co. sometimes furnished oil to ships at ports in Texas at the request of the Standard Oil Co. and charged it and sent the bills to the Standard Oil Co., and in other cases, where the delivery was not previously ordered by the Standard Oil Co., the Waters-Pierce Oil Co. sold the oil to the ships and collected the money from the ship (p. 634, 644–646). He also told what states the Continental Oil Co. and the Standard Oil Co. of Iowa did business in while he was with H. M. Tilford in 1895 to 1900 (p. 429, 586).

The State put in evidence, against the objection of the defendant, the agreement of the 5th October 1894 between the Eagle Refining Co. and A. W. Clem and the *old* Waters-Pierce Co. (*id.* p. 646), set out in the petition (p. 39).

Also the depositions of the following witnesses,

*S. K. Wheeler,* assistant manager of the Waters-Pierce Oil Co. 1903 to 1905, did not know Roy Campbell then (*id.* p. 650), believed he was an employee of the company, but had nothing to do with his employment, and did not know A. W. Clem (p. 651). The prices of oil were affected partly by competition and partly by cost (p. 656). The best oil was called Eupion, the second grade Brilliant (p. 657).

*C. A. Pierce*, president of the Waters-Pierce Oil Co. since June 1905, previously assistant-treasurer from the formation of the company in 1900 (*id.* p. 658, 956). He was also a member of the executive committee while it continued till the fall of 1904, and was one of a sub-committee of three who fixed the selling prices in Texas (p. 659, 957, 961). While Mr. Tinsley was vice-president after the disbanding of the executive committee he did not know how prices were adjusted, and, after his resignation in June 1905 until the formation of the advisory committee, they were adjusted by the vice-president A. M. Finlay, the general manager C. P. Ackert, and himself, and since that time they were considered and voted on by the advisory committee, and determined by himself and the president (p. 957–958).

He knew nothing about the original agreement for division of territory testified to by his father H. C. Pierce or about the practical working of any such agreement, but he knew of course that they sold oil in such territory where they were equipped to handle it and there was other territory where they did not sell it (p. 660). No discussion of the subject as regards the state of Texas while he was a member of the executive committee or since; he described the portions of the United States where the company did business; he knew the Standard Oil Co. had contracts with steamship lines and that the Waters-Pierce Oil Co. furnished supplies to them when requested and charged it to the Standard Oil Co. (p. 661–662, 665, 668). He explained the course of supplying oil on account of the Standard Oil Co. to customers with which that company had contracts (663–664).

He testified that R. P. Tinsley was elected vice-president April 28th 1904 and resigned June 22nd 1905, and he came to St. Louis in April 1904 and left the last of April 1905 (*id.* p. 666). From the organisation of the company in 1900, except while Mr. Tinsley was at St. Louis, H. C. Pierce directed the general policy of the company (*id.* p. 667).

*Andrew M. Finlay*, president of the present Waters-Pierce Oil Co. from its organisation in 1900 to June 1905 (*id.* p. 669), testified that Mr. Tinsley came to St. Louis in April 1904 and left the last of May 1905. [It was agreed that the suit of the

*State of Missouri* v. *Waters-Pierce Oil Co.* was filed the 29th March 1905] (p. 669). He explained how oil was ordered by the company and from what places (p. 670–672). The prices for selling oil in Texas were passed on by the general manager's office and recommendations made to the executive committee; they were based on cost, freight, local conditions, and competition (p. 673–674). He did not know how McNall got the information he communicated to the company; H. C. Pierce told him to give McNall information that he asked for and to address correspondence to him as Commercial Agent in New York (p. 674–675), and he had seen McNall and discussed business with him at 26 Broadway, where he was in the same room with H. M. Tilford (p. 676–677).

He had met Royer Campbell who did a small business at San Antonio and was bought out and put on a salary by the old Waters-Pierce Co. in 1894 under a contract made by another A. M. Finlay (p. 679) and had been continued by the new company in its employ; he had known Clem at Dallas who was employed by the new company as agent of the Eagle Refining Co. until that company stopped business in 1904 (p. 680).

When the new company was formed the old Waters-Pierce Co. discharged its employees and they were at the same time re-employed by the new company; the territory in which the new company did business continued the same, it included the whole of Texas, there was a map with reference to Missouri in the Missouri division office, the company did not do business east of the Mississippi in Louisiana, there was no change by the new company (p. 681–682). McNall's address was changed from 26 Broadway to 75 New Street about 1904, and the change was made at McNall's request (p. 682).

The witness had been the manager of the old Waters-Pierce Co. in Texas from 1878 and at St. Louis from 1887, and gave an account of the increase of business in Texas (p. 964–966). The prices at which the new company sold oil were fixed by Ackert (general manager), himself, H. C. Pierce, and C. A. Pierce, and, while Tinsley was at St. Louis, by Ackert, Tinsley, and himself acting together, and the company was run as an independent concern (p. 967); Tinsley interfered in the management, insisting on things being done that the witness did not think for the

interest of the company, discharging tried employees and putting in new men, and made himself generally disagreeable (p. 968).

*E. S. Horn*, assistant manager, formerly clerk, in lubricating department of the Waters-Pierce Co. for 15 years (*id.* p. 870), identified a letter (p. 684) from McNall June 15, 1904 (p. 1090) relating to a change of price, and testified that prices of wax products were fixed by the manager or, in his absence, by himself (p. 871); he would adjust them in case of an advance or decline, and, if a competitor offered similar goods at a lower price, he would reduce the price to meet the conditions (p. 871, 840). He never had any understanding with any Standard Oil interest regarding the price at which wax or lubricating oil would be sold by the Waters-Pierce Oil Co. (p. 872). He assumed that he received McNall's letter of March 24th 1904 (p. 609) about the purchase and selling price of wax, but had no positive recollection (p. 870–871, 872, 842), and said that if there was a change in the (purchase) price, it would naturally change their selling prices (p. 872, 841). Lubricating oil had been delivered to the Central Coal & Coke Co. at Kennard, Texas, at the request of and at prices agreed upon with the Standard Oil Co. by which the price was paid; the transaction was a sale to the Standard Oil Co. the same as to anybody (p. 873, 841). The Standard Oil Co. did not fix the minimum selling price of any oils for the Waters-Pierce Oil Co.; the Standard Oil Co. sold at less prices than they in other parts of the country; he had not heard of the Standard Oil Co. selling in Texas in the last six or eight years; the Waters-Pierce Oil Co. furnished lubricating oil to practically all the large railroads of Texas upon contracts made with the home office (p. 843). The prime factors in fixing prices were cost, competition, and profit, and such profit was added to the cost as the trade would stand where there was no competition (p. 844).

*S. Johnson*, manager of the lubricating department of the Waters-Pierce Oil Co. soon after the organisation of the new company till the previous year and associated with H. C. Pierce from a time prior to 1878 (*id.* p. 686), testified that he was absent from St. Louis in March 1904 (p. 687), and any letter from McNall in his absence would be opened and acted on by his assistant

Mr. Horn (p. 688). The selling prices of lubricating oil were fixed by himself; the company manufactured certain grades, and bought certain grades of the Standard Oil Co.; the selling prices of those so bought were not fixed by S. H. Payne of the Standard Oil Co.; the minimum price would usually be the cost price, the Standard Oil Co. might sometimes suggest prices, which were adopted if they were agreeable to the ideas of the Waters-Pierce officials regarding the conditions and their ability to hold the trade at those prices, or whether it would be necessary to go below those prices to get the trade (p. 689–690). Cost, including freight, and competition were the two principal things considered in fixing prices; there never was any understanding or agreement between him and the Standard Oil Co. regarding the selling prices (p. 691); he acted upon their advice, if the conditions justified it, and if not, he used his own judgment (p. 692).

*Royer Campbell*, called by the State, testified in court that he came to San Antonio in 1893 and engaged in coal oil business there, (*id.* p. 694) under the name of the Texas Oil & Gasoline Co. and did a business of nearly 8,000 gallons in the month of September 1894 (p. 695); at first and until the spring of 1894 he bought his oil of the *old* Waters-Pierce Co. at 16 or 17 cents a gallon (p. 696–697). He then bought 16,000 gallons from the Independent Oil Co. in Pennsylvania, and the day it arrived the Waters-Pierce Co. dropped its price to 12 cents, then finally to 8 to 10 cents, and a vigorous competition continued till October 1894 [all this testimony was objected to by the defendant p. 696, 698, 699]; they established what they called the Consumers' Oil Co. and followed his wagons round town and solicited his business more vigorously than they did to get other business, and went so far as to solicit business at his own house and tried to sell oil to his wife; they sold at 10 cents to consumers, and at 8 to dealers, and the Consumers' Oil Co. sold at 12, but he never cut his prices below 14 cents to the consumer, and 12 or 11 to the dealer, whoever he could induce to buy (p. 697–699). Louis Fries was local agent of the Waters-Pierce Co. (p. 701) and was his personal friend; they were bitter business enemies during the week but on Sunday usually went

fishing or hunting together, and he advised Campbell to sell out to the Waters-Pierce Co., *Arthur* M. Finlay (manager at Galveston) did the same thing, and they told him the Consumers' Oil Co. would drive him out of business (p. 705–706). He sold out to the Waters-Pierce Co. in September 1894 (p. 707) and agreed to enter their employ at $90 a month and continue the Texas Oil & Gasoline Co.'s business as long as they thought necessary for their account and not to re-enter the oil or gasoline business without their consent, it being understood that within six months he should get a permanent position with the company at $125 a month (p. 709, 711).

When the new company was organised he received a notice that he was discharged and the old company had gone out of business, and the same day or the next mail a letter from the new company telling him that he would be continued in the employ of the new company at the same salary (p. 710). He continued the business from October 1894 under the name of the Texas Oil & Gasoline Co., making requisitions on the manager of the Waters-Pierce Co. at St. Louis for his supplies (p. 712) and receiving the oil in tanks of the International Oil Works or from Corsicana, but not in Waters-Pierce tanks (p. 713); the only change after the reorganisation in 1900 was that he put up a little sign on his stable or warehouse "Waters-Pierce Oil Co." (p. 714, 730); he had instructions to put it on the warehouse (p. 735), but he had the name of the Texas Oil & Gasoline Co. on his tank wagons and stationery (p. 714); he continued the business in that name till March 1904, when he quit and the business and property were turned over to the Waters-Pierce Oil Co. (p. 714, 724). The Consumers' Oil Co. did not continue long after he was bought out, about four months (p. 716).

The business of the Texas Oil & Gasoline Co. was conducted without change from 1894 to 1904; he made reports to the Waters-Pierce Co. at St. Louis and used blank envelopes without anything on them to indicate from whom they came (p .717) and he received no envelope from St. Louis with the Waters-Pierce Oil Co.'s name on it (p. 718). In order to meet competition, rebates were paid to hold the trade in some instances, which he thought continued till sometime in 1903, but all rebates

were cut out when he was discharged; Horan & Co. got rebates after 1900 (p. 719, 729). The course of business of the Texas Oil & Gasoline Co. while he ran it was, not to look after regular customers of the Waters-Pierce Co., but to look after the disgruntled trade, the anti-trust shouters (p. 719–720). He gathered information of what independent dealers were doing by spying on the railroads and noting every suspicious tank car that came to town, and furnished the information to Fries who compiled it (p. 720–722). (Objections to this testimony overruled, p. 721.)

The price of oil was put up to 22 cents in 1895 or 1896 and gasoline to 25, and just before he sold out oil was 8 cents; after he sold out, there was a gradual advance up to 20 or 22 cents for oil, and 22 or 24 for gasoline in 1896 (p. 722); afterwards it went down from competition or perhaps the inclination of the company to sell it cheap; he had no independent recollection about prices after 1900; the prices were regulated by instructions from St. Louis, and he offered suggestions, based on reduced sales or competition (p. 723–724).

The State put in evidence part of the deposition of *H. J. Cohn*, who was connected with the Waters-Pierce Co. for about 10 years in various positions from office-boy to salesman and was division-auditor and salesman at St. Louis from April 1900 to September 1902 under C. L. Ackert (*id.* p. 735). He described the territory in which the company did business; the Standard Oil Co. did not sell oil in that territory, and the Waters-Pierce Oil Co. did not sell oil outside of it (p. 735). He had been at Marshall, Texas, for about 8 years, and, while he was there, the [old] Waters-Pierce Co. received the greater part of its supplies from the Standard Oil Co. refinery at Whiting, Indiana, and a refinery at Corsicana, Texas, in addition to its railroad oil which came from the Galena Signal Oil Co. in Pennsylvania (p. 736).

Also a part of the deposition of *H. C. Arnold*, an accountant in the Standard Oil Co.'s building, 26 Broadway (*id.* p. 737), who testified that he had writen a letter to R. P. Tinsley at St. Louis, enclosing a charge for two blank books (p. 738–739).

*A. W. Clem*, a witness for the State, testified in court that he began oil business at Dallas, Texas, in 1890, in the name of the Eagle Refining Co., a corporation at Cleveland, Ohio (*id.* p. 740), did a business of about 40,000 barrels a month sent by the Eagle Refining Co. (p. 741); he remembered sending a carload to Seymour in 1891, which he sold at 16 cents delivered, and, when he went there to make delivery, most of his merchants refused to take the oil they had bought, unless he would meet the competition of the [old] Waters-Pierce Co. who were selling the oil to them at 5 cents a gallon, which they were previously charging 35 cents for (p. 742–743).

After they took over his business in 1894 [by the agreement C. p. 646, 39] there was no competition in his territory and the price of oil advanced gradually from 9½ cents to about 22 cents on the basis of Eupion in four or five months (p. 744) (all this testimony was objected to). He remained with the Waters-Pierce Co. 9 years, 1894 to 1904, running the Eagle Refining plant (p. 746). When he began business at Dallas in 1890, merchants were paying 23 cents for Eupion in bulk and 17 for Brilliant, and 37½ cents for Eupion in 2-5 cases and 24 for Brilliant, and he sold to some merchants at 17 cents in barrels; he sold about the same price at Lancaster (upon terms that he would not sell to any one else there, p. 769–770), and when the oil arrived, the [old] Waters-Pierce Co.'s agent made arrangements with the other merchants to sell at 10 cents a gallon (p. 748); the prices went all to pieces when he began selling oil (p. 749). (A letter of April 28, 1891 (p. 1117) from A. M. Finlay to a cashier at Dallas, as to making prices that would prevent Clem's doing any business, was put in evidence, against the objection of the defendant, p. 750).

He told of the contract of October 1894 [p. 39, C] with the old Waters-Pierce Co. (p. 749–751), after which the business of the Eagle Refining Co. was continued by the Waters-Pierce Co. till December 1903 in the name of the Eagle Refining Co. and he made reports to St. Louis (p. 751–753), in the manner described (p. 753–755), and the business was then given up (p. 755–756).

After the reorganisation of the Waters-Pierce Co. in 1900 there was no change in the manner of conducting the business of the

Eagle Refining Co. (p. 763); he received his oil from St. Louis in International Tank cars, not in Waters-Pierce cars (p. 764).

He testified about the relations of the Eagle Refining Co. and the old Waters-Pierce Co. in the suit against the latter in 1896, and there had since been no concealment of those relations, and the testimony had been published in the newspapers (p. 768–769).

His office from 1900 to 1903 was in the south part of Dallas, and he had a sign "A. W. Clem, Agent of the Waters-Pierce Oil Company," about 6 or 8 inches wide and 2½ or 3 feet long, which was first put on the back of his office, and somebody knocked it down, and then it was put up back of the warehouse; there was a railroad track back of the office (p. 779–781).

*C. W. Cahoon*, a witness for the State, testified in court that he was manager of the Central Texas division of the Waters-Pierce Oil Co. at Dallas since January 1903 and had been employed by the company 19 years (*id.* p. 781) and at Dallas since 1893; he kept record of their own sales and such information as agents and salesmen provided him with regarding others and reported daily to the St. Louis office (p. 782–783); agents were expected to keep him posted as to the business competitors were getting and their prices (p. 797–798). Corsicana had for the last two months been the principal source of supply in that division, previously it was Neodesha in Kansas; he did not know who the owner was; requisitions were placed with the St. Louis office; other sources were the Security Oil Co. and the Gulf Refining Co. (p. 783–784). He testified as to the extent to which oil was taken from the Corsicana Refining Co. (p. 787–793).

He estimated the percentage of the business done by the company since 1900 at about 80 per cent. (p. 796–797). They did not make a practice to meet competitors' prices, and depended on good service and high grade of goods to regain and hold the trade; occasionally they reduced prices to meet competition, but it was not frequent (p. 798); in a limited way they had given rebates or discounts to special merchants (p. 799).

He testified [against the defendant's objection, p. 799, 800] that at one time, Prime White or Standard White was marketed

as Eupion, because they could not get a supply of the other oil (p. 799–800, 832).

There was no material change in the manner of doing business after the reorganisation of 1900 (p. 800–801, 812–814). He testified [against the defendant's objection p. 807] as to the extent to which prices were changed to meet competition (p. 806–811), but it had not been the policy since 1900 to cut prices until it became a question of meeting a competitor's price or permanently losing the trade (p. 818). Also [against objection] he supposed the occasion for the re-incorporation of the company was the judgment excluding the old company from the state; he learned it from the newspapers (p. 835).

The deposition of *C. M. Adams* (*id.* p. 873, 844) was put in evidence by the State; he had been secretary or treasurer of the old and new Waters-Pierce Oil Cos. since 1878 and a director (p. 873–874); the selling prices of oil were fixed by the officers of the marketing department and there had never been any agreement or understanding with any Standard Oil interest about them that he knew about (p. 874–875). Reports to McNall were prepared in his office so that people interested in the company, the stockholders, would know its condition, assuming they were transmitted to the proper parties; they had no relation to the management or control of the business (p. 876–877).

He understood that up to June 1905 three of the directors of the new company represented the Standard Oil interests, except during the period while J. D. Johnson was a director (p. 844–847). [J. D. Johnson was a director from the organisation of the company in 1900 to the spring of 1904, when W. F. Taylor took his place, p. 447, 846.]

He knew nothing about any agreement or understanding, tacit or implied or express, that the Waters-Pierce Oil Co. should do business in Texas and none of the Standard Oil companies should do business there; they were doing business in the same territory that they had for years, where they had the tank-stations and appliances (p. 878–879).

He mentioned some of the changes made by Tinsley during the year he was at St. Louis (p. 879–884).

The deposition of *C. S. Keith*, vice-president and manager of the Central Coal & Coke Co. (*id.* p. 847–848), who testified that his company had contracts with the Waters-Pierce Oil Co. in 1903 and 1904, with the Bonner Oil Co. in 1905, with the Standard Oil Co. in 1906, and with the two last in 1907 (p. 849), and he produced contracts (p. 852–869), and a contract by the Standard Oil Co. with the Louisiana & Texas Lumber Co. (p. 849–850.) It might be that the Waters-Pierce Oil Co. was furnishing the oil under the contract with the Standard Oil Co. but all remittances were made direct to the Standard Oil Co. (p. 850).

*C. P. Ackert*, called by the State, testified in court that he was general manager since July 1903 and previously assistant general manager of the Waters-Pierce Oil Co. (*id.* p. 885) and had been connected with the Waters-Pierce Co. since 1884 and at St. Louis since 1893 (p. 886). He knew the territory in which the company did business and there had been no change since 1900 (p. 887–888). The Standard Oil Co. came into that territory in Louisiana in the previous year (1906) and he immediately put in more salesmen and reduced prices where necessary (p. 888–890). (A number of letters from R. H. McNall were put in evidence against the defendant's objection (p. 909–912; copies p. 1093–1117) relating generally to prices that the company would be charged or to information desired.)

He testified that the plant of the South-western Oil Co. which had been doing a competitive business at St. Louis was purchased about two years before (p. 913), after that company had gone out of business (p. 937). The International Oil Works belong to the Waters-Pierce Oil Co. as is generally known in the trade (p. 913–914, 937).

He said that the Waters-Pierce Oil Co. had about 450 stations in Texas (p. 928). The executive committee was organised in 1900 and continued till September 1904 and subsequently an advisory committee was organised in 1906 (p. 934). Selling prices were all passed on by the executive committee while it existed; the Standard Oil Co. had nothing to do with it; after the dissolution of the committee, the prices were fixed by A. M. Finlay, Tinsley, and himself, and C. A. Pierce (p. 935). Tinsley left St. Louis about June 1, 1905 (p. 936). The Stan-

dard Oil Co. on account of its large output really determines the market prices throughout the country, which apply to the Waters-Pierce Oil Co. as to everybody else, but the Waters-Pierce Oil Co. makes its own selling prices (p. 939, 948–949). It did about 80 per cent. of the business in Texas (p. 946).

*It was agreed* by counsel that auditors of the Standard Oil Co. were sent to St. Louis to audit the books of the Waters-Pierce Oil Co. and that the first audit was sometime in 1901, and that payments authorised by H. C. Pierce as early as June 15, 1900, were thereafter audited by the Standard Oil Co. (*id.* p. 923–924).

The defendant offered in evidence an agreement between the parties that the annual franchise taxes under the laws of Texas had been paid by the Waters-Pierce Oil Co., but the evidence was excluded and the defendant excepted (*id.* p. 997).

The judge in his charge to the jury, (*id.* p. 284–294) left to them two issues under the act of 1899 in the paragraphs VII and VIII of the charge, and three issues under the act of 1903 in paragraphs IX, X, and XI, *viz.*,

In par. VII (p. 288) he directed them that, if they found that the defendant, through its authorised agents, entered into or became a party to *an agreement or understanding* with the Standard Oil Co. on June 1, 1900, to fix or regulate the price of oil in Texas, and that the defendant remained or continued to be a party to the same and *persisted in carrying out* the same in Texas on that or any subsequent day prior to March 31, 1903 (the oil being the subject of local as distinguished from interstate traffic), they would find a verdict for the State on the issues submitted to them in paragraph VII of the charge, and, if they found for the State on these issues, each day between May 31, 1900, and March 31, 1903, during which the defendant *remained a party* to the agreement or understanding, would constitute a separate violation of the law.

In paragraph VIII (p. 289), he directed them that, if they found that on June 1, 1900, or any subsequent date prior to March 31, 1903, the defendant, through its authorised agents, had *brought about or permitted any combination or union of its capital* with that of the Standard Oil Co., whereby the price of such oil in Texas was *sought to be* fixed or regulated or *would be reasonably calculated to be* fixed or regulated, or whereby the trade in such oil in Texas was *sought to* be controlled or limited, they would find for the State on the issues submitted to them in paragraph VIII of the charge, and, if the defendant became a party to a pool of the character mentioned, each day between May 31, 1900, and March 31, 1903, that it *remained a party* to such pool would be a separate violation of the law.

In paragraph IX (p. 289) the judge directed the jury that, if they found that the defendant, through its authorised agents, *entered into a combination of its capital* with that of the Standard Oil Co. for the purpose of creating in Texas, *or which tended to create or carry out* in Texas restrictions in the free pursuit there of the business of selling such oil, *or to fix, maintain, or increase* the price of such oil there, *or to prevent or lessen competition* in its sale there, and that the defendant *remained* or *was a party to* and acted under such combination on March 31, 1903, or any subsequent date prior to April 29, 1907, they would find for the State on the issues submitted to them in paragraph IX of the charge, and each day between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust would be a separate violation of the law.

In paragraph X (p. 290) he directed them that, if they found that *the direction of the affairs* of the defendant and those of the Standard Oil Co. *were under the same management or control* on March 31, 1903, or any subsequent date prior to April 29, 1907, and that they were placed under such common management or control by their respectively authorised officers under such circumstances that the common management or control created *or tended to create or carry out* restrictions in the sale of such oil in Texas, *or to fix, maintain, or increase* the price of such oil there, *or to prevent or lessen the competition* in its sale there, they would find for the State on the issues submitted to them in paragraph X of the charge, and, if the defendant entered

into such a monopoly, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly would constitute a separate violation of the law.

In paragraph XI (p. 291) he directed them that, if they found that the *Standard Oil Co. had* on March 31, 1903, or any subsequent date prior to April 29, 1907, *acquired* a majority of the capital stock of the defendant corporation, and *thereby effected a combination* of said two corporations, and that this stock was acquired and combination effected with the purpose and intention *on part of the* managing officers and directors of the *Standard Oil Co.* of preventing or lessening the competition in the sale in Texas of such oil, *or* that the effect of the said combination *tended to* affect or lessen such competition, they would find for the State on the issues submitted to them in paragraph XI of the charge, and, if the defendant entered into a monopoly of the character mentioned in this paragraph, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly constituted a separate violation of the law.

The judge also told the jury in paragraph V (p. 287) that the evidence relating to the doings and agreements of the agents of corporations other than the defendant and to those of the agents of the *defendant's predecessor* prior to June 1st 1900, and to those of the defendant's agents and the agents of other corporations and of individuals outside and within the state of Texas, both prior and subsequent to June 1, 1900, could not be considered by them *except* as afterwards stated, viz., If they found from the other evidence, independent of all declarations or statements of any persons, except their testimony by deposition or in court, that on June 1, 1900, there was formed or *existed* an agreement between the governing officers of the defendant and those of any of the other corporations, or any of the individuals, alleged to be *co-conspirators* with the dedefendant, relating to the management of its business, *then they might consider* for what, if anything, they thought it worth, such acts or declarations of all the parties to the agreement and of their authorised agents, as were done or made during the existence of the agreement and in furtherance of its execution, for the purpose of determining the character of the agreement and whether it contemplated a violation of the anti-trust laws of Texas.

In paragraph XIII (p. 292) he also told them that the evidence that had been introduced showing that the defendant had given *rebates and discounts* in the course of its dealings, and had entered into contracts and understandings other than those previously submitted to their consideration, or the evidence of its general course of dealings, including some of its business methods in *meeting competition*, did not tend to show any violation of the anti-trust laws of Texas, *unless it tended in some degree to establish some one or more of the issues* submitted to them in paragraphs VII–XI, and they would therefore return a verdict for the defendant, notwithstanding that evidence, unless they found in favor of the State on some one or more of those issues.

He directed the jury in paragraph XIV (p. 292), that, if they convicted the defendant of any violation of the act of 1899, which, he told them, was in force from May 31, 1900 till March 31, 1903 (p. 285), or of the act of 1903, which, he told them, was in force on and after March 31, 1903 (p. 286), they should specify the date or days for which it was so convicted, and should further specify that its permit to do business in Texas should be forfeited, and the amount adjudged against it for penalties, and that they should fix the penalties for any violations of the act of 1899 at not less than $200 or more than $5000 per day, and for any violations of the act of 1903 at $50 per day, for each and every day that they convicted it of having violated the law.

The counsel for the defendant requested various special charges to the jury (*id.* p. 294–312) which were refused and some of which are hereinafter mentioned.

The jury found a verdict against the defendant on each of the issues submitted to them for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties $1,549,500, and on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being 1488 days, and fixed the penalties at $74,400, and further found that the permit of the de-

fendant to do business in Texas should be cancelled, and found for the defendant upon all issues made by the pleadings and not submitted in the charge (*id.* p. 314–315).

On the same day, June 1st 1907, judgment was given on the verdict for $1,623,900 and costs, and directing that the permit be cancelled, and enjoining the defendant against doing business in Texas, except interstate business (*id.* p. 315).

A motion for a new trial was filed by the defendant on the same day (*id.* p. 315) and was afterwards overruled on the 7th June 1907, and the defendant excepted and appealed to the Court of Civil Appeals (p. 319–320) and subsequently on the 15th June gave a bond with sureties in the sum of $3,275,000 to supersede proceedings on the judgment (p. 320–322).

Immediately after the motion for a new trial, on the 1st of June 1907, the State filed an application for the appointment of a receiver of all the property of the defendant in the state (*id.* p. 323).* The application alleged the recovery of the judgment, and also that the charter of the defendant had been forfeited by proceedings in the Missouri courts, and that the property of the defendant within the state of Texas was inadequate to pay the judgment and by an act of April 11th 1907 (App. *post* p. 225) the State had a lien on all that property to secure payment of it, and that under the judgment of ouster in the case the defendant had no right to do business in the state and it was necessary to protect the rights of the State that the business should be kept a going concern in the state.

*The proceedings relating to the appointment of the receiver, beginning with this application, are also set out in the record in No. 360, p. 1–30, which are identical with pages 323–352 of the record in No. 359.

The defendant demurred to this application for insufficiency, and for answer thereto denied all and singular the allegations therein contained (*id.* p. 325).

Upon the hearing of this application on the 10th June 1907, as soon as counsel for the defendant had argued the demurrer, the judge said that it was unnecessary for counsel for the State to make any further argument, and, without hearing any evidence, announced his decision that he should take *judicial notice* of the proceedings in the main case and of *the judgment* against the defendant for violating the anti-trust laws, and he would assume that the defendant would file a proper supersedeas bond to supersede further proceedings on the judgment pending the appeal, but, as it had been brought to his attention through newspaper interviews with the defendant's counsel that the defendant intended to appeal from the judgment and to carry on its business in the same manner as before, notwithstanding the judgment, a receiver would be appointed to take charge of its property and business and deprive it of the instrumentalities by which it had so violated the law and would continue to violate the law, "and *without any evidence* being submitted to the court in connection with said application, the court thereupon announced that it would grant the said application and appoint a receiver as therein prayed for," as appears by the bill of exceptions (*id.* p. 341–342) signed by the judge (p. 349).

The defendant also appealed from the order appointing the receiver and gave a further bond with sureties in the sum of $100,000 to supersede proceedings under the order (*id.* p. 329, 349).

In the Court of Civil Appeals the two appeals were dealt with separately, and separate judgments were entered and separate records made, as previously explained (*ante* p. 2–3), which is the reason for there being two

writs of error in this Court and the motion to consolidate the two cases.

The Texas statutes regarding pleadings provide that a defendant may plead several matters, whether of law or fact, and shall file them all at the same time (Rev. Civ. St. 1895, art. 1262).

Matters of law are pleaded by way of demurrer or exceptions to the petition.

*Dobbin* v. *Bryan*, 5 Tex. 284.
*Holliman* v. *Rogers*, 6 Tex. 95.
*Glasscock* v. *Hamilton*, 62 Tex. p. 153.

And where a general exception is taken and the exception is only valid in part, it is the uniform practice to sustain the objection as to the valid part and overrule it as to the rest.

*Morrison* v. *Bean*, 15 Tex. p. 268.
*Sampson* v. *Williamson*, 6 Tex. p. 103.
*Alford* v. *Cochrane*, 7 Tex. p. 487.

By art. 1317–1318, *the judge's charge* to the jury is in writing and constitutes part of the record, and is regarded as excepted to and subject to revision on appeal without any bill of exceptions.

By art. 1320, instructions requested by a party and refused by the judge are filed and constitute part of the record and are subject to revision without any bill of exceptions.

The General Statutes 1905, c. 112, s. 5 (page 220), provide that the stenographer's notes shall be sent up as the record of the evidence, and, s. 7, that all objections to evidence shown thereby and the ruling of the court thereon shall be considered as separate bills of exceptions.

*Summary of the Case.*

The *old* Waters-Pierce Co. was incorporated in Missouri on the 1st May 1878 (*ante* p. 4, 19) and was engaged in business in Texas until May 1900, when its permit to do business was cancelled on account of certain violations of Texas anti-trust laws mentioned in *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28 (*ante* p. 7, 21).

When it was organised in 1878 the *old* Waters-Pierce Co. had agreed with the Standard Oil Co. (of Ohio) to confine its business to Texas and certain other places in which the firm that preceded it had carried on business (*ante* p. 5, 23). This agreement was not made in Texas.

In 1882 the Standard Oil Trust was formed for the purpose of acquiring and consolidating interests in various oil companies and firms (*ante* p. 5, 19), and the trustees acquired 60 per cent. of the shares in the *old* Waters-Pierce Co. and held them from that time until 1892. But the *old* Waters-Pierce Co. never became a party to the trust agreement, and H. C. Pierce, who owned the remaining 40 per cent. of the shares, did not sign it or deposit his shares under it (*ante* p. 6, 19–20). The Standard Oil Trust was dissolved in 1892, and the shares previously held by the trustees were then transferred to the Standard Oil Co. which afterwards held them for the same purposes as the trustees had held them (*ante* p. 7). On the 28th May 1900 when the *old* Waters-Pierce Co. was dissolved (*ante* p. 21) the Standard Oil Co, held 2750 shares and H. C. Pierce 1250 shares (*ante* p. 8).

On the 29th May 1900 the *defendant* was incorporated in Missouri, and on the 31st May a permit to do business in Texas was issued to it (*ante* p. 3, 21). In accordance with a previous understanding between the shareholders, the business and property of the *old* Waters-Pierce Co. were transferred to the defendant, and each of the shareholders in the *old* company received a number of shares in the

new company corresponding to the number held by them respectively in the old company (*ante* p. 8–9, 25).

All the shares in the *new* company were issued to H. C. Pierce (*ante* p. 25), and, in accordance with the understanding, he gave the Standard Oil Co. transfers in blank of 2750 shares, but they continued to stand in his name on the books till June 1904 (*ante* p. 9) for the purpose (as he testified and there was no evidence to the contrary) of enabling him absolutely to control the company (*ante* p. 25) as previously agreed, with the intention of carrying on the business in strict accordance with law (*ante* p. 22). These transactions did not take place in Texas.

The *defendant* did not enter into any agreement to confine its business to Texas or any other place, or agree to observe the agreement made by the *old* Waters-Pierce Co., but it continued to carry on business only in the territory in which the business to which it succeeded was already established and did not extend the business into other territory (*ante* p. 24–25).

The Standard Oil Co. never conducted any business in Texas or had a permit to do business there (*ante* p. 20).

The act of 1899 (*post* p. 213), by s. 1, makes it an offence for any corporation or persons to enter into or become a party to any agreement or understanding with any other corporation or persons *to regulate or fix the price* of any article.

By s. 2, it is made an offence to engage in a "monopoly," which is defined as any *union or combination of capital* by or between persons, firms, or corporations, whereby the purposes mentioned are accomplished or sought to be accomplished or whereby the several results are reasonably calculated to be produced, whether the combination is *effected* by partnership or union under the form of a corporation, or *by the acquisition of shares* or other corporate property.

A penalty of not less than $200 nor more than $5,000 is imposed by s. 5 on any person or corporation violating any provision of the act for every offence, and each day that such person or corporation shall continue to do so shall be a separate offence.

The defendant has been convicted under par. VII of the judge's charge (*ante* p. 44) of having entered into or become a party to an agreement or understanding with the Standard Oil Co. *to fix or regulate the price* of oil in Texas on account of the agreement of the *old* Waters-Pierce Co. in 1878 to confine its business to Texas and the other specified places.

And the defendant has also been convicted under par. VIII of the charge (*ante* p. 45) of having brought about *or permitted a combination or union of its capital* with that of the Standard Oil Co. by reason of the acquisition of a majority of its shares by the Standard Oil Co.

For these violations, which the jury find to have been committed on 1033 days, the penalties have been fixed at $1,549,500 (*ante* p. 47).

The act of 1903 (*post* p. 220), in s. 1 defines a trust as a *combination of capital*, skill, or acts by two or more persons or corporations to create or which may tend to create restrictions in trade, or to fix, increase, or reduce prices, or to prevent or lessen competition. In s. 2, it defines a monopoly as a *combination* of two or more *corporations*, where the direction of their affairs is brought under the same management or control for certain purposes, or where any corporation acquires the shares of another corporation for certain purposes.

By s. 11 every person or corporation who violates the act shall for every day that such violation is committed or continued forfeit $50.

The defendant has been convicted under par. IX, X, and XI of the judge's charge (*ante* p. 45–46) of having

violated these provisions on 1488 days and the penalti
have accordingly been fixed at $74,400 (*ante* p. 47).

The defendant's permit to do business in Texas has al
been cancelled (*ante* p. 48), and an order has been mad
appointing a receiver of its property, as mentioned *an*
p. 48–49.

The case was an action to recover penalties from th
defendant corporation under statutes of which the earlie
took effect on January 31, 1900. The corporation wa
formed on May 29, 1900.

The defendant could not be liable for anything don
before May 1900. It came into being innocent and it ca
be convicted only on proof of its own acts. The statute
could not be violated *by anybody* before May 1899.

The petition set forth a conspiracy entered into in Janu
ary 1870 by the founders of the Standard Oil Co. and othe
persons "*including the defendant*" to monopolise the bus
ness of selling petroleum and its products in the Unite
States, and alleged various agreements by these person
in pursuance of this conspiracy made in 1882 and othe
years long before 1900, and described in detail the acts o
other corporations and persons done before 1900, and ac
of the defendant in reducing prices and taking other step
in competing with its rivals in Texas (*Rec.* p. 33, 34–36
and upon this foundation of agreements entered into an
acts done by other persons made a variety of charge
against the defendant couched in the most inflammator
language well calculated to disguise the issue and arou
the prejudices of the jury.

Exceptions to the allegations in the petition as to th
acts and agreements of others long before 1899 were take
and overruled, and the case went to the jury upon th
petition (*Rec.* p. 69–76, par. 56–82; p. 97).

Though no evidence of the conspiracy alleged in the declaration was introduced, and though it was admitted that neither the defendant nor the *old* Waters-Pierce Co. nor H. C. Pierce was a party to the agreements of 1870 or 1882, evidence of the acts and declarations of persons and corporations other than the defendant was admitted on the ground that a conspiracy made in those years was *alleged*, and all the evidence offered of acts done by the *old* Waters-Pierce Co. in the course of competition was also admitted.

When the case was sent to the jury the questions whether the allegations of conspiracy and the various inflammatory accusations contained in the declaration were true were not submitted to the jury. These allegations were denied in the answer and by the verdict of the jury in favor of the defendant on all the issues except those submitted in paragraphs VII to XI of the charge it was established that they were not true.

The only questions submitted to the jury were in effect two:

Did the defendant on June 1, 1900, enter into or become a party to an agreement or understanding with the Standard Oil Co. to fix or regulate the price of oil in Texas and remain or continue to be a party to the same thereafter?

Did the defendant enter into a combination or unica of its capital with the Standard Oil Company for either of certain specified purposes?

The last issue is presented in different forms by paragraphs VIII to XI of the charge and the differences will hereinafter be pointed out.

Upon the first issue the jury were instructed that if they found that on June 1, 1900, "there was formed or existed an agreement between the governing officers of the defendant and the governing officers of any of the other corporations or any of the individuals alleged in the State's petition to be co-conspirators with the defendant relating to the

management of defendant's business" they might consider the acts and declarations of all the parties to the agreements or of their authorised agents "for the purpose of determining the character of the agreement and whether or not it contemplated a violation by the defendant of the anti-trust laws of Texas."

The jury were allowed, by this instruction, if they found that there was *any* agreement, to use all these acts and declarations of other parties for the purpose of determining its character and object. The judge expressly refused to instruct them that they could not consider the execution of the Standard Oil Trust agreement of January 2, 1882, or the contract between the Waters-Pierce Oil Co. and Royer Campbell in 1894, and further refused to instruct them to disregard all evidence with respect to actions and transactions prior to May 31st 1900 (Special Charges Nos. 12, 13, and 15, *Rec.* p. 302, 303, 305).

The jury was also, by paragraph XIII of the charge, permitted to consider the evidence of contracts, discounts and dealings by the defendant, "including its business methods in meeting competition," although the court said that none of this evidence tended to show any violation of the law of Texas upon the issues submitted. In other words, the court allowed the jury to consider evidence which did not even tend to show a violation of Texas laws in determining whether the defendant agreed or formed a combination of capital to violate those laws.

In this way all the evidence in the case however immaterial was submitted to the jury and its full effect upon their prejudices was secured.

## *Assignment of Errors*

The assignment of errors is the same in both cases (*Rec.* No. 359, p. 1188; *Rec.* No. 360, p. 84) and is as follows,

The defendant the said Waters-Pierce Oil Company says that in the record and proceedings aforesaid and in giving and affirming the judgment aforesaid of the District Court and in the order appointing a receiver as a consequence of the said judgment there is manifest error in this to wit

1 That it was decided in and by the said judgment that the defendant the Waters-Pierce Oil Company which was incorporated under the laws of Missouri on the 29th May 1900 and not before was liable to the penalties imposed by the statute of 1903 in the record mentioned for and on account of the acts of the Standard Oil Company in acquiring a majority of the shares of the Waters-Pierce Oil Company before the said statute of 1903 was passed or took effect which acts were not done in the State of Texas And by means thereof the defendant the Waters-Pierce Oil Company is thereby deprived of its property without due process of law And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any ex post facto law by any state

2 There is also manifest error in this that it was decided in and by the said judgment that the said Waters-Pierce Oil Company was liable to the penalties imposed by the statute of 1899 in the record mentioned for and on account of a supposed union or combination of its capital with the capital of the Standard Oil Company by means of acts done by the said Standard Oil Company long before the passage of the said statute and long before the incorporation of the said Waters-Pierce Oil Company in acquiring a majority of the shares of another then existing company (hereinafter called the old Waters-Pierce Company) incorporated under the laws of Missouri by the same name as the said Waters-Pierce Oil Company which acts were not done in the state of Texas And by means thereof the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law And it was also thereby decided that the said statute was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the pro-

vision of the said Constitution forbidding the passage of any ex post facto law by any state

3 There is also manifest error in this that it was decided in and by the said judgment that the defendant the Waters-Pierce Oil Company was liable to the penalties imposed by the said statutes of 1899 and 1903 respectively for and on account of certain supposed agreements or understandings entered into before the passage of either of the said statutes between the Standard Oil Company and the old Waters-Pierce Company whose property and business the defendant the Waters-Pierce Oil Company afterwards acquired without becoming in any way bound by or answerable in respect of any of the said supposed agreements or understandings and never became so bound or answerable or did any act in carrying any of them into effect which supposed agreements or understandings if they existed were entered into out of the state of Texas And by means of the said decision the said Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution

4 There is also manifest error in this that the Court upon hearing the exceptions of the defendant to the plaintiff's amended original petition before the said trial overruled among others of them the exception (No. 9) whereby the defendant excepted to all parts and paragraphs of the said petition by which it was sought to hold the defendant subject to the provisions of the said statute of 1903 and to cancel its permit to do business in Texas and to recover penalties against it on account of the alleged holding or ownership by the Standard Oil Company of New Jersey of a majority of its stock because according to the allegations in the said petition the said stock was so held and owned by the said Standard Oil Company at and long prior to the passage of the said statute of 1903 and its ownership of the said stock being a vested right and not in violation of the laws of the state of Texas when the defendant's permit to transact business in Texas was granted to it on May 31st 1900 it was not competent or within the constitutional power of the legislature of the state of Texas to interfere with such ownership or divest the said Standard Oil Company of its said property or to make it an offence by the defendant subjecting it to penalties and to a forfeiture of its said permit for such vested ownership to continue and that the said statute of 1903 is violative of the Constitution of the United States for that it is both ex post facto and retroactive in its operation and for the additional reason that if given the effect of prohibiting the continuance of such ownership of the said stock by the said Standard Oil Company and of making it an offence on the part of the defendant for such holding to continue it would

deprive the defendant of its property without due process of law and deny to the defendant the equal protection of the laws and impair the obligations of a contract contrary to the provisions of the said Constitution in the said exception referred to and for these reasons the defendant therein said that it was apparent that all allegations in the said petition with respect to the alleged ownership of the defendant's stock by the Standard Oil Company should be stricken out and of this special exception the defendant prayed the judgment of the Court And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said majority of the stock of the defendant before the passage of the said statute of 1903 and continuing afterwards to hold the same And the defendant has thereby been denied the equal protection of the laws and is deprived of its property without due process of law And it was also thereby decided that the said statute of 1903 was valid and not repugnant to the Constitution of the United States whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any ex post facto law by any state

5 There is also manifest error in this that the Court in like manner also overruled another of the said exceptions (No. 20) to the said petition whereby if the Court should construe the plaintiff's petition as alleging that the defendant was the same corporation—the same entity as the old Waters-Pierce Company (which the said petition does plainly allege) then the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provision of the said statute of 1899 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreement between the defendant and the said Standard Oil Company or on account of the alleged agreement between the defendant and the said Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same were insufficient for the reason that if the petition be so construed it then affirmatively appeared from the said petition that the said alleged ownership of the stock of the defendant by the said Standard Oil Company existed at the time of and prior to the taking effect of the said statute of 1899 and that all of the said alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character of the said alleged agree-

ments so set forth in the said petition it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the legislature to authorise the recovery against the defendant of the penalties provided for in the said statute on account of the continuation of the said alleged ownership of its stock by the said Standard Oil Company or on account of the performance by this defendant of any of the alleged agreements so alleged to have been made prior to the taking effect of the said statute then such act so construed would be violative of the said Constitution in that it would be retroactive in its effect and impair the obligations of contracts and deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1899 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters-Pierce Company before the passage of the said statute of 1899 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such majority of the shares of the defendant the Waters-Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of the alleged agreements and understandings between the old Waters-Pierce Company and the said Standard Oil Company and the said other corporations and persons entered into before the passage of the said statute of 1899 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law

6 There is also manifest error in this that the Court in like manner also overruled another of the said exceptions (No. 21) to the said petition whereby the defendant excepted to all the allegations in the said petition whereby it was sought to recover penalties of the defendant under the provisions of the said statute of 1903 on account of the alleged ownership by the said Standard Oil Company of the stock of the defendant or on account of the alleged agreements between the defendant and the said Standard Oil Company or on account of the alleged agreements between the defendant and the said Standard Oil Company and the other corporations and persons mentioned in the said petition and said that the same

were insufficient for the reason that it affirmatively appeared from the said petition that the alleged ownership of the stock of the defendant by the said Standard Oil Company existed at the time of and prior to the passage of the said statute of 1903 and that all of the alleged agreements and understandings were made and entered into prior to the passage of the said statute and for the reason that the said statute was intended to act prospectively only and if intended to apply to ownerships by one corporation of the stock of another corporation or to apply to agreements of the character set forth in the said petition it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of the said statute and to such agreements as should be made or entered into after the taking effect of the said statute and if the said statute should be construed as having been intended by the legislature to authorise the recovery against the defendant of the penalties provided for in the said statute on account of the continuance of the said alleged ownership of the stock by the said Standard Oil Company or on account of the performance by the defendant of any of the agreements so alleged to have been made prior to the taking effect of the said statute such statute so construed would be violative of the said Constitution in that it would be retroactive in its effect and impair the obligations of contracts and deny to the defendant the equal protection of the laws and would take the property of the defendant without due process of law and of this the defendant prayed judgment of the Court And the said exception being overruled the defendant was by the said judgment made liable to the penalties imposed by the said statute of 1903 for and on account of the acts of the Standard Oil Company in acquiring the said stock of the old Waters-Pierce Company before the passage of the said statute of 1903 and continuing afterwards to hold the same and taking a corresponding majority of the shares or the beneficial interest in such majority of the shares of the defendant the Waters-Pierce Oil Company issued to the said Standard Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and for and on account of the alleged agreements and understandings between the old Waters-Pierce Company and the said Standard Oil Company and the said other corporations and persons entered into before the passage of the said statute of 1903 to none of which agreements or understandings the defendant ever became a party or became in any way answerable therefor And the defendant is thereby denied the equal protection of the laws and is deprived of its property without due process of law

7 There is also manifest error in this that the Court in like manner overruled another of the said exceptions (No. 25) to the said

petition whereby the defendant objected that each of the said statutes of 1899 and 1903 was so indefinite vague and uncertain in its terms that it could not be ascertained by the language used what particular acts constituted an offence subjecting the offender to punishment as therein prescribed and for that reason a person could not know in advance of committing the act whether he was violating the law and that to subject the defendant to heavy penalties for an alleged violation thereof would result in the taking of the defendant's property without due process of law contrary to the provisions of the said Constitution And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly

8 There is also manifest error in this that the Court in like manner overruled others of the said exceptions (No. 52 and 53) to the said petition whereby the defendant objected that the said statutes of 1899 and 1903 respectively were so indefinitely framed and of such doubtful construction that they could not be understood either from the language in which they were expressed or from some other written law of the state and by reason of their failure to designate an offence by the plain import of their words the infliction of the penalties prescribed by the said statute would be the taking of property without due process of law contrary to the provisions of the said Constitution And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said statutes of 1899 and 1903 respectively and is thereby deprived of its property without due process of law accordingly

9 There is also manifest error in this that evidence having been adduced at the trial of the said cause that the Standard Oil Company from some time in the year 1882 owned a majority of the shares of the old Waters-Pierce Company down to the incorporation of the defendant the Waters-Pierce Oil Company on the 29th May 1900 and that on or about the 24th September 1900 a majority of the shares of the defendant the Waters-Pierce Oil Company which had up to that time been held by H. C. Pierce in trust for the said Standard Oil Company (the same having been so issued to him upon the formation of the defendant company on account of the interest of the said Standard Oil Company in the old Waters-Pierce Company) were transferred to the said Standard Oil Company by an indorsement of the certificates therefor in blank by the said H. C. Pierce without any evidence of the registration of any transfer of the same on the books of the defendant company until early in the year 1904 when the said Standard Oil Company caused the same to

be transferred on the said books into the name of M. M. Van Beuren and evidence having been also adduced at the said trial that the old Waters-Pierce Company carried on its business throughout the whole of Texas and in certain other states and in Mexico and obtained its supplies of refined oil almost exclusively from the Standard Oil Company and that the said Standard Oil Company did not carry on such business in the said territory in which the old Waters-Pierce Company so carried on business and that the defendant the Waters-Pierce Oil Company after acquiring the business of the old Waters-Pierce Company as above mentioned carried on the said business in the same territory and in the same way without extending its business into other territory and that the said Standard Oil Company did not extend its business into the territory in which the defendant so carried on business the judge before whom the said cause was tried at the said trial although there was no other evidence of any such agreement or understanding between the defendant and the Standard Oil Company as next hereinafter mentioned or of any other act by the defendant in carrying any other such agreement or understanding into effect directed the jury (in paragraph VII of his charge) upon the said evidence that if they found that the defendant the Waters-Pierce Oil Company entered into or became a party to an agreement or understanding with the Standard Oil Company on June 1 1900 to fix or regulate the price in Texas of oil refined from petroleum and if they further found that the defendant remained or continued to be a party to the said agreement or understanding if any and persisted in carrying the same out in Texas on June 1 1900 or any subsequent date or dates prior to March 31 1903 and that the oil with reference to which the said agreement or understanding was so made and carried out was the subject of local as distinguished from interstate commerce the jury should return a verdict for the state and thereby say that they found in favor of the state upon the issues submitted for their consideration in paragraph seven (VII) of the Court's charge and further instructed the jury that each day between May 31 1900 and March 31 1903 during which the defendant remained a party to the agreement or understanding therein mentioned would constitute a separate and distinct violation of the anti-trust laws of Texas And the said judge also directed the jury that the said statute of 1899 was in force on May 31 1900 and thenceforth until March 31 1903 and that the said statute of 1903 became effective on March 31 1903 and has since continued in force and that if the jury should convict the defendant of any violation or violations of the said statute of 1899 they should specify in their verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas should be forfeited and the amount of money which should be adjudged against it as penalties for such

violations fixing the same at not less than $200 or more than $5,000 per day for each day that they should find it had so violated the law And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph (VII) of the judge's charge for each of the days between May 31 1900 and March 31 1903 stating the same in their verdict as being 1033 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled By means whereof the jury found that any such agreement or understanding as above mentioned entered into between the old Waters-Pierce Company and the said Standard Oil Company became an agreement or understanding on the part of the defendant the Waters-Pierce Oil Company with the said Standard Oil Company as soon as the defendant acquired the property and business of the old Waters-Pierce Company and conducted the said business in the same manner and in the same territory as the old Waters-Pierce Company had done and without extending the said business into any other territory although the defendant had not otherwise than by its said acts entered into any such agreement or understanding and also that the defendant the Waters-Pierce Oil Company having entered into such an agreement or understanding as mentioned in the said paragraph of the judge's charge although not in the state of Texas and having persisted in carrying the same out in Texas on the 1st June 1900 was guilty of a violation of the said law on every subsequent day including Sundays and holidays down to the 31st March 1903 although it did not on any such subsequent day or did not upon some of such subsequent days do any act in Texas in or towards carrying out the said agreement or understanding but only remained a party thereto And by the judgment upon the said verdict upon the issues submitted to the jury in the said paragraph (VII) of the judge's charge the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law

10 There is also manifest error in this that upon the evidence mentioned in the last preceding paragraph without any other evidence or suggestion of such a combination or union as next hereafter mentioned the said judge also directed the jury (in paragraph VIII of his charge) that if they found that on June 1 1900 or any date subsequent thereto and prior to March 31 1903 the defendant had brought about or permitted any combination or union of its capital with the capital of the said Standard Oil Company whereby the price in Texas of such oil as mentioned in the said clause of the charge was sought to be fixed or regulated or would be reasonably calculated to be fixed or regulated or whereby the trade in such oil in Texas was sought to be controlled or limited the jury should return a verdict for the state

and thereby say that they found for the state upon the issues submitted for their consideration in paragraph eight (VIII) of the Court's charge and further directed the jury that if the defendant became a party to a pool of the character mentioned in that paragraph each day between May 31 1900 and March 31 1903 that it remained a party to such pool would constitute a separate violation of the anti-trust laws of Texas And the jury in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them in the said paragraph of the judge's charge for each of the days between May 31 1900 and March 31 1903 stating the same in their verdict as being 1033 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the two paragraphs seven (VII) and eight (VIII) of the judge's charge at $1,549,500 and further found that the permit of the defendant to do business in Texas should be cancelled By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of having brought about or permitted such a combination or union of its capital with the capital of the Standard Oil Company as above mentioned by means of the acts of the said Standard Oil Company in acquiring a majority of the shares of the old Waters-Pierce Company long before the passage of the said statute of 1899 and before the defendant came into existence and in holding the said shares until the defendant was incorporated and acquired the property and business of the old Waters-Pierce Company and then taking the beneficial interest in a corresponding majority of the shares of the defendant the Waters-Pierce Oil Company for its interest in the old Waters-Pierce Company in which acts of the said Standard Oil Company the defendant had no part and although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or union or for any of the supposed purposes thereof on some or any of the days for which it was so convicted And by the judgment upon the said verdict upon the last mentioned paragraph (VIII) of the judge's charge the defendant the Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1899 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any ex post facto law by any state

11 There is also manifest error in this that upon the evidence mentioned or referred to in the next preceding paragraph hereof without any other evidence or suggestion of any such combination as next

hereinafter mentioned and although it was agreed by the parties at the said trial for the purposes of this case that the said Standard Oil Company had from a time long before the passage of the said statute of 1903 owned a majority of the shares of the defendant the Waters-Pierce Oil Company the said judge also directed the jury (in paragraph IX of his charge) that if they found that the defendant entered into a combination of its capital with the capital of the said Standard Oil Company for the purpose of creating in Texas or which tended to create in Texas or carry out in Texas restrictions in the free pursuit in that state of the business of selling such oil as is mentioned in the said paragraph of the charge or to fix maintain or increase the price of such oil in Texas or to prevent or lessen competition in Texas in the sale of such oil and that the defendant remained or was a party to and acted under such combination on March 31 1903 or any date subsequent thereto and prior to April 29 1907 the jury should return a verdict for the state and thereby say that they found for the state upon the issues submitted for their consideration in paragraph nine (IX) of the Court's charge and further directed the jury that if the defendant became a party to a trust of the character mentioned in that paragraph of the charge each day between March 30 1903 and April 29 1907 that it remained a party to and acted under such trust would constitute a separate violation of the anti-trust laws of Texas and that if the jury should convict the defendant of any violations of the said statute of 1903 they should specify in the verdict the date or days for which it was so convicted and further specify therein that as a result of such conviction its permit to do business in Texas should be forfeited and the sum of money that should be adjudged against it as a penalty for such violation fixing the sum at $50 per day for each day that they should convict it of having violated the said law And the jury, in pursuance of the said directions found for the plaintiff against the defendant on the issues submitted to them by the said paragraph of the judge's charge for each of the days between April 1 1903 and April 29 1907 stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of having entered into such a combination as last above mentioned by means of the acts of the said Standard Oil Company in acquiring the said majority of the shares of the said Waters-Pierce Oil Company long before the passage of the said statute of 1903 although none of the said acts were done in the state of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for any of the supposed purposes thereof on some or any of the days for which it was so convicted and although the defendant had no means

of requiring or inducing the said Standard Oil Company to part with the said majority of shares or any part thereof

12 There is also manifest error in this that the said judge also directed the jury (in paragraph X of his charge) that if they found that the direction of the affairs of the defendant corporation and the affairs of the said Standard Oil Company was under the same management and control on March 31 1903 or on any date subsequent thereto and prior to April 29 1907 and that they were placed under such management or control by their respectively authorised officers under such circumstances that such common management or control created or tended to create or carry out restrictions in the sale in Texas of such oil as is referred to in the said paragraph of the charge or to fix maintain or increase the price in Texas of such oil or to prevent or lessen in Texas the competition in the sale of such oil the jury should return a verdict for the state and thereby say that they found for the state on the issues submitted for their consideration in paragraph ten (X) of the Court's charge and further directed the jury that if the defendant entered into a monopoly of the character mentioned in that paragraph of the charge each day between March 30 1903 and April 29 1907 that it remained a party to such monopoly constituted a separate violation of the anti-trust laws of Texas And although there was no evidence that the direction of the affairs of the defendant and the said Standard Oil Company was after the passage of the said statute of 1903 brought under the same management or control or was under the same management or control on the 31st March 1903 when the said statute was passed or on the first or second or any subsequent day thereafter or that the said Standard Oil Company had any power to bring the direction of the affairs of the said two corporations under the same control or management until the said majority of the shares in the defendant corporation were transferred on its books into the name of M. M. Van Beuren as hereinbefore mentioned in the year 1904 or that the said Standard Oil Company exercised any such power by doing so either before or after the same were so transferred or that any of the things supposed to have been done had been done in Texas except carrying on business there as hereinbefore mentioned the jury in pursuance of the said direction of the judge found for the plaintiff against the defendant on the issues submitted to them by the said paragraph ten (X) of the judge's charge for each of the days between April 1 1903 and April 29 1907 stating the same in their verdict as being 1488 days and fixed the penalties for all the said days as hereinafter mentioned and further found that the permit of the defendant to do business in Texas should be cancelled By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of the offence of bringing the direction of its affairs

under the same management and control as those of the said Standard Oil Company although it had had no part in doing so itself and although whatever was supposed to have been done to bring the direction of the affairs of the said two corporations under the same management and control had not been done in Texas and had been done before the passage of the said statute of 1903 or had not been done on some of the days for which it was so convicted and was not in fact done at all

13 There is also manifest error in this that the said judge also directed the jury (in paragraph XI of his charge) that if they found that the Standard Oil Company had on March 31st 1903 acquired a majority of the capital stock of the defendant the Waters-Pierce Oil Company and thereby effected a combination of the said corporations with the purpose and intention therein mentioned or the part of the managing officers and directors of the said Standard Oil Company the jury should return a verdict for the state and thereby say that they found in favor of the state upon the issues submitted for their consideration in paragraph eleven (XI) of the Court's charge and further directed the jury that each day between March 30 1903 and April 29 1907 that the defendant remained a party to such monopoly constituted a separate violation of the anti-trust laws of Texas And although at the said trial no evidence was adduced that the said Standard Oil Company acquired on or after the 31st March 1903 such a majority of the said capital stock or any shares necessary to make such majority or ever acquired any such shares within the state of Texas and it was agreed by the parties at the said trial that since a time long previous to the 31st March 1903 the said Standard Oil Company had owned more than a majority of the said capital stock the jury in pursuance of the said direction found for the plaintiff against the defendant upon the issues so submitted to them for each of the days between April 1 1903 and April 29 1907 stating the same in their verdict as being 1488 days and in pursuance of the said directions and the other directions hereinbefore mentioned fixed the penalties for the violations of law of which the defendant was convicted by their verdict upon the issues submitted to them in the three paragraphs nine (IX) ten (X) and eleven (XI) of the judge's charge at $74,400 and further found that the permit of the defendant to do business in Texas should be cancelled By means whereof the jury found the defendant the Waters-Pierce Oil Company guilty of having effected a combination of itself and the said Standard Oil Company solely by reason of the acts of the said Standard Oil Company done long before the passage of the said statute of 1903 in acquiring the said majority of the shares of the said Waters-Pierce Oil Company although none of the said acts were done in the state of Texas and although no act was done by

the defendant in Texas in pursuance of the supposed combination or for giving effect to the supposed purpose or intention of the managing officers of the said Standard Oil Company on some or any of the days for which the defendant was so convicted And by the judgment upon the said verdict upon the issues submitted to the jury in the three last mentioned paragraphs of the judge's charge respectively the said Waters-Pierce Oil Company is deprived of its property without due process of law contrary to the provisions of the said Constitution and it was thereby decided that the said statute of 1903 was valid and not repugnant to the said Constitution whereas it ought to have been decided that the same so far as it had the effect so given to it was invalid and repugnant to the provision of the said Constitution forbidding the passage of any ex post facto law by any state

14 There is also manifest error in this that the said judge also declared his opinion to the jury (in paragraph XI of his charge) that if the said Standard Oil Company acquired a majority of the capital stock of the defendant the Waters-Pierce Oil Company a combination of the said two corporations would be thereby effected and with that direction he left the said issues to the jury whereas a combination of the said two corporations would not be thereby effected And the jury in pursuance of the said direction found for the plaintiff against the defendant upon each of the issues submitted to them respectively in the four paragraphs (eight (VIII) nine (IX) ten (X) and eleven (XI) of the judge's charge and thereby found the defendant guilty of having effected such combination solely by reason of the acts of the said Standard Oil Company in acquiring the said majority of shares although none of the said acts were done in the State of Texas and although no act was done by the defendant in Texas in pursuance of the supposed combination or for giving effect to any supposed purpose or intention thereof on some or any of the days for which the defendant was so convicted And by the judgment upon the said verdict upon the issues submitted to the jury in the four last mentioned paragraphs of the judge's charge respectively the defendant the said Waters-Pierce Oil Company is punished for an act which it could not control and an offence that it could not commit and is thereby deprived of its property without due process of law contrary to the provision of the said Constitution

15 There is also manifest error in this that the said judge upon the trial of the said cause arbitrarily and without any regard to the rules of law admitted evidence of (1) the incorporation of the Standard Oil Company of Ohio on or about the 10th January 1870 (2) the incorporation of the old Waters-Pierce Company in Missouri

on the 1st May 1878 and the increase of its capital on the 13th June 1882 (3) the agreement of the 2nd January 1882 by which the Standard Oil Trust was formed and to which the old Waters-Pierce Company or the defendant the Waters-Pierce Oil Company or H. C. Pierce who owned about two-fifths of the shares in these two companies never became a party (4) the incorporation of the Standard Oil Company of New Jersey herein referred to as the Standard Oil Company on the 1st August 1882 (5) the ownership by the Standard Oil Company of the majority of the shares of several other companies as stated in the agreement of counsel designated Stipulation No. 1 (6) the judgment in favor of the state of Texas against the old Waters-Pierce Company on the 15th June 1897 for the forfeiture of its permit to do business in Texas which judgment was affirmed by this Court on or about the 19th March 1900 (177 U. S. 28) and also (7) the testimony of several witnesses relating to the doings and agreements of the agents of corporations other than the defendant and of the agents of the old Waters-Pierce Company prior to the incorporation of the defendant the Waters-Pierce Oil Company and prior to the 1st June 1900 and to the doings and agreements of the defendant's agents and the agents of other corporations outside the state of Texas and to the doings and agreements of individuals both prior and subsequent to the 1st June 1900 and both outside and within the state of Texas (to all of which evidence and testimony respectively counsel for the defendant duly objected at the trial as appears by the record) And although there was not any other evidence nor any evidence whatever of an agreement at any time between the defendant or the governing officers of the defendant and any other persons whatever relating to the management of the defendant's business yet the said judge arbitrarily and without any regard to the rules of law and intending that the jury should identify the defendant with the old Waters-Pierce Company as charged in the petition of the state and should convict the defendant of violations of the said anti-trust laws upon the issues submitted to them in the five paragraphs last above mentioned of the judge's charge without any legal evidence of any such violation and should for that purpose consider irrelevant evidence under color of first finding a conspiracy of which there was no evidence whatever overruled all the objections of the defendant to the admission of the said evidence and directed the jury (in the division V of his charge) that if they found from the other evidence in the case independent of all declarations or statements made by any person or persons except their evidence given as witnesses personally or by deposition that on June 1 1900 there was formed or existed an agreement between the governing officers of the defendant and the governing officers of any of the other corporations alleged in the state's petition to be co-conspirators with the defendant relating

to the management of the defendant's business or between the governing officers of the defendant and any of the individuals alleged in the State's petition to be co-conspirators with the defendant relating to the management of the defendant's business then the jury might consider for what if anything they thought it worth such acts or declarations of all the parties to the said agreement and such acts and declarations of their authorised agents if any as were done or made during the existence of such agreement and in furtherance of its execution for the purpose of determining the character of such agreement and whether or not it contemplated a violation by the defendant of the anti-trust laws of Texas but that none of the said evidence could be considered by the jury for any other purpose whatever and none of it could be so considered by the jury against the defendant for the said purposes except such of it if any as they should think proper to be considered when tested by the rules so stated relating to its competency And also directed the jury (in the division XIII of his charge) that they might consider so far as it tended to establish some one or more of the issues submitted for their consideration in the said five paragraphs (VII to XI) of his charge the evidence introduced before them that the defendant had given rebates and discounts in the course of its dealings and that the defendant had made contracts and entered into understandings other than those submitted for their consideration in the said five paragraphs of the charge and also the evidence introduced before them of the general course of dealings of the defendant in Texas and elsewhere including some of its business methods in meeting competition although he directed them that none of this evidence showed or tended to show any violation of the anti-trust laws of Texas unless it tended to establish some one or more of the said issues so submitted for their consideration And the verdict was accordingly given for the State upon the said issues submitted to the jury whe[illegible]s according to due process of law it ought to have been given for the defendant And upon the appeal of the defendant the Court of Civil Appeals in affirming the said judgment unreasonably and wilfully disregarded the questions thereby raised under the said Constitution as well as the rules of evidence according to the usage and practice prevailing in Texas And the defendant is thereby deprived of its property without due process of law contrary to the provisions of the said Constitution

16 There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 5) as follows

"You are instructed that inasmuch as the defendant is a corporation incorporated and existing under the laws of the state of Missouri the question of the legality of the ownership of a majority of its

stock by the Standard Oil Company is not an issue in this case and in this connection you are further instructed that the anti-trust laws of Texas being designed merely to prohibit unlawful combinations or agreements having the purpose of fixing and regulating prices and other forbidden purposes denounced by such laws could not be violated by the mere ownership by the Standard Oil Company of a majority of the stock of the defendant"

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in owning in another state a majority of the stock of the defendant And the verdict having been given for the State the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution

17 There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 7) as follows

"You are instructed that it is admitted by the defendant that the Standard Oil Company of New Jersey acquired a majority of the shares of stock of the defendant company on or about the 4th day of September 1900 and thereafter continued to own the same Therefore the Court further instructs the jury that the acquiring and owning of said shares of stock by said Standard Oil Company did not constitute a violation of the act approved March 31st 1903 even though the jury may believe that the said Standard Oil Company voted said shares of stock at the meeting of the stockholders of the defendant company for the election of director of said defendant company"

And there is also manifest error in this that the said judge also refused to direct the jury as requested by the defendant (Special Charges refused No. 24)

"You are instructed that since the Standard Oil Company acquired a majority of the stock of the defendant prior to the enactment of the anti-trust act of 1903 and since the defendant company being a corporation created by the laws of Missouri the acquisition of such stock by the Standard Oil Company cannot be inquired into by the courts of Texas but must be in all things treated as legal and valid the inhibition of the anti-trust act of 1903 against any corporation's acquiring the shares of stock of any other corporation for the purpose of preventing or lessening competition or tending to affect or lessen competition can have no application to this case"

Whereas the said directions ought respectively to have been given so that the jury might not convict the defendant of violation of the said statute of 1903 upon any of the three issues submitted to them

as aforesaid in the paragraphs nine (IX) ten (X) and eleven (XI) of the judge's charge on account of the acts of the Standard Oil Company in acquiring the said majority of shares before the passage of the said statute of 1903 And the verdict having been given for the State the defendant is by reason of the said refusals deprived of its property by the said judgment without due process of law and subjected to the said penalties by virtue of an ex post facto law passed by the state of Texas contrary to the provisions of the said Constitution

18 There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 9) as follows

"You are instructed that it is not a violation of the laws of the state of Texas and has not been a violation of such laws or any laws at any time since May 31st 1900 for the Standard Oil Company of New Jersey or any other person or corporation to own a part of the stock of the defendant Waters-Pierce Oil Company and you will therefore disregard any evidence that has been introduced before you upon this subject"

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas merely on account of the acts of the Standard Oil Company in owning in another state a majority of the stock of the defendant And the verdict having been given for the state the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution

19 There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges No. 13) as follows

"You are instructed that in view of the fact that the Standard Oil Trust Agreement of January 2nd 1882 and the supplemental agreement thereto of January 4th 1882 were executed long prior to the creation of the defendant and there is no evidence showing that the defendant ever adopted said agreement you will not consider the execution of said agreement or the contents of the same as in any wise affecting this defendant"

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the anti-trust laws of Texas on account of this agreement between other persons made long before the defendant came into existence and long before the passage of the said anti-trust laws And the verdict having been given for the State the defendant is by reason of the said refusal deprived of its property by the said judgment without due process of law contrary to the provisions of the said Constitution

20 There is also manifest error in this that the penalties of $1,549,500 and $74,400 assessed by the jury are respectively so plainly excessive that the defendant is thereby deprived of its property without due process of law

21 There is also manifest error in this that the Court upon hearing the said exceptions of the defendant to the said petition in manner aforesaid overruled others of the said exceptions (Nos. 28 and 38) whereby the defendant objected that the recovery of penalties under the said statutes respectively for acts done more than two years before the commencement of the said action was barred by article 219 of the Code of Criminal Procedure of Texas And in this that the Court also overruled in like manner others of the said exceptions (Nos. 30, 31, 40, 41) whereby the defendant objected respectively that if the said limitation was not available to it the defendant would be denied the equal protection of the laws contrary to the provisions of the said Constitution and that the said statutes of 1899 and 1903 would respectively be invalid by reason thereof And in this that the Court also in like manner overruled others of the said exceptions (Nos. 32 and 42) whereby the defendant objected that the recovery of the said penalties for acts done more than two years before the commencement of the said action was barred by article 3354 of the Revised Statutes of Texas And in this that the Court also in like manner overruled others of the said exceptions (Nos. 34 and 44) whereby the defendant objected that if the said limitation was not available to it the defendant was denied the equal protection of the laws contrary to the provisions of the said Constitution and that the said statutes of 1899 and 1903 were invalid respectively by reason thereof And in this that the Court also in like manner overruled others of the said exceptions (Nos. 35 and 37) whereby the defendant objected respectively that the recovery of penalties under the said statute of 1899 for acts done more than four years before the commencement of the said action was barred by article 3358 of the said Revised Statutes and that if the said limitation was not available to it the defendant was denied the equal protection of the laws contrary to the provisions of the said Constitution And in this that the judge also refused with like effect and consequences to direct the jury as requested by the defendant in the Special Charges refused Nos. 1, 2, and 3 respectively as regards the said limitations which were duly pleaded in the defendant's answer

22 There is also manifest error in this that the Court in like manner overruled another of the said exceptions (No. 10) to the said petition whereby the defendant objected that the parts thereof which seek to hold the defendant liable to penalties and a forfeiture of its said

permit because of the alleged agreement or understanding whereby in consideration of the defendant purchasing all its supplies from the said Standard Oil Company the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company because it appears from the petition that the said Standard Oil Company was and is a citizen of New Jersey and never obtained a permit to do business in Texas and it is not alleged that it ever contemplated entering Texas to do business therein or could have obtained a permit so to do and therefore an agreement such as alleged if made could not be construed as violating any laws of Texas without giving to such laws an extra-territorial effect and operation binding upon citizens of other states and with respect to inter-state commerce and in violation of the said Constitution and the defendant moved the Court to strike out the said allegations with respect to the said alleged agreement and understanding And the said exception being overruled the defendant is by the said judgment made liable to the penalties imposed by the said laws on account of the said alleged agreement or understanding contrary to the provisions of the said Constitution relating to commerce among the several states and is so deprived of its property without due process of law

23 There is also manifest error in this that the said judge at the trial refused to direct the jury as requested by the defendant (Special Charges refused No. 23) as follows

"You are instructed that if you believe from the evidence that the defendant has entered into any agreement by which it has bound itself to transact business within a certain territory in the United States, including the State of Texas, and that in pursuance of such agreement the defendant has been and is transacting business in the State of Texas, the making of such agreement and the transaction of business thereunder by the defendant cannot be considered as in violation of the Anti-Trust Laws of Texas, and in this connection you are instructed that the defendant always had and now has the right to confine its business operations to any territory desired by it and that the fact that the defendant has not extended its operations to a broader field would not render the defendant guilty of violating the Anti-trust Laws of Texas"

Whereas the said direction ought to have been given so that the jury might not convict the defendant of violation of the said laws by reason of any such agreement or understanding as alleged as aforesaid by which the said Standard Oil Company agreed that the defendant should be permitted to sell its products in Texas without competition or interference by the said Standard Oil Company in consideration of the defendant purchasing all its supplies from the said Standard Oil Company and which agreement or understanding related to com-

merce among the several states And the verdict having been given for the State the defendant is by the said judgment deprived of its property without due process on account of statutes passed by the State of Texas regulating commerce among the several states contrary to the provisions of the said Constitution in that behalf

24 There was also manifest error in this that the said judge at the said trial arbitrarily and without any regard to the rules of law and for the purpose of exciting and inflaming the prejudices of the jury against the defendant admitted in evidence against the objection of the defendant proof of the Standard Oil Trust agreement of 1882 in the plaintiff's petition set out which was made many years before the incorporation of the defendant and to which it was admitted that the defendant never became a party And in this that the said judge in like manner admitted in evidence the paragraphs (3rd 4th 5th 6th 7th and 8th) of the agreement of counsel called Stipulation No. 1 setting out subject to all legal objections that the Standard Oil Company of New Jersey owned a majority of the shares of the companies therein mentioned by the names of the Standard Oil Company of Indiana New York and Kentucky respectively and of the Continental Oil Company and the Republic Oil Company at the times and in the manner therein mentioned and that the said companies did not transact any business in Texas all of which were matters in which the defendant was in no way concerned and had no possible relation to any of the questions involved in this case And also in this that the said judge in like manner admitted in evidence that the defendant had given rebates and discounts to certain dealers and had sold oil at different prices in different localities in Texas which evidence was irrelevant to all the issues in the case And also in this that the said judge in like manner admitted in evidence the testimony of the witness C. W. Cahoon to the effect that at points in Texas where there was competition the defendant sometimes sold oils at less than at points where there was no competition which testimony had no tendency to show any violation of the laws of Texas and could have no effect except to prejudice the jury And also in this that the said judge in like manner admitted in evidence the testimony of the said C. W. Cahoon to the effect that for about 60 days in 1906 certain brands of oil of grades inferior to that known as Eupion oil had been sold by the defendant as Eupion oil which evidence was frivolous and irrelevant And also in this that the said judge in like manner admitted in evidence the testimony of the witness A. W. Clem to the effect that the old Waters-Pierce Company in 1891 cut the prices of oil at Seymour and other places in Texas and also that the old Waters-Pierce Company in 1894 after it bought out the business of the same witness advanced the selling-price of oil from 9½ cents to 22 cents per gallon which testimony did not relate in any way to the defendant or its

doings or to any issue involved in this case And in this that the said judge in like manner admitted in evidence the testimony of the witness Royer Campbell to the effect that in 1894 when he quit buying from the old Waters-Pierce Company and bought from other persons in San Antonio the old Waters-Pierce Company immediately cut the price of oil from 16 or 17 cents to 8 and 10 cents per gallon and also his testimony as to the character of warfare and competition that the old Waters-Pierce Company carried on with him in 1894 which evidence did not relate in any way to the defendant or anything in question in this case And the said judge permitted the jury to consider all the said evidence so admitted so far as it might seem to establish any of the said issues submitted for their consideration And by the admission of the said several pieces of evidence respectively the prejudices of the jury were excited and inflamed against the defendant and their attention was diverted from the true issues in the case and the defendant was prevented from having a trial of the said issues according to the due course of law And by the judgment upon the verdict upon the issues submitted to the jury as aforesaid the defendant is deprived of its property without due process of law contrary to the provision of the said Constitution

25 There is also manifest error in this that the Court appointed a receiver of the property and assets of the defendant and the bond of such receiver was received and approved as appears by the said record after the judgment given upon the said verdict was suspended by the proceedings by way of appeal on the part of the defendant from the said judgment although the Court had no authority to appoint such receiver otherwise than as a consequence of the said judgment and for the purpose of carrying the same into effect And the defendant was thereby deprived of its property without due process of law contrary to the provisions of the said Constitution

26 There is also manifest error in this that after the judgment given upon the said verdict and after notice of appeal therefrom by the defendant according to law the Court acting under color of the Texas statute of 1907 c. 87 but arbitrarily and wilfully disregarding its provisions and purposes appointed the said receiver for the purpose of depriving the defendant of its property and business and not for any purpose for which the appointment of a receiver was authorised by the said statute and on the alleged ground that the said judgment had been rendered against the defendant for violation of the said anti-trust laws and that newspaper interviews with the counsel for the defendant had been brought to the attention of the Court in which the said counsel had declared the purpose of the defendant to appeal from the said judgment and to continue to carry on its

business in the same manner as theretofore and without any evidence being submitted to the Court in connection with the application for the appointment of such receiver And the Court disregarding the provisions of the said statute and the due course of law made the said appointment of a receiver not because any interest of the state seemed to require such action but for the pretended purpose of preventing the defendant from a continued violation of the law although the Court knew that the defendant had appealed from the said judgment and denied any violation on its part of the said anti-trust laws and although the Court assumed as declared by the Court at the time of such appointment that the defendant would file its proper supersedeas bond upon the said appeal and had a right to do so within the time provided by law all of which appears by the bill of exceptions of the defendant as to matters connected with the appointment of the receiver which bill of exceptions was signed and allowed by the judge who held the said Court at the time of the said proceedings And the defendant by the appointment of the said receiver for such purpose and in such circumstances is deprived of its property without due process of law contrary to the provisions of the said Constitution

27 There is also manifest error in this that the Court decided that the said statute of 1907 under color of which the said receiver was so appointed was valid and not repugnant to the said Constitution although the statute was passed after the commencement of the said action and provided that when any law of the said state including any of the said Anti-Trust Laws for the violation of which fines or penalties or forfeitures were provided had been theretofore violated or should be violated before the taking effect of the said statute by any corporation the said state should have a lien to secure the payment of such fine penalties and costs from the time when the said statute took effect on all property of such corporation within the said state or which should thereafter become or be brought within the said state and also provided for the appointment of a receiver for such corporation in the cases therein mentioned but did not provide for any lien or authorise the appointment of a receiver in the case of a violation of any of the said laws by any person other than a corporation Whereas it ought to have been decided that the said statute was invalid and repugnant to the provisions of the said Constitution forbidding the passage of any ex post facto law by any state and was also invalid because the defendant was thereby denied the equal protection of the laws and deprived of its property without due process of law contrary to the provisions of the said Constitution

28 There is also manifest error in this that after judgment was

improperly given upon the said verdict as aforesaid for the plaintiff the court appointed a receiver of the property and assets of the defendant the Waters-Pierce Oil Company as specified in the orders appointing a receiver whereas the Court ought not to have appointed such receiver And by the appointment of such receiver the defendant is deprived of its property without due process of law contrary to the provisions of the said Constitution

And the said Waters-Pierce Oil Company prays that the said judgment and order and the judgment affirming the same respectively for the errors aforesaid and others in the record and proceedings aforesaid may be reversed annulled and altogether held for nothing and that it may be restored to all things which it hath lost by occasion of the said judgment and order and the affirmance thereof as aforesaid

### *Questions in the Case*

1. By the proceedings in the Texas courts the defendant has been subjected to the penalties of the Act of 1899, under paragraph VII of the judge's charge, by reason of an *agreement* made by another company, the old Waters-Pierce Co., with the Standard Oil Co., confining the business of those two companies to different parts of the United States. This agreement was made in 1878, many years *before the act was passed*, and the only ground for imputing it to the defendant is that the defendant has since acquired the business of the old Waters-Pierce Co. and carried it on in Texas and the other parts of the country where it was already established, and not in other places, though it has done so without entering into any similar agreement. The defendant submits that it cannot be so subjected to penalties without giving a retroactive effect to the act and depriving the defendant of its property without due process of law.

2. The agreement was not only made before the act of 1899 was passed, but it was made *outside of the state of Texas*, and it did not provide that either company should do anything in Texas, much less anything that has since been made illegal by the laws of that state. By imposing penalties on the defendant by reason of such an agreement, it is submitted that the State is punishing an act done out of its jurisdiction and so depriving the defendant of its property without due process of law.

3. The only provision of the agreement that affected Texas was that the Standard Oil Co. should not do business in that state, which it could not do without carrying its oil into that state for the purpose and thereby engaging in *interstate commerce*. The State had no authority to regulate such commerce by imposing penalties for entering into contracts relating to it.

4. The defendant has also been subjected to the penalties of the act of 1899 *for the doings of the Standard Oil Co.* in acquiring shares in the defendant company, in which the defendant itself had no part. This has been done under paragraph VIII of the charge on the assumption that the defendant thereby *permitted* a combination of its capital with that of the Standard Oil Co., although there was no evidence that the defendant itself had any part in the transaction except to register the transfer as it was bound to do. It is submitted that such an imposition of penalties upon the defendant for the acts of somebody else is a taking of its property without due process of law.

5. This acquisition of the shares also took place *outside of Texas* and under the laws of Missouri, and was a matter to which the State of Texas could not constitutionally extend its jurisdiction.

6. Besides this, any *combination* effected by the acquisition of shares by the Standard Oil Co. was effected when that company first acquired the shares in the

*old* Waters-Pierce Co. and that was long *before the act of* 1899 *was passed*. The shares in the defendant company were given to the Standard Oil Co. for its interest in the property of the old company which was taken over by the defendant, and there was no new combination effected at that time. The imposition of penalties on this ground therefore gives the act the effect of an ex post facto law.

7. In like manner the defendant has been subjected to the penalties of the act of 1903 for what *the Standard Oil Co.* did in acquiring the shares. This has been done under paragraph IX of the charge on the ground that *the defendant* thereby entered into a combination of its capital with that of the Standard Oil Co., and under paragraph X on the ground that the management of the two companies were thereby placed under the same management or control, and under paragraph XI on the ground that the Standard Oil Co. had acquired the shares with the purpose on the part of its own officers of lessening competition in Texas. It is submitted that the constitutional rights of the defendant have been violated in the three ways previously mentioned (4–6), by imposing penalties on the defendant for the acts of somebody else, for acts done outside of Texas, and for acts done before the statute.

8. It is also submitted that both the acts of 1899 and 1903 are too indefinite and uncertain in their terms to make it an offence to do what the defendant has been found by the jury to have done, and that the imposition of penalties for doing that deprives the defendant of its property without due process of law.

9. The penalties that have been imposed upon the defendant are also so excessive as to constitute a deprivation of its property without due process of law.

10. It is also submitted that the conduct of the judge at the trial in arbitrarily and without any regard to the rules of law admitting against the defendant's objection evidence that could have no possible connection with the issues in the case and could only confuse and excite the prejudice of the jury, and directing the jury to consider such evidence as tending to prove some of the issues in favor of the State, and directing them to bring in a verdict for the State if they found facts of which there was no evidence whatever, amounted to a denial of a trial according to law, and that the judgment deprived the defendant of its property without due process of law.

11. The permit was a contract with the State for valuable consideration under which the defendant was entitled to do business in Texas for ten years, and the revocation of the permit without convicting the defendant of misconduct by due process of law was, like the imposition of the penalties, a deprivation of its property without due process of law.

12. The order appointing the receiver, being dependent on the judgment, must fall with the judgment.

13. It is also submitted that, after the judgment for penalties had been superseded by the appeal and bond, the judge had no authority to complete the appointment of a receiver, and that the order completing such appointment deprived the defendant of its property without due process of law.

14. The appointment of the receiver was also made arbitrarily and without due process of law.

[The *Record* in No. 359 will hereinafter be referred to as the record, except where the other is specially mentioned.]

1. *Charging the Defendant with the Agreement made by the Old Waters-Pierce Co. before the Act of* 1899.

The only agreement upon which the defendant was charged was the agreement made by the *old* Waters-Pierce Co. in 1878 for a division of territory between it and the Standard Oil Co., and there was no evidence of any other.

The allegation in the petition (*Rec.* p. 6) is that, when the [old] Waters-Pierce Oil Co. was formed, it was agreed that that company was to confine its business to Texas and certain other places and was not to do or attempt to do business elsewhere, and that the Standard Oil Co. or its subsidiary or dependent companies should not do business in the territory named as that of the Waters-Pierce Oil Co., and that this agreement has been *acquiesced in* and *acted upon* by the defendant since its organisation to the present time. It is also alleged (p. 6) that, as a consideration of the agreement, the [old] Waters-Pierce Co. contracted to purchase all of its supplies from the Standard Oil Co., which contract was *enforced* and *observed* by the defendant since its incorporation to the present time.

It is alleged (p. 5) that the [old] Waters-Pierce Co. organised in 1878 *is in fact* the same company as the defendant "doing business under a reputed reorganisation with a charter dated May 29th 1900," and that "the company as reorganised *adopted* all the acts, *carried out* and *is carrying out* all the *contracts*, schemes, and conspiracies of the company as originally organised, and in every way has *taken the place* of the company as originally organised."

It is not alleged that the defendant ever *agreed* with anybody to adopt, observe, carry out, or to be bound by

this agreement of the old Waters-Pierce Co. or entered into any similar agreement with anybody. The defendant is charged only with *the original agreement* on the ground that it is in fact the same company as the old Waters-Pierce Co. and has acquiesced in, acted upon, enforced, observed, and carried out its agreements.

It is afterwards alleged (*Rec.* p. 37) that by the acts, doings, and undertakings thereinbefore set out the defendant had violated the act of 1899 and entered into and become a party to an agreement and understanding *to regulate and fix the price* of an article and commodity.

The defendant excepted to the allegations claiming penalties under the act of 1899 on account of this agreement, because it was made before the passage of the act, and, if the act authorised a recovery of penalties on account of the performance of the agreement by the defendant, it would violate the Constitution in being retroactive and impairing the obligation of contracts and denying to the defendant the equal protection of the laws and taking the property of the defendant without due process of law (*ante* p. 14, special exception 20; *Rec.* p. 53).

This exception was overruled (*Rec.* p. 97), to which the defendant excepted (p. 97) and assigned the same as error (p. 354, par. 25).

This was assigned also as error in this Court (*ante* p. 59, par. 5; *Rec.* p. 1190).

If the exception had been sustained as to the agreement alleged in the petition, it would have removed from the case the charge of an agreement for a division of territory, and there would have been no ground for leaving to the jury the issue stated in par. VII of the charge (*ante* p. 44; *Rec.* p. 288) regarding an agreement or understanding to fix or regulate prices.

See *Johnasson* v. *Bonhote*, 2 Ch.D. p. 300–301.
*Alford* v. *Cochrane*, 7 Tex. 485.

The evidence at the trial did not go beyond the allegations, but on the contrary fell far short of them. The only evidence of the agreement was the testimony of *H. C. Pierce*, (*ante* p. 23) that, when he organised the first Waters-Pierce Co. in 1878, it was agreed between him and the Standard Oil Co. that the first Waters-Pierce Co. would confine its operations and transact its business within the certain territory in which Waters, Pierce, & Co. had transacted their business.

This evidence was objected to by the defendant on the ground that it related to transactions with the *old* Waters-Pierce Co. which had ceased to exist and was not a party to the suit (*Rec.* p. 443).

There was no evidence of the alleged agreement on the part of the Standard Oil Co. not to do business in Texas *or* of the alleged agreement that the *old* Waters-Pierce Co. *should buy its supplies* from the Standard Oil Co.

None of the other witnesses who were questioned on the subject knew anything about the agreement (*C. A. Pierce*, *ante* p. 34; *C. M. Adams*, *ante* p. 42).

There was not even any evidence that the defendant had ever asserted any rights under the agreement from the time of its incorporation in 1900. The disputes about the dividing lines in Missouri and Louisiana, testified to by *C. F. Hatfield* (*ante* p. 28), occurred in 1889 or before. *H. R. Knollenberg* spoke only of the time between 1893 and 1895 when he was salesman for the *old* Waters-Pierce Co. and was told not to go beyond certain limits (*ante* p. 32). *T. R. Hopkins*, who once sold outside of his territory between 1887 and 1903 and was told not to do so any more, does not say that this happened since May 1900 (*ante* p. 32).

Even the testimony of employees of the Standard Oil Co. or other companies regarding the orders given to them relate to a time before the defendant was incorporated. This is so as to what *E. M. Wilhoit* was *told* about orders from

the Panhandle country and the complaints of the *old* Waters-Pierce Co., when he was employed by the Standard Oil Co. at Wichita more than 7½ years before he gave his evidence (*ante* p. 28). *M. Maxon* says that after 1895 his territory came in contact with that of the [old] Waters-Pierce Co. in Illinois, and he was not permitted to sell oil beyond the line in Missouri or Illinois, but he does not say he had orders to that effect after the defendant was incorporated in 1900 (*ante* p. 29). *A. H. Gardner* who was employed at Denver up to 1892 (14 years before 1906) by a company that represented the Standard Oil Co. there, only says that he did not sell oil in any territory in which the [old] Waters-Pierce Co. sold (*ante* p. 29). *E. P. Pratt*, who was so employed at Des Moines till 1892 and afterwards at Kansas City, says they were instructed to confine their business to their own territory, but he does not speak of any instructions after 1900 (*ante* p. 30). *W. N. Davis* testifies only of a period ending in 1897, in which he did not permit his men to seek patronage in Waters-Pierce territory (*ante* p. 31–32). *W. A. Morgan* was once or twice reprimanded for going into Waters-Pierce territory during his employment from December 1898 to October 1900, but he does not say that happened after May 1900, when the defendant was incorporated (*ante* p. 32). *G. J. Steigerwald*, a manager of the Republic Oil Co. in 1901 to 1904, is the only one that testifies to anything that happened after the defendant was incorporated, and he only says that one station of his company at Springfield, Mo., in the territory of the Waters-Pierce Co. was closed, and speaks vaguely of an apparent change in the method of doing business after a year or more (*ante* p. 29).

But, although the defendant itself never had any agreement or understanding with any other company or person about the territory in which the business should be carried on, there is no question that the defendant did not

*extend* the business outside of the territory in which it was established when the defendant acquired it. This appears by the testimony of *H. C. Pierce* (*ante* p. 24–25) and of other witnesses.

Upon this evidence, the judge, in par. VII of his charge (*ante* p. 44), left to the jury the question, in the words of s. 1 of the act of 1899, whether the defendant entered into or *became a party* to an agreement or understanding with the Standard Oil Co. *to fix or regulate the price* of oil in Texas, and persisted in carrying it out there.

This was excepted to according to the statutory provision (*ante* p. 50), and assigned as error (*Rec.* p. 372, par. 232).

It was also assigned as error in this Court (*ante* p. 62, par. 9; *Rec.* p. 1193–1195).

The jury were thus invited to treat the agreement of the old Waters-Pierce Co. for a division of territory as an agreement to fix or regulate prices, and also to treat the defendant as liable on account of the agreement of the old Waters-Pierce Co. in the same manner as that company would have been.

The defendant did not by acquiring the business and property of the *old* Waters-Pierce Co. succeed to any of the liabilities of that company.

*Armour* v. *Bement's Sons*, 123 Fed. R. 56.

The State courts by imposing on the defendant a liability on account of an agreement made by the *old* Waters-Pierce Co. have undertaken to deprive the defendant of its property without due process of law.

*Woodward* v. *Central Vermont Ry. Co.*, 180 Mass. 599.
*Davidson* v. *New Orleans*, 96 U. S. p. 102.

If the defendant has done anything in violation of the laws of Texas, it is liable for the consequences independently of any agreement, but it cannot be made liable on the ground that the *old* Waters-Pierce Co. made an agreement which would be contrary to the laws of Texas if it were made after 1899.

But if the defendant is to be regarded as the *old* Waters-Pierce Co. in a new form and so *a party to* its contracts, which is the theory asserted in the petition, then the question is to be treated in the same manner as if the *old* Waters-Pierce Co. were sued for penalties for having entered into the agreement for a division of territory in 1878 and remaining a party to it on and after June 1, 1900 (Cf. *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. p. 36, 39).

In 1878 there was no law in Texas forbidding such an agreement as that by which the old Waters-Pierce Co. agreed not to do business outside of Texas or other specified places, and the agreement was perfectly legal, whether it was one that the Standard Oil Co. could have enforced or not.

*Mogul Steamship Co.* v. *McGregor*, [1892] A. C. p. 39.

It was impossible for the State of Texas in 1899 to impose a penalty upon that company for having previously entered into such a contract, and any law enacted for that purpose would have been an ex post facto law and invalid.

*Kring* v. *Missouri*, 107 U. S. p. 228.

It is plain that the action is criminal in its nature, as the object is to inflict punishment (*post* p. 136).

Penalties could not be imposed on the ground that the agreement provided for doing something since made illegal, which the company continued to do. The agreement did not provide for doing anything. It provided only that the *old* Waters-Pierce Co. should *not* do business out of

Texas and certain other places and that the Standard Oil Co. should *not* do business within that territory.

The case therefore does not resemble *State* v. *Missouri, Kansas, & Texas Ry. Co.*, 99 Tex. 516, 527; 91 S. W. 214, where a contract by a railway company for giving exclusive facilities to an express company, which was made before and carried out after the act of 1903, was held to be a violation of that act.

The only thing *forbidden* by the act of 1899 was *entering into or becoming a party to* an agreement or understanding to regulate or fix prices, and it was provided that the parties to such an agreement should be deemed "guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act" (1899, c. 146, s. 1, *post* p. 213). The agreement limiting the territory in which business should be carried on was entered into by the old Waters-Pierce Co. before the act was passed. That agreement, although it was not an agreement to regulate or fix prices and only might affect them indirectly by preventing the possible competition of the Standard Oil Co., was the only ground for the finding of the jury that there was an agreement to fix or regulate prices. But no such agreement was made after the passage of the act.

The only thing that the old Waters-Pierce Co. or the defendant *did* after the passage of the act, as regards the issue in par. VII of the charge, was to do business in Texas, which was not a thing forbidden by the act. The carrying on of business in Texas was not even a thing that the *old* Waters-Pierce Co. agreed to do. There was nothing in the agreement of that company to which the words of the judge's charge, "persisted in *carrying same out in Texas*" were applicable.

It is evident that the judge intended to allow the jury to treat the two companies and their obligations as identical.

In par. V (*Rec.* p. 287) he tells the jury they may consider certain evidence, if they find that on June 1st 1900 "there was formed *or existed*" an agreement between the officers of the defendant and those of any of the other companies mentioned relating to the management of the defendant's business. This was only three days after the defendant was incorporated, and the intimation that there may have been an agreement *then existing*, which was not then entered into, naturally suggests an agreement previously entered into by the *old* Waters-Pierce Co.

The identification was facilitated by the admission of the evidence of the judgment revoking the permit of the old Waters-Pierce Co. in 1897 for violation of the anti-trust acts of 1889 and 1895, the affirmation of that judgment by this Court in 1900, and the subsequent formation of the defendant company and the issue of a permit to it to do business in Texas (*ante* p. 21).

This evidence relating to the old Waters-Pierce Co. was objected to by the defendant on the ground that it was entirely irrelevant to the case against the defendant (*Rec.* p. 438–439). The only color for its admission was the charge in the petition that the "*conspirators*" had gone through the *form* of dissolving the old company and creating a new corporation "for the purpose of *defrauding* the state of Texas and for the purpose of *fraudulently rendering ineffective* the judgments of the courts of the state of Texas and of the United States" (*ante* p. 7–8; *Rec.* p. 21). It did not have the remotest tendency to prove that the defendant had made any agreement with anybody, but it enabled the jury easily to identify the defendant with the old Waters-Pierce Co. as charged in the petition.

The judge helped on the result by his encouragement of the idea of *conspiracy*. There was a general allegation of conspiracy in the petition but there was no evidence what-

ever in support of it. The Standard Oil Trust agreement of 1882 was no more a conspiracy than any combination would be that was formed to acquire and to do all the business that it could. It was not an agreement to do any unlawful thing or to use unlawful means to carry out a lawful purpose. And, whatever the character of the agreement may be, it was an admitted fact that neither the *old* Waters-Pierce Co. nor H. C. Pierce ever signed or deposited shares under the agreement (*ante* p. 19–20) and that the trust was dissolved long before *the defendant* came into existence (*ante* p. 7, 20).

There was no evidence of fraud or impropriety in the dissolution of the old company or the formation of the new one, or in the purpose of these proceedings. The only evidence adduced by the plaintiff on the subject was the testimony of *H. C. Pierce* (*ante* p. 22), that, the licence of the old Waters-Pierce Co. having been revoked, he organised the new company in order that he should manage and control it free from any direction of the Standard Oil Co. and that the company should transact its business in strict accordance with the laws of every state. This testimony gives no support to the charge of fraudulent purpose. When the permit of the old company was revoked, it was perfectly proper, and in accordance with the laws of Texas, that the persons interested in the business should form a new company to carry it on free from the contracts and combinations by which the old company had broken the law.

The identification of the two companies and their obligations was also assisted by the judge's direction (par. XIII, *ante* p. 47) that the jury might consider, upon the issues submitted to them, the evidence that the defendant had given *rebates and discounts* in the course of its dealings and the evidence of its general course of dealings and

methods of *meeting competition*, although these things themselves were not a violation of law. But the evidence of rebates and discounts and of vigorous competition was confined almost entirely to the *old* Waters-Pierce Co. (Campbell, *ante* p. 37; Clem, *ante* p. 40; Cahoon, *ante* p. 41–42). This evidence of what the *old* Waters-Pierce Co. did is the only ground of the constantly repeated charge against *the defendant* of "unfair competition" (*ante* p. 13), and, with the judge's direction regarding it, the jury could hardly fail to treat the defendant as for all practical purposes the same company as the old Waters-Pierce Co. and a party to all its agreements.

It is evident that the defendant was only found to have become *a party to* the old agreement of 1878 by the circumstances in which the company was formed and succeeded to the business, and the ground on which it was held liable to penalties was that it *remained* a party and persisted in *carrying out* that agreement in Texas on and after June 1, 1900, as found by the jury in accordance with the judge's charge (*ante* p. 44; *Rec.* p. 288), and as alleged in the petition. The judge at the trial said, "Most of the evidence that has been admitted in this case has been admitted on that theory" (*Rec.* p. 648).*

The judge cannot be supposed to have intended to leave to the jury the question whether the defendant had itself agreed to be bound by the old agreement or had made a similar new agreement, for, in the first place, there was no evidence whatever of any such agreement by the defendant, nor any allegation of one, and the supposition could not be made without attributing to the judge an intention

* This was said in a discussion about the evidence of continuing the business of the Eagle Refining Co., the issue on which was afterwards withdrawn from the jury in par. XII of the charge (*Rec.* p. 291–292).

to leave to the jury an issue not raised by the pleadings or supported by any evidence.

*Maguire* v. *Tyler*, 8 Wall. 650, 665.
*Neilson* v. *Lagow*, 12 How. 98, 110.

In the next place, such a supposition would be contrary to the avowed theory on which most of the evidence was admitted.

Accordingly the defendant has been convicted of a conspiracy to defraud and subjected to penalties by reason of an agreement made by another company long before the act was passed, and without having done any thing in pursuance of the agreement.

Although the words of the act refer to the future, yet the state courts have given it the effect of applying to an agreement made before its passage, and the defendant has thereby been deprived of its constitutional right.

*General Oil Co.* v. *Crain*, 209 U. S. 211, 228.

**2.** ***The Making of the Agreement outside of the State of Texas.***

The agreement upon which the defendant has been found guilty under par. VII of the charge (*ante* p. 44) was also made outside of the state of Texas, and did not provide for doing anything in that state, and it is submitted that the State has therefore undertaken to punish without due process of law an act done beyond its jurisdiction.

The defendant specially set up and claimed in its answer (*ante* p. 16, par. 24; *Rec.* p. 86–87) that, if it ever entered

into any agreement or understanding as alleged (which was denied), the same was made *outside of the state of Texas*, and that the Anti-Trust Laws of 1899 and 1903 had no application thereto, and that the court was without jurisdiction of the same for the reason that the laws of Texas had no extra-territorial effect.

This was a distinct claim that the act of 1899 could not, consistently with due process of law, impose a penalty upon the defendant on account of such an agreement.

*Schlemmer's Case*, 205 U. S. p. 9, 11.
*Kaukauna Water Co.* v. *Green Bay Canal Co.*, 142 U. S. p. 270-271.
*Willson* v. *Blackbird Creek Co.*, 2 Pet. p. 250-251.

The judge gave partial effect to this claim with a qualification that destroyed its effect, by telling the jury in par. VI of his charge (*Rec.* p. 288) that no agreement made outside of the state would violate the anti-trust laws of Texas, *unless* such agreement was executed or attempted to be executed in Texas. He then proceeded in par. VII (*ante* p. 44; *Rec.* p. 288) to direct them that, if the defendant *persisted in carrying out* the agreement in Texas, they should return a verdict for the State.

This qualification added by the judge was met by the Special Charge No. 23 (requested by the defendant and refused), that the *transaction of business in Texas* by the defendant could not be considered as in violation of the anti-trust laws, and that the fact that the defendant had not extended its operations to a broader field would not render the defendant guilty of violating them (*Rec.* p. 310).

The par. VII of the charge and the refusal of this Special Charge No. 23 were excepted to according to the statutory provision (*ante* p. 50) and assigned as errors (*Rec.* p. 372, 377, par. 232, 267).

Both were assigned as errors in this Court (*ante* p. 62, 75, par. 9, 23; *Rec.* p. 1193, 1205).

The only manner in which the alleged agreement for a division of territory could affect the price of oil in Texas was by freeing the defendant from the possibility of the future competition of the Standard Oil Co. This might indirectly affect the price of oil in Texas, though it could hardly be said to regulate or fix the price there. But the agreement did not provide for the doing of anything by either party. Its terms were absolutely negative, namely, that the old Waters-Pierce Co. should *not* do business *out of Texas* and other specified places and that the Standard Oil Co. should *not* do business *within* that area. There was no agreement that the old Waters-Pierce Co. or the defendant *should* carry on business in Texas, and the defendant, in doing so, exercised a right entirely independent of the agreement. Accordingly the defendant cannot be said to have been *carrying out the agreement in Texas* merely by continuing to do business in that state.

The only obligation imposed by the agreement was *not* to carry on business in certain places out of Texas, and the mere *not doing* of that *out of Texas* cannot be treated as *an act done* in Texas in pursuance of the contract.

If such an agreement could operate as an agreement "to regulate or fix the price" of oil in Texas, as specified in the act of 1899, c. 146, s. 1 (*post* p. 213), the only way in which it could be shown to have been carried into effect there would be by showing that the price had been actually regulated or fixed by the agreement or in pursuance of it.

But there was not a particle of *evidence* of any such regulation of prices, and no *finding* by the jury that prices had been actually regulated, and no intimation was given to them by the judge that they should consider whether prices had been affected or not.

It is plain that what the judge meant in par. VII by "*persisted in carrying out*" the agreement in Texas (*Rec.* p. 288) was only carrying on business there, taken in connection with the evidence of the general course of business of the defendant, its methods of meeting competition, and the rebates and discounts it had given, which he told them in par. XIII of his charge (*ante* p. 47) that they might consider upon this issue as well as upon the others submitted to them.

The only evidence as to the way in which prices were fixed was that they were settled by the officers of the defendant, and were based on cost, freight, local conditions, and competition (C. A. Pierce, *ante* p. 34; Finlay, *ante* p. 35; Horn, *ante* p. 36; Johnson, *ante* p. 37; Campbell, *ante* p. 39; Cahoon, *ante* p. 41–42; Ackert, *ante* p. 43–44).

There was no suggestion that the agreement was made in Texas, and it was admitted that the Standard Oil Co. had never done business there (*ante* p. 20–21; *Rec.* p. 424–425).

By this means the defendant has been subjected to penalties for a conspiracy on account of an agreement made in another state although it has not been shown that anything that the law of Texas was intended to prevent was effected by means of it.

The Texas anti-trust act of 1899, c. 146, s. 1 (*post* p. 213) was passed on the 25th May 1899 and is a copy word for word of s. 1 of the Arkansas act of 1899, c. 41, called the "Rector Anti-Trust Act," which was passed on the 6th March of the same year (Ark. Statutes 1899, p. 50).

In *State* v. *Lancashire Ins. Co.*, 66 Ark. 466 (1899), the defendant, having joined a combination out of the state to regulate the premiums to be paid for insurance, and being sued for penalties under the act, answered that it was not a

member of a combination to regulate the premiums for insuring property *in Arkansas*. This answer was held sufficient, on the ground that the State could not punish an offence unless it was complete in the state, and, although the legislature might dictate the terms on which foreign corporations could do business in the state, the only act for which the penalty was imposed was described in general terms as entering into an agreement to regulate prices, and the general expressions must be confined to acts done within the jurisdiction, and accordingly did not apply to an agreement made out of the state, unless it was to fix prices in the state and so would be completed there.

This case is a direct authority that the State of Texas had no authority to punish the defendant for entering into an agreement out of the state to fix prices, unless prices within the state were thereby fixed (see also *O'Neil* v. *Vermont*, 144 U. S. p. 332, 341).

There is however this difference between the cases, that in the Arkansas case there was a direct agreement *to regulate prices*, as described in the statute, but in the present case the only agreement was that the *old* Waters-Pierce Co. *should not do business out of* Texas and some other places and that the Standard Oil Co. should not do business *in* Texas. The obvious purpose was not to fix or regulate prices in Texas, but to enable the old Waters-Pierce Co. to do all the business there that might otherwise have been divided between the two companies.

The agreement did not necessarily have any effect upon prices in Texas. Nobody can say that, if the agreement had not been made, the Standard Oil Co. would have considered it a good business enterprise to invade the territory where another company was already established, or that, if the Standard Oil Co. had established itself there, the two companies would have deemed it for their respective interests to enter into a competition of reducing prices,

instead of getting what business they could respectively at the actual prices.

This would be readily recognised in the case of two large department shops in New York and Boston respectively. The Jordan Marsh Co. has a large establishment of that kind in Boston and does not carry on its business in New York where J. Wanamaker has a similar establishment, and they confine themselves respectively to the places in which their business is established. This is done presumably without any agreement or understanding between them.

It is not likely that the agreement had even any effect in keeping the Standard Oil Co. out of Texas after the passage of the anti-trust acts, for that company, being in the Texas view the arch-trust itself, could not have engaged in business there if there had been no agreement. But unless the agreement did actually regulate or fix prices in Texas, no act was done in that state contrary to the statute.

Even if there had been a finding of the jury that the price of oil in Texas had been actually affected by the agreement, it is at least doubtful whether such an indirect result of the agreement could be considered as an act done by the defendant in Texas in violation of the statute. If two merchants in St. Louis, or Liverpool, agreed with one another that they would not send goods to Texas for sale, on account of the oppressive laws in force there, it can hardly be asserted that one of them who happened to be passing through the state could be punished on the ground that prices there had been increased by the removal of their competition with others. Or if it could be shown that the result of a combination of manufacturers in Europe had been to increase prices in Texas, it would be difficult to say that one of them had violated the law of Texas. The result would have been only the

remote consequence of something over which the State of Texas had no authority. It would have been so in the present case if it had been shown that prices in Texas had been affected by the agreement. The case would not have been one where the punishment is inflicted for the continuation of an act begun in another state or for the direct result of an act done there, as in *U. S.* v. *Thayer*, 209 U. S. 39, 44, and *In re Palliser*, 136 U. S. 257, 266.

In 1905, as appears by *Hartford Ins. Co.* v. *State*, 76 Ark. 303, the Arkansas act of 1899 above mentioned was repealed, and a new section 1 was enacted in the same words as the former, but adding, after the mention of agreements, combinations, &c., the words "whether made in this state or elsewhere," and, after the mention of the purpose to regulate prices, the words "in this state or elsewhere." This was done, as stated in the case, in pursuance of a demand in "the platform" of "the dominant party" in 1904, that a certain bill should be passed whereby all foreign corporations should be prevented from doing business in the state if they were members of a pool or trust whether to affect prices in Arkansas or not. It was held by a majority of the court, two judges out of five dissenting, that the additional words, taken in connection with the "history of the times," showed an intention to make it unlawful for a foreign corporation to do business in the state while it was a member of a combination to regulate prices anywhere. An insurance company was consequently held to be liable to penalties in the same circumstances in which the insurance company was held not to be liable under the act of 1899. Battle J. dissented on the ground that the words "transacting or conducting business" in the state were only *descriptio personae*, and not a part of the offence or conspiracy, which consisted only in entering into a combination to regulate prices (p. 314). Wood J. also dissented on similar grounds.

In the present case the words of the act are those of the previous Arkansas act of 1899 and there are no such words as those added to it in 1905, and no such "history of the times," and the state court has not attempted to put on the words of the Texas act of 1899 any such construction as the majority of the Arkansas court have put on the Arkansas act of 1905. The Court of Civil Appeals said in its judgment (*Rec.* p. 1161) that the evidence was sufficient to show that the defendant was a party to an agreement or understanding with the Standard Oil Co., one object of which was to create a monopoly and control the price of oil and prevent competition in its sale in Texas, and that to a large extent such object had been accomplished; that the defendant performed the agreement in Texas, and such performance within the state constituted violations of Texas laws and rendered the defendant amenable to such laws, although the agreement might not have been made in the state; that to a large extent the case rested upon *circumstantial evidence*, but the court could not say that the jury were not warranted in their conclusions from it. This shows plainly that the court did not suppose that the *mere doing of business* in the state, about which there was no dispute, was a violation of the act of 1899, if the defendant was a party to an agreement made out of the state. It was also necessary that the object should be to some extent accomplished by creating a monopoly and controlling the price and preventing competition in Texas.

**3.** *The Subject of the Agreement was Interstate Commerce.*

The defendant excepted to the parts of the petition claiming penalties and a forfeiture on account of the agreement, because the Standard Oil Co. had never entered Texas to do business there and the agreement could not violate the laws of Texas without giving them an extra-territorial effect and with respect to interstate commerce in violation of the Constitution (*ante* p. 14, special exception 10; *Rec.* p. 49–50).

This exception was overruled (*Rec.* p. 97), to which the defendant excepted (p. 97) and assigned the same as error (p. 353, par. 15).

It was also assigned as error in this Court (*ante* p. 74, par. 22; *Rec.* p. 1204).

The defendant also specially set up and claimed in its answer (*ante* p. 16, par. 24; *Rec.* p. 86) that, if it ever entered into any agreement or understanding as alleged (which was denied), the same was made with reference to commerce in oils between states other than Texas or between Texas and some other state, and that the anti-trust act of 1899, if applicable thereto, was in violation of the provision of the Constitution regarding commerce among the several states.

The paragraph VII of the judge's charge (*ante* p. 44), which is excepted to according to the statutory provisions (*ante* p. 50) and assigned as error below (*Rec.* p. 372, par. 232) and in this Court (*ante* p. 62, par. 9; *Rec.* p. 1193), is inconsistent with this claim, which is again asserted in the motion for a new trial (*Rec.* p. 316, par. 4) referring to this paragraph of the charge.

It was agreed at the trial that the Standard Oil Co. had never done any business in Texas (*Rec.* p. 424–425).

The agreement alleged to have been made in 1878 was that the old Waters-Pierce Co. would confine its business to Texas and certain other places and that the Standard Oil Co. should not sell oil in that territory (*ante* p. 5), and no evidence was given of any other agreement (*H. C. Pierce, ante* p. 23).

All the supplies of oil used by those companies in their business were obtained at places outside of Texas, and such oil as was sold in Texas was carried there from those places for that purpose, and it is only very recently that oil has been discovered in Texas which could be so employed (*H. C. Pierce, ante* p. 23–24, 26).

Accordingly it was necessary first to carry the oil to Texas before it could be sold there, and this was interstate commerce.

*General Oil Co.* v. *Crain*, 209 U. S. p. 228–229.

The old Waters-Pierce Co. could not sell any oil in Texas without engaging in interstate commerce for the purpose of obtaining the oil that it intended to sell. The Standard Oil Co. only undertook to abstain from engaging in interstate commerce by carrying its products to Texas for the purpose of sale there.

As the agreement related only to interstate commerce, so far as Texas was concerned, that State had no authority to interfere with it or to impose penalties on account of it.

*Caldwell* v. *North Carolina*, 187 U. S. 622.
*Leisy* v. *Hardin*, 135 U. S. 100, 119.
*Rearick* v. *Pennsylvania*, 203 U. S. 507.

**4.** ***Liability of the Defendant under the Act of 1899 for the Doings of the Standard Oil Co. in acquiring Shares.***

It was specially set up and claimed in the answer that, the defendant being a Missouri corporation, it was not within the constitutional powers of Texas to make the ownership of stock in such corporation acquired in Missouri by the Standard Oil Co. an offence, and that the imposition of penalties on the defendant under the acts of 1899 and 1903 on account of such ownership by the Standard Oil Co. would deprive the defendant of its property without due process of law contrary to the Constitution (*ante* p. 16, par 25, 26; *Rec.* p. 87–88).

The defendant also requested the Special Charges No. 5 and No. 9, which were refused and were in substance as follows,—

Special Charge No. 5 (*Rec.* p. 297–298), that, as the defendant was a Missouri corporation, the legality of the ownership of a majority of its stock by the Standard Oil Co. was not an issue in the case, and the Texas Anti-Trust Laws could not be violated by the mere ownership of a majority of the stock by the Standard Oil Co.

Special Charge No. 9 (*Rec.* p. 300), that it has not been a violation of the laws of Texas since May 31st 1900 for the Standard Oil Co. to own a part of the stock of the defendant and the jury would therefore disregard any evidence that had been introduced upon the subject.

The judge in par. VIII of his charge (*ante* p. 45) directed the jury to find for the State under the act of 1899 if they found that the defendant "had *brought about or permitted* any *combination* or union of its capital with the capital

of the Standard Oil Co." whereby the price of oil in Texas was sought to be or would be reasonably calculated to be fixed or regulated.

And in par. XI (*ante* p. 46) the judge gave them a definition of *combination*, in leaving to them certain issues under the act of 1903, viz. if "the *Standard Oil Co.* had . . . acquired a majority of the capital stock of the defendant corporation and *thereby effected a combination* of said two corporations."

These paragraphs of the charge and the refusal of the Special Charges No. 5 and No. 9 were excepted to according to the statutory provision (*ante* p. 50) and assigned as errors (*Rec.* p. 372, 374, 377, par. 233, 236, 249, 253).

They were assigned as errors in this Court (*ante* p. 64–73, par. 10, 14, 16, 18; *Rec.* p. 1195–1203).

The act of 1899 (*post* p. 214), in s. 2, declares a monopoly to be, among other things, "any *union or combination . . . of capital* . . . by or between persons, firms or corporations," whereby any one of the purposes or objects mentioned in the act is accomplished or sought to be accomplished, or whereby the results described are reasonably calculated to be produced, and such a monopoly is declared to be unlawful and against public policy, and all persons and corporations engaged therein shall be deemed guilty of a conspiracy to defraud and be subject to the penalties of the act. By s. 5 any person or corporation "violating any of the provisions of this act shall forfeit not less than $200 nor more than $5000 for every such offence," each day being a separate offence.

There was no evidence of any combination or union of the capital of the defendant with that of the Standard Oil Co. unless such a combination or union was effected by the *Standard Oil Co.* in acquiring a majority of the shares of

the defendant company. That was the *act of the Standard Oil Co.*, and the defendant took no part in it and had no control over it.

There is no ground for saying that the defendant "*brought about or permitted*" it. The evidence adduced by the plaintiff, which was the only evidence, was that the shares corresponded to the interest that the Standard Oil Co. had in the *old* Waters-Pierce Co. and were transferred to that company by H. C. Pierce in September 1900 in accordance with an understanding at the time of the organisation of the company; this transfer was made by an indorsement of the certificates in blank, and the shares continued to stand in the name of H. C. Pierce till June or July 1904; the Standard Oil Co. then had them transferred on the books into the name of M. M. Van Beuren (*H. C. Pierce, ante* p. 25, 22).

So from May 1900 to June or July 1904, when the transfer to Van Beuren was presented for registration, the defendant had nothing whatever to do with the Standard Oil Co. or Van Beuren as the owner of the shares or with H. C. Pierce's dealings with them.

When the transfer was then presented for registration, the defendant only performed its legal duty in registering the transfer and issuing new certificates for the shares,* and did not thereby become a party to the acquisition of the shares by the Standard Oil Co. or Van Beuren.

**Case* v. *Bank*, 100 U. S. 446.
*Oliver* v. *Bank of England*, [1902] 1 Ch. p. 615, 619, 629.
Lindley on Companies (6th ed.) 81.

The petition alleges that this was done "with the knowledge and sanction of the defendant" (*ante* p. 9; *Rec.* p. 25). But there was no evidence that the defendant had any connection with the transaction except in performing the ministerial act of registering the transfer. That was an act which it could not legally have refused to perform.

The defendant could not have prevented the transfer from H. C. Pierce to the Standard Oil Co. or its nominee, if it had desired to do so, and there was no duty imposed on it to prevent the transfer. Its "sanction" consisted wholly *in doing nothing* in circumstances where there was nothing that it ought to have done or could have done.

The jury were directed in par. VIII of the charge (*ante* p. 45) to find for the State, if the defendant "brought about *or* permitted" a combination. Under this direction they cannot be taken to have found more than that the defendant "*permitted*" the combination. The permission could have been nothing else than taking no action in a transaction between other persons. (See *Hobson* v. *Middleton*, 9 B. & C. p. 303).

The statute says nothing about *permitting* a combination. It provides in s. 2 (*post* p. 214) that a monopoly is a union or combination of capital of certain kinds, and one of the ways in which it may be effected is "by the purchase, *acquisition*, or control of shares," and by s. 5 any person or corporation "*violating* any of the provisions of this act" is liable to penalties, and by s. 7 any foreign corporation "which shall *violate* any of the provisions" shall forfeit its right to do business in the state.

The natural interpretation of the words is that the act is violated by the person or corporation that so purchases or *acquires* the shares. But, according to the effect given to them by the state courts, the corporation whose shares *are acquired* by another is liable to the penalties and forfeiture of its right to do business.

This is nothing less than taking the property of one corporation to pay the penalties for the acts of another.

A statute that produces such an effect does not differ in principle from one that assumes to provide that the

property of A shall be the property of B, which has been used as an example of a statute that would deprive a person of his property without due process of law.

*Davidson* v. *New Orleans*, 96 U. S. p. 102.

In the *Northern Securities Co.'s Case*, 193 U. S. 197, it was held that the acquisition of a majority of the shares of the Northern Pacific and Great Northern Ry. Cos. by another company, which had been formed for the purpose, was a violation of the Sherman Act of 1890. That would have made the Northern Securities Co. also liable to the penalty of $5000 imposed (p. 318) for a violation of the act. But it is inconceivable that the Northern Pacific and Great Northern Ry. Cos. were each of them subject to a like penalty on the ground that *they* also had violated the law by what the Northern Securities Co. had done.

There was no ground for the judge to leave to the jury the issues specified in par. VIII of his charge, and he ought to have given the Special Charges No. 5 and No. 9 requested by the defendant, so that the jury should not find the defendant guilty of the acts done by the Standard Oil Co. in acquiring or continuing to own the shares, which the defendant had in its answer claimed that it could not be made liable for consistently with the Constitution.

If there had been any evidence that the defendant had taken any part in the combination, these special charges would have prevented the jury from putting their finding on the ground that the Standard Oil Co. had acquired or continued to own the shares.

But the judge plainly intended that the jury should find that *the defendant* had brought about or permitted a combination on the undisputed evidence alone that the Standard Oil Co. owned a majority of the shares. This is

shown by the definition he gave of *combination* in par. XI (*ante* p. 46) already quoted, viz., if "the *Standard Oil Co.* had . . . acquired a majority of the capital stock of the defendant corporation and *thereby effected a combination* of said two corporations." This definition was a general one, and not limited to the purposes of the particular issues in par. XI, and the jury would have been stupid if they had not so understood it.

In the Court of Civil Appeals, one of the judges, referring to this par. XI, thought that the provisions of the act of 1903 seemed to be directed rather against the corporation that acquired the stock of another, than against the corporation whose stock was acquired, but he said that the other members of the court did not concur with him (*Rec.* p. 1152). They did not however consider the effect of the definition upon the issues submitted in the other paragraphs of the charge, or give any reasons for their conclusion, which they announced in general terms, that there was no error in the charge (*Rec.* p. 1151–1152).

### 5. *The Shares acquired outside of Texas.*

The same parts of the answer and of the charge and Special Charges (above-mentioned under 4, *ante* p. 103) also raise the question whether the defendant can be subjected to penalties, consistently with due process of law, for a combination effected *outside of the state of Texas* by the ownership of the shares by the Standard Oil Co.

The defendant is a Missouri corporation and the Stan-

dard Oil Co. is a New Jersey corporation, and there is no suggestion that the transaction regarding the shares took place in Texas.

The provisions of s. 2 of the act of 1899 regarding combinations are general and the language is broad enough to include all combinations of the descriptions mentioned wherever they are effected. But the power of the State of Texas to punish for forming combinations is limited to combinations that are formed in the state or whereby something is done in the state.

See *State* v. *Lancashire Ins. Co.*, 66 Ark. 466; *ante* p. 96.

The only limitation in the statute is contained in the words describing the effect of the combination that is declared to be a monopoly (*post* p. 214). These words are,

"whereby any one of the purposes or objects mentioned in this act is accomplished
"or *sought to be* accomplished,
"or whereby any one or more of said purposes are *promoted*
"or *attempted to be* executed or carried out,
"or whereby the several results described herein are *reasonably calculated* to be produced."

The purposes and objects, and results, referred to are specified in s. 1 of the act (*post* p. 213), viz. *to regulate or fix* the price of any article, or *to maintain* the price when so regulated or fixed, or to fix or limit the quantity of any article.

There is no express mention of the state of Texas in either section, but, as the authority of the State does not extend beyond its boundaries, the words of the act must be limited by implication to what is done in the state, or the act will have to be treated as ineffectual as to what is done out of the state.

The judge, in par. VIII of his charge (*ante* p. 45; *Rec.*

p. 289), directed the jury to find for the State *on the issues submitted to them in that paragraph*, if they found that the defendant had brought about *or* permitted a combination of its capital with that of the Standard Oil Co. *whereby* the price of such oil in Texas

"was *sought to be* fixed or regulated,"

*or* "would be *reasonably calculated to be* fixed or regulated,

"*or* whereby the trade in such oil in Texas was *sought to be* controlled or limited."

It was not necessary for the jury to find more than *one* of those things in order to find for the State on the issues so submitted in par. VIII.

These issues submitted to them were, first, whether the defendant had brought about or permitted a *combination*, and, then, whether that combination answered any *one* of three *descriptions*. If there was a combination and it corresponded with one of those descriptions, the jury were directed to find for the State on the issues submitted to them in that paragraph. It was not necessary for the jury to find, and they did not find, that the combination answered all three of the descriptions.

Accordingly, in convicting the defendant under this direction, the jury cannot be taken to have done more than to find that the defendant *permitted* such a combination of capital to be effected (outside of the state of Texas) whereby the price of oil in Texas would be *reasonably calculated to be* fixed or regulated (although the price was not in fact fixed or regulated by it). Or the jury may have found only that, although the price was not actually fixed or regulated, that result was *sought to be* produced.

The judge did not tell them that they must also find that prices were actually fixed or regulated or that *anything* was done or accomplished *in the state*. It was suf-

ficient that that result was either *sought to be* produced *or* would be *reasonably calculated to be* produced. In either one of those cases they were to find for the State on the issues submitted in that paragraph of the charge, whether anything was actually done in Texas or not.

A form of verdict was prepared by the judge to be used if the jury found for the State on the issues submitted to them in one or more of the five paragraphs specified and not in all of them, and another form was prepared by him to be used in the case, which actually happened, that they found for the State on the issues submitted to them in all the five paragraphs (*Rec.* p. 292–293, par XV).

The defendant was a Missouri corporation, and it was not in the power of the State of Texas to determine who should hold shares in it, or to impose penalties upon it because shares were held by persons who might not have been allowed to hold them if it had been a Texas corporation. If the defendant and the Standard Oil Co. formed a combination out of Texas by which it was *sought to* regulate prices in Texas, nothing was done for which that State had a right to impose penalties, unless the purpose was accomplished by the actual regulating of prices there. If it was not *sought to* regulate prices, and the jury only thought that the combination would be *reasonably calculated* to fix or regulate them, that would not be a thing done in Texas for which that State had a right to impose penalties. In order that the State should have authority to do that, it was necessary that the combination should be *formed* there or that prices there should be *regulated* by means of the combination. The jury have not found that either of these things was done.

It is not sufficient that the defendant has been doing business in Texas. That is not an act against which the

statute was directed, and there has been no intimation by the state courts that the penalties could be imposed on that ground. The statute was directed against combinations by which prices there might be regulated or fixed, and competition driven out. If the defendant, after the Standard Oil Co. had acquired the shares, had withdrawn from business in Texas, that would have had a tendency, by removing its competition, to produce the very effect that the statute was intended to prevent. There would have been one less competitor in business there, and the other traders in the state would not have had that inducement to lower their prices.

The Special Charges No. 5 and No. 9 (*Rec.* p. 297–298, 300) requested by the defendant ought to have been given in accordance with the claim in the answer (par. 25, 26, *ante* p. 16) that the State of Texas could not consistently with due process of law impose penalties on the defendant on account of the ownership of shares acquired in Missouri by the Standard Oil Co. and the directions contained in par. VIII of the charge (*ante* p. 45), which are inconsistent with it, ought not to have been given.

By the course that has been pursued, the jury have been enabled to convict the defendant and impose penalties upon it on account of a combination formed outside of the state of Texas which has not been found to have regulated any prices in Texas or even to have had any effect upon them. As this is a matter in which the State of Texas has no authority, the defendant is by this means deprived of its property without due process of law.

### 6. *Combination effected before the Act of* 1899.

By par. VIII of the charge (*ante* p. 45) the jury were directed to find a violation of the act of 1899, if the defendant *had* on June 1, 1900, brought about or permitted a *combination* of its capital with that of the Standard Oil Co. whereby certain things were sought to be, or would be reasonably calculated to be, done.

This direction required the jury to convict the defendant if they found that there had been *a combination*, although it was formed before the passage of the act.

Although the particular shares in the defendant company that now belong to the Standard Oil Co. were transferred to that company after the act of 1899 was passed, yet the interest in the old Waters-Pierce Co. for which the shares were so given to it was acquired by the Standard Oil Trustees as far back as 1882, and was transferred to the Standard Oil Co. in 1892 for the same purposes as those for which it had been previously held by the trustees. It is submitted that any *combination of capital* that was effected by all or any of the transactions in the case, was effected in 1882 when that interest was so acquired, and not at the time when these shares were issued on account of it or when they were transferred to the Standard Oil Co. As the combination so effected was a perfectly lawful one and not subject to any penalty at that time, it was not competent for the state of Texas to impose penalties by the act of 1899.

The act in s. 2 (*post* p. 214) defines a monopoly as including, among other things, a *combination* or consolidation of capital by or between persons, firms, or corporations,

whereby some of the purposes mentioned were accomplished or sought to be accomplished or whereby the several results described would be reasonably calculated to be produced, and it was declared that a monopoly, as so defined, included not merely combinations between two or more persons, firms, or corporations acting for themselves, but included all aggregations of capital, whether *effected* by the ordinary methods of partnership or by actual union under the form of a corporation, or *by* the purchase, *acquisition*, or control *of shares*, or other corporate property, and all corporations or partnerships that *have been* or may be created by the consolidation of the separate capital of two or more firms or corporations are especially declared to constitute monopolies, if created for one or more of the purposes mentioned.

It was alleged in the petition that the [old] Waters-Pierce Co. entered into the trust agreement of the 2nd January 1882 (*ante* p. 5; *Rec.* p. 7). At the trial it was admitted that this was not true, but it was agreed that some of the shareholders, other than H. C. Pierce, transferred a majority of the shares to the Standard Oil Trustees who held them till 1892 (*ante* p. 6, 20). The petition also alleges that in 1892, upon the dissolution of the trust, the Standard Oil Co. took over these shares and afterwards performed the functions of the trustees up to the present time (*ante* p. 7).

The petition then proceeds to allege that, after the cancellation of the permit of the old Waters-Pierce Co. in 1900, the form of dissolving that company was gone through, and a new charter was taken out by the old stockholders, giving the same name, "and being in fact *the same corporation*" (*ante* p. 7–8); that the nominal capital under the new charter was paid by the cheque of H. C. Pierce for $400,000, and the company, which had at the time more than that amount in cash, paid $400,000 as a dividend to the share-

holders, which was afterwards used to reimburse H. C. Pierce for his advance; and that, in pursuance of an understanding that "the 2750 shares previously owned by the Standard Oil Co." should be transferred to it, H. C. Pierce transferred a corresponding number of shares under the new incorporation by an indorsement in blank and placed them under its control, but they remained on the books in the name of H. C. Pierce till June 1904 when they were transferred into the name of M. M. Van Beuren for the benefit of the Standard Oil Co. (*ante* p. 8–9).

The defendant in its answer, by special exception No. 20 (*ante* p. 14), if the petition was construed as alleging that the defendant was the same corporation as the old Waters-Pierce Co. (as it plainly did allege), excepted to the allegations claiming penalties under the act of 1899 on account of the ownership of the stock by the Standard Oil Co., because it appeared that the ownership existed before the passage of the act, and, if the act authorised a recovery on that account, it would violate the Constitution in being retroactive and depriving the defendant of its property without due process of law and otherwise.

This exception was overruled and the defendant excepted (*ante* p. 13), and the same was assigned as error below (*Rec.* 354, par. 25), and was also assigned as error in this Court (*ante* p. 59, par. 5; *Rec.* p. 1190).

A similar claim was specially set up in the answer (*ante* p. 17, par. 27), and the judge's charge in par. VIII is directly contrary to it. This paragraph of the charge was subject to the statutory exception (*ante* p. 50) and was assigned as error below (*Rec.* p. 372, par. 233), as well as in this Court (*ante* p. 64, par. 10; *Rec.* p. 1195).

The act does not purport to make the mere *acquisition of shares* an offence. It is the *combination of capital* that constitutes the offence, whether it is effected by acquisition

of shares or in some of the other ways mentioned. Such a combination may be effected by the acquisition of shares, as where one corporation acquires the shares of another engaged in the same business and is thereby enabled to conduct the business of that corporation as a part of its own. Or some persons or a corporation may, by acquiring the shares of two or more corporations engaged in the same business, be enabled to manage the affairs of all of them as a single enterprise and so effect a combination of capital. But the shares, or a majority of the shares, of a corporation may be acquired even by another corporation without effecting a combination. If the corporations are not engaged in the same kind of business and the one acquiring the shares does not already own the shares of another corporation that is engaged in the same business as the one whose shares are acquired, there is no such combination of capital. So, if a combination is effected, and shares are afterwards issued on account of an existing interest in it, the combination is not effected by the acquisition of the shares. If such a combination is effected at a time when it is lawful and there is no penalty imposed by law for forming it, a state has no power by a subsequent statute to impose a punishment for effecting the combination, although shares have been issued or transferred since the statute on account of a previously existing interest in the combination.

The old Waters-Pierce Co. was incorporated in 1878, and a majority of its shares was acquired by the Standard Oil Trustees in 1882. Whatever combination of capital was ever effected, was effected then, and there has never been any combination since. The shares so acquired by those trustees were transferred to the Standard Oil Co. in 1892, but that company took the shares in the same interest and for the same purposes as the trustees had held them, and there was no new combination then.

In 1882 there was no statute in Texas making such a combination unlawful or imposing penalties on account of it, or in any way relating to the subject. In 1889 and 1895 certain "anti-trust laws" were passed, imposing a penalty for any violation of the provisions, and providing that every foreign corporation violating any of the provisions should be denied the right and prohibited from doing business in the state. These statutes are printed in a foot-note to the case of *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. p. 29 n. Both of them contained the same discriminating provisions that were held in *Connolly* v. *Union Pipe Co.*, 184 U. S. 540, 554, 560, to render the statute in that case unconstitutional, and were therefore invalid, except so far as they authorised the revocation of the charter of a corporation of that state or the permit of a foreign corporation to do business in the state (*State* v. *Shippers Compress Co.*, 95 Tex. 603, 611; *National Cotton Oil Co.* v. *Texas*, 197 U. S. p. 131). The provisions of the act of 1889 were included in the Rev. Civ. Sts. 1895, art. 5313–5321, and the Penal Code 1895, art. 976–988, and they and the act of 1895 were repealed by 1903, c. 94, s. 17, 18 (*post* p. 224–225.)

The permit of the *old* Waters-Pierce Co. to do business in Texas was cancelled and the company restrained from doing business in that state, in accordance with the acts of 1889 and 1895, by proceedings in the state courts and in this Court in 1897–1900 (*ante* p. 21) by reason of its having entered into contracts with persons in Texas by which they agreed to buy oil only of that company or to sell its oil exclusively of other oil (*Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. p. 37, 39–40; 19 Tex. Civ. App. 1; 44 S. W. 936).

The permit was issued subject to the provisions of these acts, and the contract thereby entered into between the State and the company was consequently not impaired by its revocation in accordance with the acts. Subject to any such contract the State might have arbitrarily

required the company to withdraw from the state without depriving it of any right (*Security Ins. Co.* v. *Prewitt*, 202 U. S. 246, 249; *National Council of Mechanics* v. *State Council*, 203 U. S. 151, 163).

But no penalty could have been imposed on the company on account of those contracts, for the acts were invalid so far as they assumed to change existing rights by making the contracts unlawful or by imposing penalties.

After the act of 1899 was passed on the 25th May 1899, the *old* Waters-Pierce Co. could not have been subjected to the penalties of that act on account of a *combination effected by the acquisition of* a majority of its *shares* by the Standard Oil Co., for the only combination so effected was effected in 1882, when the shares were acquired by the Standard Oil Trustees. Even if the time when the shares were transferred by those trustees to the Standard Oil Co. for the same purposes as they were previously held is regarded as the time of the combination, the latest time, at which the combination can be said to have been effected, was 1892, which was seven years before the act imposing the penalties.

When the present Waters-Pierce Oil Co. was formed in 1900, no new combination of capital or trade or anything else was formed. The capital of the new company was the same as that of the old company and was advanced by H. C. Pierce in cash, for which he was reimbursed out of a dividend paid by the old company, and shares in the new company corresponding in number to those held by the Standard Oil Co. in the old company were transferred by H. C. Pierce in accordance with their direction. The property and business of the old company were taken over by the new company, which continued to carry on the business. All this was done in accordance with a previous understanding between the shareholders, H. C. Pierce and the Standard Oil Co.

This is the statement of the transaction as it appears in the petition (*ante* p. 8–9) and in the evidence (*H. C. Pierce, ante* p. 25). There is no suggestion in either the petition or the evidence that any combination was effected by this transaction. The whole burden of the petition is that no change was effected by it and that the new company was in all respects the same as the old one. The petition calls the transaction a reorganisation and it may properly be described by that term. The property and business and the interests in them were the same as before. The only substantial distinction between the new company and the old one was, that the new company was a different corporation from the old one, and was not affected by the judgment excluding the latter from Texas, and was not bound by any of the agreements that made the latter obnoxious to the laws of that state.

The petition describes the reorganisation as a *fraudulent* reorganisation (*Rec.* p. 24) and says that the purpose of it was to *defraud* the State and *fraudulently* render ineffective the judgments of the courts (*Rec.* p. 21, 24, 25). But the facts constituting the supposed fraud are not stated, and, in the absence of a statement of such facts, these expressions charging fraud are mere vituperation and have no effect (*Ambler* v. *Choteau*, 107 U. S. p. 591; *Wallingford* v. *Mutual Society*, 5 App. Cas. p. 697, 701, 709). It has already been pointed out that there was no *evidence* of fraud or impropriety in the transaction (*ante* p. 91).

In connection with the allegations that the reorganisation was fraudulent (*Rec.* p. 21–22), the petition alleges that the *old* Waters-Pierce Co. was not really dissolved in accordance with the laws of Missouri and sets out certain statutes, alleging that they were the only provisions for dissolving a corporation there (*Rec.* p. 22). This was denied by the answer, which mentions another statute

providing for the dissolution of corporations and alleges that the old Waters-Pierce Co. was dissolved accordingly on the 28th May 1900, and also that the State was precluded from questioning the dissolution by reason of a judgment, dated the 5th November 1900, in an action by the State against the old Waters-Pierce Co. for penalties, by which it was held that the old Waters-Pierce Co. had been dissolved (*Rec.* p. 85, 95). No evidence was adduced by the State in support of its allegations regarding the law of Missouri, and no question was submitted to the jury in respect of the dissolution (*ante* p. 8). As there is no question of the incorporation of the *new* company, to which the property and business were transferred, and against which this action is brought (*Rec.* p. 2), it is of no consequence whether the *old* company was ever dissolved or not.

But if the reorganisation had been in fact a *fraudulent* one, that would not change the time when the combination was in fact effected. It might be a reason for disregarding the reorganisation and looking at the transaction as if there had been no reorganisation at all. But it would not be a reason for saying that a combination was made at a time when in fact no combination was made.

It is submitted therefore that the jury, under the directions in par. VIII of the judge's charge and in accordance with the allegations of the petition, have convicted the defendant under the act of 1899 on account of a combination that was effected long before that act was passed, and that the act has thus been given a retroactive effect and the defendant is deprived of its property without due process of law (*Kring* v. *Missouri*, 107 U. S. p. 228.)

[NOTE] *The Verdict as affected by Error in any of the Issues under the Act of* 1899.

By their verdict "the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties 1,549,500.00 dollars" (*Rec.* p. 314).

The issues submitted to them in respect of that period are contained in par. VII and VIII of the charge (*ante* p. 44–45), and, in accordance with the act of 1899, which was in force during that period, the judge directed them that, if they convicted the defendant of any violation of that act, they should specify the date or days for which it was so convicted, and should fix the penalties at not less than $200 or more than $5000 per day (par. XIV, *ante* p. 47).

As the jury have fixed a gross sum as the total penalties for all the violations of the act during the 1033 days of which they have convicted the defendant under the two paragraphs VII and VIII of the charge, and have not specified how much of that sum was fixed as the penalty for one violation, or how much for another, the whole of that part of the verdict must be set aside, if there has been any error in regard to any of the issues submitted to them in these two paragraphs.

The jury were not required to fix the same penalty for every violation of the law, and there is no ground for supposing that they did so. The only limit on their discretion was that the penalties must not be less than $200 or more than $5000 a day, and they have kept within that limit, as the average for the 1033 days would be $1500 a day.

### 7. *Liability for Combination under the Act of* 1903.

In like manner the defendant has been subjected to penalties under the act of 1903, for each of the days between April 1, 1903, and April 29, 1907, on account of the combination supposed to have been effected by the acquisition of the shares by the Standard Oil Co.

It is submitted that the defendant's constitutional rights have thereby been violated in the same way as they were violated under the act of 1899, by imposing penalties on the defendant (1st) for the acts of the Standard Oil Co., (2nd) for acts done outside of the state of Texas, and (3rd) for a combination effected before the statute was passed.

The penalties were fixed at $74,400 by the second part of the verdict by which the defendant was convicted on each of the issues submitted for each of the days above mentioned (*Rec.* p. 315; *ante* p. 47). These issues were submitted to them by par. IX, X, and XI of the charge (*ante* p. 45–46).

> By par IX, the jury were directed to find for the State on the issues submitted to them in that paragraph, if they found that the defendant "*entered into a combination*" of its capital with that of the Standard Oil Co. "for the purpose of creating in Texas, *or* which *tended to* create" or carry out in Texas restrictions in the free pursuit there of the business of selling oil, *or* to fix, maintain, or increase the price there, *or* to prevent or lessen competition in its sale there, and that the defendant *remained* or *was* a party to and acted under the combination on any date in the period from March 31, 1903, to April 29, 1907, and each day that it remained a party to and acted under such trust would be a separate violation of the law (*Rec.* p. 289; *ante* p. 45).

By par X, they were directed to find for the State on the issues submitted to them in that paragraph, if they found that "*the direction of the affairs* of the defendant" and those of the Standard Oil Co. "*were under the same management or control*" on any date in the same period, and were placed under such common management or control by their respectively authorised officers under such circumstances that the common management or control created *or tended to* create or carry out restrictions in the sale of oil in Texas, or to fix, maintain, or increase the price there, or to prevent or lessen the competition in its sale there, and, if the defendant entered into such a monopoly, each day during the period above-mentioned that it remained a party to such monopoly would constitute a separate violation of the law (*Rec.* p. 290; *ante* p. 45).

By par XI, they were directed to find for the State on the issues submitted to them in that paragraph, if they found that the *Standard Oil Co.* "*had* on March 31, 1903," or any subsequent date during the period "*acquired* a majority of the capital stock of the defendant corporation, and *thereby effected a combination* of said two corporations," and that this stock was acquired and combination effected "*with the purpose* and intention *on part of the* managing officers and directors of said *Standard Oil Co.*" of preventing or lessening the competition in the sale of oil in Texas, *or* that the effect of the said combination *tended* to affect or lessen such competition, and, if the defendant entered into such a monopoly, each day during the period above-mentioned that it remained a party to such monopoly constituted a separate violation of the law (*Rec.* p. 291; *ante* p. 46).

The issues submitted to the jury by par. IX of the charge are based upon s.1 of the act of 1903, which is set out in full in the Appendix (*post* p. 220–221).

Those submitted by par. X are founded upon s. 2, par. 1, (*post* p. 222).

Those submitted by par. XI derive their only support from s. 2, par. 2 (*post* p. 222).

As already mentioned (under **4**, *ante* p. 103), it was spe-

cially set up and claimed in the answer that, the defendant being a Missouri corporation, it was not within the constitutional powers of Texas to make the ownership of stock acquired in Missouri by the Standard Oil Co. an offence, and that the imposition of penalties under the acts of 1899 and 1903 on account of such ownership by the Standard Oil Co. would deprive the defendant of its property without due process of law contrary to the Constitution (*ante* p. 16, 17, par. 25, 26, 28; *Rec.* p. 87–89).

And the Special Charges No. 5 and No. 9 were refused, which were in substance as follows,—

Special Charge No. 5 (*Rec.* p. 297–298), that, as the defendant was a Missouri corporation, the legality of the ownership of a majority of its stock by the Standard Oil Co. was not an issue in the case, and the Texas Anti-Trust Laws could not be violated by the mere ownership of a majority of the stock by the Standard Oil Co.

Special Charge No. 9 (*Rec.* p. 300), that it has not been a violation of the laws of Texas since May 31st 1900 for the Standard Oil Co. to own a part of the stock of the defendant and the jury would therefore disregard any evidence that had been introduced upon the subject.

The defendant in its answer, by special exception No. 9, also excepted to the parts of the petition claiming penalties and cancellation of the permit under the act of 1903 on account of the ownership by the Standard Oil Co. of a majority of the stock of the defendant, because it was so owned long before the passage of the act, and the act, if given the effect of making that an offence on the part of the defendant, was *ex post facto* in its operation and would deprive the defendant of its property without due process of law contrary to the Constitution (*ante* p. 13–14, special exception 9; *Rec.* p. 49).

The defendant in its answer, by special exception No. 21, also excepted to the allegations claiming penalties under the act of 1903 on account of the alleged ownership of stock by the Standard Oil Co. or the alleged agreements, because it appeared that the ownership existed and agreements were made prior to the passage of the act, and, if the act authorised a recovery of penalties on account of the continuance of them, it would violate the Constitution in being retroactive, and impairing the obligation of contracts, and denying to the defendant the equal protection of the laws, and taking its property without due process of law (*ante* p. 14, special exception 21; *Rec.* p. 53–54).

The defendant also requested the Special Charges No. 7 and No. 24 (*Rec.* p. 299, 311), which were refused and were in substance, that, since the Standard Oil Co. acquired a majority of the stock of the defendant prior to the passage of the act of 1903, and since, the defendant being a Missouri corporation, such acquisition of the stock could not be inquired into by the Texas courts but must be treated as valid, the inhibition of the act of 1903 against any corporations acquiring the shares of another could have no application to the case.

The paragraphs IX, X, and XI of the judge's charge (*ante* p. 45–46) are contrary to the exceptions and claims in the answer, and these paragraphs and the refusal of the Special Charges No. 5, No. 9, No. 7, and No. 24 were excepted to according to the statutory provision (*ante* p. 50) and assigned as errors (*Rec.* p. 373–374, 377, par. 234–236, 249, 251, 253, 268).

They were assigned as errors in this Court (*ante* p. 65–73, par. 11–14, 16–18; *Rec.* p. 1196–1203).

The special exceptions 9 and 21 above-mentioned were overruled (*Rec.* p. 97) to which the defendant excepted

(p. 97) and assigned the same as error (p. 353, 354, par. 14, 26), and the same were also assigned as error in this Court (*ante* p. 58, 60, par. 4, 6; *Rec.* p. 1190, 1192).

The issues submitted to the jury in the three paragraphs IX, X, and XI (*ante* p. 45–46) depend for their support on the ownership of a majority of the shares in the defendant company by the Standard Oil Co., and, if that support is withdrawn, there was no case for the jury under any one of those paragraphs. Even if it could be said that there was other evidence that might have supported a verdict for the State, still there is no doubt that this ownership was an important part of the case against the defendant, and, if it had been eliminated from the case, the result would very probably have been different.

The issues in par. IX (*ante* p. 45), regarding the combination, are whether the defendant "*entered into* a combination of its capital with" that of the Standard Oil Co., and *remained* or *was a party to* and acted under the combination on or after March 31, 1903.

This does not differ in substance from the issue in par. VIII regarding the combination before that date, which was, whether the defendant had *brought about* or *permitted* the combination, and has already been considered under 4 (*ante* p. 103). Its form is taken from s. 1 of the act of 1903, which defines *a trust* as "*a combination of capital*, skill or acts by *two or more* persons, firms, *corporations*, or associations," for certain purposes (*post* p. 220).

There was no ground for a pretence that the defendant "*entered into*" a combination otherwise than through the act of the Standard Oil Co. in putting it into a combination with itself by the mere ownership of the shares. The fact that the defendant was thus *in* a combination was a sufficient ground for the jury to find that it *entered into* the combination. They could hardly help finding that, when they were told in par. XI that, if the Standard Oil Co. *had*

acquired a majority of the stock and *thereby* effected a combination, they would find for the State, and, if the defendant *entered into* such a monopoly, each day that it *remained a party* would be a separate violation of law (*ante* p. 46). In that paragraph the words "*entered into*" are plainly used (in the same manner as the words "became a party to") to describe the result of what was done by the Standard Oil Co. The words are evidently used in the same sense in par. IX, and there was no evidence of anything else to which they could have been applicable. Being thus a party to such combination, the defendant would remain a party and act under "such trust," every day that the Standard Oil Co. continued to own the shares and the defendant carried on business.

What has already been said (*ante* p. 105–108) regarding par. VIII is equally applicable to par. IX.

The directions in par X (*ante* p. 45) were adapted to s. 2, par. 1, of the act of 1903, which described *a monopoly* as *a combination* of two or more corporations, "where the *direction of the affairs* of two or more corporations is in any manner *brought under the same management or control*" in certain circumstances (*post* p. 222).

The issue submitted in this paragraph as to the direction of affairs was, whether "*the direction of the affairs* of the defendant corporation" and those of the Standard Oil Co. "were under the same management *or* control," and were placed there by their respectively authorised officers.

There is nothing to which this is applicable except the management or control which the Standard Oil Co. is supposed to have obtained by the ownership of a majority of the shares. The jury were told in par. XI in substance, that the acquisition of these shares effected a combination, and that the defendant, if it entered into such a combination, was liable for penalties as long as it remained a party. No definition of what would constitute *control* or *management* was given to the jury, and they were left

to interpret those expressions as they liked. There was nothing to which they could apply the words except the *combination*, which they were told was effected by the acquisition of the shares.

There was no evidence, and it was not pretended, that the directors or managers of the two companies were ever the same persons.

At the trial an attempt was made to show control by evidence that "since the organisation of the new company up to along in June of 1905, *with the exception of a period* during which Mr. J. D. Johnson was on the board, there has always been three members of the board of directors that were supposed to represent the Standard Oil interests" (C. M. Adams, *ante* p. 42; *Rec.* p. 847). But J. D. Johnson was a member of the board from the organisation of the company in May 1900 to the spring of 1904, when W. F. Taylor took his place, and Tinsley took the place of J. P. Gruet (*Rec.* p. 447, 845–846). The petition itself states that J. D. Johnson was one of the five directors from the commencement (*Rec.* p. 23), and that all the Standard Oil Co.'s shares stood in the name of H. C. Pierce till June 1904, except *two* shares which were held by "C. M. Adams and J. P. Gruet as the representatives of the Standard Oil Co.'s interest in the directorate" (*Rec.* p. 24). So it was only during the year from June 1904 to June 1905 that there was even a majority of the directors who could be "supposed to represent the Standard Oil interests." One of them was W. F. Taylor, a New York lawyer (*Rec.* p. 845), and there is no suggestion that he took any active part in the business or ever attended a meeting of the directors.

There is no evidence that the directors, even during the year when three of them were "supposed to represent the Standard Oil interests," acted under the *actual* management or control of the Standard Oil Co.'s officers or managers, or that they did not manage the business of the company independently. The only evidence in the case is

that they did manage it independently. Even Tinsley, during the year that he was at St. Louis, does not appear to have acted under the control of the managers of the Standard Oil Co., and his interference was confined to changes of employees and details of management, and making himself disagreeable to the other officers (H. C. Pierce, *ante* p. 25–26; A. M. Finlay, *ante* p. 35–36; C. M. Adams, *Rec.* 879–884).

There is no presumption that directors are the mere tools or servants of the holder of a majority of shares in whose interest they are elected, or that they do not act in good faith in the performance of their duty (*Peterson* v. *Chicago, Rock Island, & Pacific Ry. Co.*, 205 U. S. p. 391; *Brewer* v. *Boston Theatre*, 104 Mass. p. 388).

Much stress was laid on the admitted fact that the Standard Oil Co. was allowed to examine the accounts by its own auditors (H. C. Pierce, *ante* p. 26; agreement, *ante* p. 27, 44). But there is no reason why it should not have done so. All corporations give more or less information to their shareholders regarding the management and results of the business, and, in a case where there were only two shareholders, the natural and convenient way of imparting it was to leave the books and accounts open to the inspection of both. It would have been ridiculous for the minority shareholder, H. C. Pierce, who was the manager, to exclude the majority shareholder from direct access to the sources of information.

There was no other ground upon which the finding could rest, that the direction of the affairs of both companies was *under the same management or control*, except the ownership of the shares by the Standard Oil Co., by which *that* company *effected* the combination.

The only evidence that the affairs "were placed under such common management or control by their *respectively authorised officers*," was, as regards the defendant company, that H. C. Pierce, who was an officer of the company,

transferred the majority of the shares to the Standard Oil Co. in accordance with a previous understanding, and the transfer was registered on the books by the proper officers of the company (H. C. Pierce, *ante* p. 25, 22). These were acts of authorised officers of the company. But, as the beneficial interest in the shares in accordance with the previous understanding already belonged to the Standard Oil Co., H. C. Pierce was legally bound to transfer them, and the officers only performed their legal duty in registering the transfer (*ante* p. 105).

The foundation of the directions in par. XI (*ante* p. 46) is s. 2, par. 2, of the act of 1903, which describes a *monopoly* as *a combination* of two or more corporations, "where any corporation *acquires* the *shares* or certificates of stock" of another corporation for the purpose or in the circumstances specified (*post* p. 222).

The directions contained in this paragraph were, to convict the defendant if the *Standard Oil Co.* had acquired a majority of the capital stock of the defendant corporation, and thereby effected a combination of the two corporations, and this was done with the purpose and intention on the part of the managing officers and directors of the Standard Oil Co. of preventing or lessening competition in Texas, or the effect of the combination tended to affect or lessen such competition.

This puts the liability of the defendant entirely, and without any ambiguous phrase, on the acts of the Standard Oil Co. in acquiring the shares and the purpose and intention of its officers, without any intimation that concurrence on the part of the defendant was necessary.

The issues submitted to the jury in these three paragraphs were thus substantially the same. The only differences in them consisted in the variations of language employed to adapt them to the different clauses of the statute. They

all of them rested on the acquisition of the shares by the Standard Oil Co., without which there could have been no verdict on any of them in favor of the State.

The constitutional rights of the defendant were consequently violated by the issues submitted to the jury under the act of 1903 in paragraphs IX, X, and XI, in the same three ways in which they were violated by the issues submitted in par. VIII under the act of 1899.

(1st) Penalties have been imposed on the defendant for the *acts of the Standard Oil Co.* alone, and the property of the defendant is thus applied to discharge penalties incurred by another.

One of the judges in the Court of Civil Appeals could not bring himself to concur with the others in approving par. XI of the charge, which gave the statute the effect of imposing the penalties on the corporation whose stock or property was acquired by another, when the provision of the statute seemed to be directed against the corporation that acquired the stock or property (*Rec.* p. 1152). The same objection was applicable to par. IX and X of the charge, if they were regarded in connection with the evidence in the case, and the other directions given to the jury.

But, whatever may be the proper construction of the statute, the effect that has been given to it is to make the defendant liable to penalties for what the Standard Oil Co. has done. (See *General Oil Co.* v. *Crain*, 209 U. S. 211, 228.)

This point has already been discussed with reference to the act of 1899 (under **4**, *ante* p. 106–107).

(2nd) The defendant has also been subjected to penalties for acts done *outside of the state of Texas* and consequently beyond the jurisdiction of the State.

This point has also been considered (under **5**, *ante* p. 108) with reference to the act of 1899.

The jury have not found upon any of the issues submitted to them under the act of 1903 that anything was done in Texas or any effect produced there against which the act was directed.

By par. IX (*ante* p. 45) the jury were only required to find that the combination was one *for the purpose* of creating restrictions in Texas *or* which *tended* to create or carry out restrictions there *or* to fix, maintain, or increase the price of oil there, *or* to prevent or lessen competition in its sale there. The *purpose* need not have been accomplished in Texas, or the *tendency* need not have produced any effect there.

Under par. X (*ante* p. 45) it was only necessary that the common management or control created *or tended* to create or carry out restrictions in the sale of oil in Texas, *or* to fix, maintain, or increase the price of oil there, *or* to prevent or lessen competition in its sale there. There may have been a *tendency* to any of those things without producing any actual effect in Texas. Even if competition had been actually *prevented* or *lessened* there, by preventing the Standard Oil Co. from extending its business into Texas, that would not be a thing done there.

In par. XI (*ante* p. 46) the jury, after finding that the Standard Oil Co. had *acquired* a majority of the stock and thereby effected a combination of the two corporations, were only required to find the additional fact, that this was done *with the purpose and intention* on the part of the officers of the Standard Oil Co. of preventing or lessening competition in Texas, *or* that the effect of the combination *tended to* affect or lessen such competition. The *purpose and intention* must have existed at the time and place of the combination, and the offence according to this direction was complete there. If the jury went on the other branch of the direction and found that the combination *tended to* affect or lessen competition in Texas, they need not have found that the *tendency* produced any

effect there. And even if competition there were actually affected or lessened by the Standard Oil Co.'s *not going there*, that would not be a thing done in Texas and subject to punishment there.

As already pointed out with reference to par. VIII (*ante* p. 110), the jury were directed in par. IX, X, and XI to find in favor of the State on the issues submitted to them in each of those paragraphs, if they found that a combination was effected in the manner described and that the combination answered any *one* of the several descriptions. It was not necessary that the combination should correspond to *all* of the different descriptions.

(3rd) The penalties have been imposed on account of a combination effected *before the act of* 1903 was passed, and the act has so been given a retroactive effect and has deprived the defendant of its property without due process of law.

*Kring* v. *Missouri*, 107 U. S. p. 228.

It was stated in the petition that the 2750 shares were transferred to the Standard Oil Co. in accordance with a previous understanding that they should be so transferred immediately after the reorganisation (*ante* p. 9; *Rec.* p. 24). It was agreed at the trial that since about the 24th September 1900 the Standard Oil Co. had owned 2748 out of the total 4000 shares of the new Waters-Pierce Oil Co. (*ante* p. 20–21; *Rec.* p. 425). This was long before the passage of the act of 1903.

No combination whatever was formed when the shares were thus transferred to the Standard Oil Co., but they were issued and transferred to it on account of its existing interest in a combination that was formed as far back as 1882, when a majority of the shares of the *old* Waters-Pierce Co. were acquired by the Standard Oil Trustees, or at the latest in 1892, when these shares were transferred by those trustees to the Standard Oil Co. for the same pur-

poses for which the trustees had previously held them. This has already been explained under **6** (*ante* p. 113).

## 8. *Indefiniteness of the Acts of* 1899 *and* 1903.

The defendant in its answer (special exception 25, *ante* p. 14–15; *Rec.* 55–56) excepted to the petition on the ground that each of the acts of 1899 and 1903 was so *indefinite, vague, and uncertain* that it could not be ascertained from its language what acts fall within their prohibitions and constitute an offence, and therefore to subject the defendant to penalties and forfeiture of its permit would be taking its property without due process of law and denying to it the equal protection of the laws contrary to the Constitution.

The defendant in its answer also excepted to the petition (special exceptions 52 and 53, *ante* p. 15; *Rec.* p. 68), so far as it sought to recover penalties under each of those acts respectively, on the ground that the act was so *indefinitely framed* and of such doubtful construction that it could not be understood and by reason of its failure to designate an offence by the plain import of its words the infliction of the penalties prescribed would be the taking of property without due process of law contrary to the Constitution.

The defendant also specially set up and claimed in its answer (*ante* p. 17, par. 29; *Rec.* p. 89) that the act of 1899 was unconstitutional and void, because of its terms

and in the construction of its language as applied to the facts alleged in the petition it was so vague, indefinite, and uncertain in its meaning that it was impossible for the defendant, in advance of its construction and application to any state of facts by the verdict of a jury and the ruling of the court, to understand its meaning and legal effect, or to know what was lawful and permissible and what was unlawful, and that the same would, if the defendant was convicted, deprive the defendant of its property without due process of law contrary to the Constitution.

The defendant also specially set up in its answer and made a similar objection to the act of 1903 (*ante* p. 18, par. 32; *Rec.* p. 90–91).

The directions to the jury in submitting the issues to them in par. VII–XI of the charge were directly contrary to these exceptions and claims. These paragraphs of the charge were subject to the statutory exception (*ante* p. 50) and were assigned as errors below (*Rec.* p. 372–374) and in this Court (*ante* p. 63–69; *Rec.* p. 1193–1199).

The special exceptions, 25, 52, and 53, were overruled (*Rec.* p. 97), to which the defendant excepted (p. 97) and assigned the same as errors below (p. 355, 358, par. 30, 75, 76) and in this Court (*ante* p. 61–62, par. 7, 8; *Rec.* 1193).

The question whether the statutes were too indefinite and uncertain in the particulars involved in this case was also expressly passed upon by the Court of Civil Appeals and was "not regarded as tenable" (*Rec.* p. 1152, at foot).

*Montana* v. *Rice*, 204 U. S. 291, 299.
*Sullivan* v. *Texas*, 207 U. S. 416, 422.

This action is a proceeding by the government of Texas

to recover penalties for an offence that the defendant is charged with having committed, and, although it is in the form of a civil action, the object is to inflict punishment for the offence and the action is criminal in its nature.

*Huntington* v. *Attrill*, 146 U. S. p. 667–669.
*Chaffee* v. *U. S.*, 18 Wall. 516, 545.
*U. S.* v. *Shapleigh*, 54 Fed. R. 126, 129–134 (C. A.)
*State* v. *Waters-Pierce Oil Co.*, 67 S. W. 1057 (1902).

In *Tozer* v. *U. S.*, 52 Fed. R. 917, the plaintiff-in-error was convicted under s. 3 of the Interstate Commerce Act 1887 (24 Sts. 380) which makes it unlawful for a common carrier "to make or give any *undue or unreasonable* preference or advantage to any particular person," but the Court of Appeals held that the statute was too indefinite and uncertain to support a conviction. Brewer J. in delivering judgment said (p. 919),

> "But in order to constitute a crime, the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. There must be some definiteness and certainty. In the case of *Railway Co.* v *Dey*, 35 Fed. R. 866, 876, I had occasion to discuss this matter, and I quote therefrom as follows:
>
> "'Now the contention of complainant is that the substance of these provisions is, that, if a railroad company charges an unreasonable rate, it shall be deemed a criminal and punished by fine, and that such a statute is too indefinite and uncertain, no man being able to tell in advance what in fact is, or what any jury will find to be, a reasonable rate. If this were the construction to be placed upon this act as a whole, it would certainly be obnoxious to complainant's criticism, for no penal law can be sustained unless its mandates are so clearly expressed that any ordinary person can determine in advance what he may and what he may not do under it. In Dwar. St. 652, it is laid down "that it is impossible to dissent from the doctrine of Lord Coke, that the acts of parliament ought to be plainly

and clearly, and not cunningly and darkly, penned, especially in legal matters." See also *U. S.* v. *Sharp*, Pet. C. C. 122; *The Enterprise*, 1 Paine 34; Bish. St. Cr. s. 41; Lieb. Herm. 156. In this the author quotes the law of the Chinese Penal Code, which reads as follows: "Whoever is guilty of improper conduct, and of such as is contrary to the spirit of the laws, though not a breach of any specific part of it, shall be punished at least forty blows; and when the impropriety is of a serious nature, with eighty blows." There is very little difference between such a statute and one which would make it a criminal offence to charge more than a reasonable rate. See another illustration in *Ex parte Jackson*, 45 Ark. 158.'"

In *Ex parte Jackson*, 45 Ark. 158, a statute by which it was made a misdemeanor to "commit any act injurious to the public health or public morals" was held to be unconstitutional and void for uncertainty. The court said (p. 164),

> "We cannot conceive how a crime can, on any sound principle, be defined in so vague a fashion. Criminality depends, under it, upon the moral idiosyncrasies of the individuals who compose the court and jury. The standard of crime would be ever varying, and the courts would constantly be appealed to as the instruments of moral reform, changing with all fluctuations of moral sentiment. The law is simply null. The constitution, which forbids *ex post facto* laws, could not tolerate a law which would make an act a crime, or not, according to the moral sentiment which might happen to prevail with the judge and jury after the act had been committed."

In *Louisville & Nashville Rld. Co.* v. *Com.*, 99 Ky. 132; 35 S. W. 129, a statute providing that, if any railroad corporation should charge "more than *a just and reasonable* rate of toll or compensation," it should be guilty of extortion and subject to a penalty, was contrary as well to the Federal as to the State Constitution, because it prescribed no standard of what was just and reasonable. It is said in the judgment of the court (p. 136),

"That this statute leaves uncertain what shall be deemed a 'just and reasonable rate of toll or compensation' cannot be denied, and that different juries might reach different conclusions on the same testimony, as to whether or not an offence has been committed, must also be conceded.

"The *criminality* of the carrier's act therefore depends on the jury's view of the reasonableness of the rate charged; and this latter depends on many uncertain and complicated elements.

"That the corporation has fixed a rate which it considers will bring it only a fair return for its investment does not alter the nature of the act. Under this statute it is still a crime, though it cannot be known to be such until after an investigation by a jury, and then only in that particular case, as another jury may take a different view, and, holding the rate reasonable, find the same act not to constitute an offence. There is no standard whatever fixed by the statute, or attempted to be fixed, by which the carrier may regulate its conduct; and it seems clear to us to be utterly repugnant to our system of laws to punish a person for an act, the criminality of which depends, not on any standard erected by the law which may be known in advance, but on one erected by a jury. And especially so as that standard must be as variable and uncertain as the views of different juries may suggest, and as to which nothing can be known until after the commission of the crime.

"If the infliction of the penalties prescribed by this statute would not be the taking of property without due process of law and in violation of both State and Federal Constitutions, we are not able to comprehend the force of our organic laws."

The court then refers (p. 137) to *Louisville & Nashville Rld. Co.* v. *Railroad Commission*, 19 Fed. R. 679, 691, in which a similar Tennessee statute was held by the U. S. Circuit Court (Baxter, Hammond, & Key, JJ.) to be unconstitutional, and to the *Railroad Commission Cases*, 116 U. S. p. 336, in which that statute was distinguished from the one under consideration in the latter case.

In *U. S.* v. *Brewer*, 139 U. S. 278, Blatchford J. said (p. 288) in delivering the judgment of the court,

> "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. *U. S.* v. *Sharp*, Pet. C. C. 118. Before a man can be punished, his case must be plainly and unmistakedly within the statute. *U. S.* v. *Lacher*, 134 U. S. 624, 628."

(1) The act of 1899 (*post* p. 213) provides in s. 1, that *any corporation*, or any partnership, or individual, or other association of persons, "who shall create, enter into, become a member of or a party to any pool, trust, *agreement*, combination, confederation, *or understanding* with any other corporation, partnership, individual or any other person or association of persons, *to regulate or fix the price* of any article," or to maintain the price when so regulated or fixed, or to fix or limit the amount of any article, or the price of insurance, "shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided in this act."

By s. 2, a monopoly is defined as "any *union or combination* or consolidation or affiliation of capital . . . by or between persons, firms or corporations . . . whereby any one of the purposes or objects mentioned in this act is accomplished or *sought to be* accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are *reasonably calculated to be* produced," and all persons and corporations engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to the penalties prescribed in the act.

Under s. 1 of this act, the judge left to the jury the question, in the words of that section, whether the defendant "entered into or became a party to *an agreement or*

*understanding*" with the Standard Oil Co. "*to fix or regulate the price* in Texas of oil refined from petroleum." This question was submitted to the jury in par. VII of the charge (*ante* p. 44; *Rec.* p. 288).

The only agreement alleged in the petition to have been made by either the *old* Waters-Pierce Co. or the defendant was an agreement by the old Waters-Pierce Co. *to confine its business to Texas* and certain other places and *not to do* or attempt to do *business elsewhere*, and by the Standard Oil Co. not to do business in the territory named as that of the Waters-Pierce Oil Co. (*ante* p. 5; *Rec.* p. 6). No agreement *to fix or regulate prices* is alleged, unless this agreement answers that description. And in the petition the plaintiff charges that "by the acts, doings and undertakings *hereinbefore set out* the Waters-Pierce Oil Co. has violated" the laws of Texas, and says that the defendant has especially violated the act of 1899, and created, entered into and became a member of and a party to a pool, trust, agreement, combination, confederation, and understanding *to regulate and fix the price* of an article and commodity (*Rec.* p. 37).

The only agreement of which there was any evidence was that testified to by H. C. Pierce, (*ante* p. 23), viz., that, when he organised the first Waters-Pierce Co. in 1878, it was agreed between him and the Standard Oil Co. that the first Waters-Pierce Co. would confine its operations and transact its business within the certain territory in which Waters, Pierce, & Co. had transacted their business.

Upon this allegation and this evidence of an agreement for a *division of territory* between the two companies, the defendant has been convicted of having been a party to an agreement *to fix or regulate the price* of oil.

The agreement limiting the territory in which each of the two companies might do business was not an agree-

ment *to fix or regulate prices* in the natural or ordinary sense of the words. Those words have never before been applied to such an agreement in any of the cases that have arisen under legislation of this kind. In previous cases, they have only been applied to agreements by which the parties actually agreed to regulate or fix prices among themselves, as in *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115, 117; 72 S. W. 615 (Texas), and *State* v. *Lancashire Ins. Co.*, 66 Ark. 466, and *Hartford Ins. Co.* v. *State*, 76 Ark. 303. But this agreement neither fixed or regulated prices nor provided a means of fixing or regulating them, and that was not its purpose or intention.

It was possible that prices might be affected indirectly as a result of the agreement. But the only way in which this could happen would be by leaving the Waters-Pierce Co. free to conduct its business without the possible competition that might have arisen if the Standard Oil Co. had seen fit to extend its business into Texas and try to get away the trade of the Waters-Pierce Co. by reducing prices. Nobody can say that that would have happened if there had been no agreement. It is by no means certain that the Standard Oil Co. would have extended its business into a district where the Waters-Pierce Co. was already established, even if the laws of Texas permitted it to do so, or that, if it had done so, the two companies would have considered it for their respective advantage to compete with one another by reducing prices. It is quite as likely that they would have tried to get what business they could at the existing prices. The immediate purpose of the agreement was, not to fix or regulate prices, but to allow the Waters-Pierce Co. to have all the business that might otherwise have fallen to the two companies. The agreement did not even give the Waters-Pierce Co. the power to fix or regulate prices. It left them to be regulated by cost and competition, as prices are generally regulated in trade, and all the evi-

dence shows that that is the way in which they were in fact regulated (T. R. Hopkins, *ante* p. 33; S. K. Wheeler, *ante* p. 33; E. S. Horn, *ante* p. 36; S. Johnson, *ante* p. 37; R. Campbell, *ante* p. 37, 39; A. W. Clem, *ante* p. 40; C. W. Cahoon, *ante* p. 41, 42; C. P. Ackert, *ante* p. 43–44). The petition admitted that there was competition, and complained that the Waters-Pierce Co. had carried it to such an extent that it had been disadvantageous to the competitors of that company (*ante* p. 13; *Rec.* p. 34–35, 37).

The agreement therefore was not an agreement to fix or regulate prices, and the most that can be said of it is that it was one that a jury might think *reasonably calculated to affect* or *increase* prices by limiting the territory in which each of the companies might do business, and so keeping out a possible competitor.

The words of the statute do not include an agreement that does not *regulate or fix prices* but only *limits the territory* in which the parties shall carry on business. Nobody could by reading it be informed that it was intended to make the act of entering into such an agreement a criminal offence.

The statute does not in terms prohibit an agreement that may in the opinion of a jury be only *reasonably calculated to* affect or increase the price of an article of trade. But by the judgment for penalties under par. VII of the charge, the state courts have given it the effect of applying to such agreements as well as to those that directly regulate or fix the price.

The validity of the statute must therefore be determined as if it had been expressed in accordance with the effect that has so been given to it.

*General Oil Co.* v. *Crain*, 209 U. S. 211, 228.

It is submitted that a statute that makes it a criminal

offence and imposes penalties, if anyone enters into or becomes a party to an agreement that may be *reasonably calculated to* affect or increase the price of any article is so indefinite and uncertain that nobody can say in advance what might be found by a jury to constitute an offence.

It might depend, as was said in *Ex parte Jackson*, 45 Ark. p. 164, upon "the moral sentiment which might happen to prevail with the judge and jury after the act had been committed," whether any particular agreement would be considered to have such a tendency as to make it a criminal offence. It was undoubtedly so in the present case. In the state of public feeling that existed at Austin, as disclosed by the newspapers (*Rec.* p. 208, 211, 253), the letters of the attorney-general of the state (*Rec.* p. 219–226, 232–236), and the testimony of the witnesses on both sides on the motion for a change of venue, any agreement between the Waters-Pierce Oil Co. and the Standard Oil Co. would probably have been considered to be *calculated to* increase the price of oil. It was already settled in the public mind that the Waters-Pierce Oil Co. was "a trust," and even witnesses who thought the defendant could have "a fair and impartial trial" had made up their minds on that question (*e.g.*) *R. C. Burleson, Rec.* p. 165; *R. E. Lee, Rec.* p. 275–276). But if a similar agreement had been made between two other oil dealers, for example, between two persons now engaged in the business in Massachusetts, by which one of them was to be at liberty to trade in Texas, and the other agreed not to engage in business there, it is not at all likely that prices in Texas would be in the least degree affected by the agreement. It is not certain that even a jury at Austin would consider the agreement *calculated to* increase prices there. An agreement for the purchase of a very large quantity of a commodity by one dealer of another would be much more calculated to affect the price. So the criminality of the act would de-

pend, not on the nature or provisions of the agreement, but on the importance of the business carried on by the parties to it, or on a variety of circumstances, which might weigh with a jury, but the effect of which could not be determined by the parties beforehand.

Accordingly s. 1 of the act of 1899, as applied to the facts alleged in the petition and proved by the evidence at the trial, was too indefinite to constitute an offence, or to support the conviction under par. VII of the charge.

(2) Under s. 2 of this act the judge left to the jury in par. VIII of his charge (*ante* p. 45) the question whether the defendant had brought about or permitted a combination of its capital with that of the Standard Oil Co. *whereby* the price of such oil in Texas

"was sought to be fixed or regulated,

or "would be *reasonably calculated to* be fixed or regulated,

"or whereby the trade in such oil in Texas was sought to be controlled or limited."

The jury were directed that, if they found there was that combination of capital, and it answered *one* of those three descriptions, they should find for the State.

As the jury were not required to find that the combination answered more than one of the three descriptions, it cannot be said that they found more than that the defendant permitted a combination *whereby* the price of oil in Texas would be *reasonably calculated to* be fixed or regulated. This was explained *ante* p. 110.

By the judgment of the court upon that finding the defendant is subjected to penalties for only having permitted a combination whereby the price of oil would in the opinion of a jury be *reasonably calculated to* be fixed or regulated, and for nothing else, under that paragraph of the charge.

The part of s. 2 of the act that attempts to make this

a criminal offence, and to impose penalties on account of it, is subject to the same objection of indefiniteness that has already been considered.

(3) The act of 1903 (*post* p. 220) in s. 1 defines a trust as a *combination of capital*, skill, or acts by *two or more* persons, firms, *corporations* or associations for any of the following purposes, "1. To create or *which may tend to* create or carry out restrictions in trade or commerce or aids to commerce . . . or to create or carry out restrictions in the free pursuit of any business. 2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities. . . . 3. To prevent or lessen competition in the manufacture . . . sale or purchase of merchandise, produce or commodities." [The other provisions of s. 1 are immaterial.]

By s. 2, a monopoly is defined as "a *combination* or consolidation *of two or more corporations* when effected in either of the following methods:

"1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or *where* such common management or control *tends to* create *a trust as defined* in the first section of this act.

"2. Where any corporation acquires the shares or certificates of stock . . . of any other corporation or corporations for the purpose of preventing or lessening, or *where* the effect of such acquisition *tends to* affect or lessen competition. . . ."

The provisions of s. 1 and of the 1st and 2nd paragraphs of s. 2 were the grounds of the issues submitted to the jury by par. IX, X, and XI respectively of the judge's charge (*ante* 45–46).

By each of these provisions, it is enough to make the

combination a trust or a monopoly, if it only *tends to* produce the specified effect.

By s. 1 the combination is *a trust* if it *tends to* create or carry out restrictions in trade or in the free pursuit of any business, &c.

By s. 2, par. 1, it is *a monopoly* if it *tends to* create a trust as defined in s. 1 [*i.e.* a combination that *tends to* create or carry out restrictions in trade or the free pursuit of any business, &c.].

By s. 2, par. 2, it is also a monopoly if it *tends to* affect or lessen competition.

By par. IX of his charge (*ante* p. 45) the judge left to the jury the question, under s. 1, whether the combination was for the purpose of creating

"or which *tended to create* in Texas, or carry out in Texas, restrictions in the free pursuit in this state of the business of selling oil,"

"*or* to fix, maintain, or increase the price of such oil in Texas,

"*or* to prevent or *lessen competition* in Texas in the sale of such oil."

By par. X (*ante* p. 45) the question was left to the jury, under s. 2, par. 1, whether the common management or control created

"or *tended to* create or carry out restrictions in the sale in Texas of oil,"

"*or* to fix, maintain, or *increase the price* in Texas of such oil,

"*or* to prevent or *lessen* in Texas the *competition* in the sale of such oil."

By par. XI (*ante* p. 46) the question was left to them, under s. 2, par. 2, whether the combination was effected with the purpose and intention on the part of the officers

of the Standard Oil Co. of preventing or lessening the competition in the sale in Texas of such oil,

"*or* that the effect of said combination . . . *tended to* affect or lessen the competition in the sale in Texas of such oil."

The jury cannot be taken to have found more, under any of these three paragraphs, than that the combination *tended to* effect some *one* of the results mentioned.

Everything that has been said about the indefiniteness of the act of 1899, in regard to combinations whereby prices would be *reasonably calculated to be* fixed or regulated, is applicable to these provisions of the act of 1903 regarding combinations which *may tend to* create or carry out restrictions in trade or to affect or lessen competition, &c.

It could not have been intended to forbid all combinations, for in that case there would have been no reason for limiting the provisions to those formed for certain purposes, or which tend to produce the results mentioned, although it might not be the purpose of the combination to produce them. But almost every combination of persons or corporations engaged in trade would have a *tendency* to affect prices or trade in some way.

The provisions of s. 1 apply to persons, as well as corporations, and a partnership is a combination of persons. The words of the act of 1899, s. 2, expressly mention *partnerships*. A partnership might be formed without any purpose of creating restrictions in trade or increasing or reducing prices, but it might have *a tendency* to produce one of those results, and then it would be within the terms of the act. There is no standard provided by which the bad combinations can be distinguished from the good ones, until a jury has expressed its approval or disapproval according to the prevailing sentiment at the time.

The statutory provisions upon which the cases of *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28, 42, 43, and *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115, were decided, were not those upon which the defendant has been convicted in the present case, and different considerations apply to them.

It is submitted that the defendant's special exceptions in its answer ought to have been sustained as to the indefinite parts of the statutes of 1899 and 1903, as applied to the case set out in the petition, and that the jury ought not to have been allowed at the trial to find a verdict against the defendant on those indefinite parts of the statutes contrary to the claims specially set up in the answer.

**9.** *The Excessive Penalties.*

It is also submitted that the penalties imposed upon the defendant for the offence of which it has been convicted are so excessive as to constitute a deprivation of its property without due process of law.

This objection is assigned as error in this Court (*ante* p. 74, par. 20; *Rec.* p. 1203).

It was raised in the courts below by the motion for a new trial (*Rec.* p. 318, par. 12, 14) and was assigned there as error (*Rec.* p. 381, par. 281, 283), and it is therefore properly before this Court.

*Chicago, Burlington, & Quincy Rld. Co.* v. *Chicago*, 166 U. S. p. 231.

*Schlemmer's Case*, 205 U. S. p. 9.

The point was also expressly passed upon by the Court of Civil Appeals in reviewing the refusal of the motion for a new trial, as appears by the opinion of that court printed in the *Record* p. 1160–1161

*Montana* v. *Rice*, 204 U. S. 291, 299.
*Sullivan* v. *Texas*, 207 U. S. 416, 422.

The part of the opinion of the Court of Civil Appeals that relates to this subject is as follows (*Rec.* p. 1160),

> "It is claimed that the trial court should have granted appellant's motion for a new trial based upon the ground that the judgment imposes excessive fines, and operates as a deprivation of property without due process of law. It is also contended that the act of 1899 should be declared void, because it authorises excessive fines and forfeitures. That question has already been decided against appellant's contention in *State* v. *Laredo Ice Co.*, 96 Tex. 467. The verdict, while large, is much under the maximum permitted by the law. Its magnitude is mainly attributable to appellant's repeated and long-continued violations of the law, covering a period of six years. Hence we have reached the conclusion that the verdict is not so large as to render it manifest that the jury were actuated by prejudice or other improper motives."

In *State* v. *Laredo Ice Co.* 96 Tex. 461, 467, the question was, not whether a judgment imposed an excessive fine, but whether the statute was wholly unconstitutional because it authorised the imposition of excessive penalties. The case came before the court upon demurrer, which had been sustained by the lower court on the ground that the act was unconstitutional. The Supreme Court of the state said (p. 467–468),

> "Prescribing fines and other punishments which may be imposed upon violators of the law is a matter peculiarly within the power and discretion of the legislature, and courts have no right to control or restrain that discretion except in extraordinary cases where it becomes so manifestly violative of the con-

stitutional inhibition as to shock the sense of mankind. 13 Am. and Eng. Enc. of Law, 60; *Express Co.* v. *Walker*, 92 Va., 66. In the case cited the court said: 'The imposition and regulations of fines belong to the legislature, and to its discretion and judgment the widest latitude must be conceded. Fines are to be fixed with reference to the object they are designed to accomplish. . . . What is to be the legislative guide, in performance of its duty, but its sound judgment and the wisdom of experience? And how can courts with reason or propriety question the action of the legislature or control or restrain its discretion except where the minimum penalty is so plainly disproportioned to the offence or act for the violation of which it is affixed as to shock the sense of mankind.' There is a wide range for the discretion of the jury between the minimum and the maximum penalties fixed by this act, and we are not able to say that *the minimum penalty* inflicted upon an individual *would be so excessive* as to 'shock the sense of mankind.'"

The defendant has been convicted of, at the most, *two* offences. One of them was, that the *old* Waters-Pierce Co. agreed with Standard Oil Co. not to engage in business out of Texas and certain other territory, in consideration of the Standard Oil Co.'s agreeing not to extend its business into Texas and the other specified territory, and that this agreement was inherited by the defendant with the property and business of the old Waters-Pierce Co. The other was, that the Standard Oil Co. acquired and held a majority of the shares of the defendant company.

The former of these two offences has by statutory construction been turned into 1033, and the latter into 2521, separate offences, and a penalty of $1,623,900 has been imposed for them.

This result has been attained by multiplying each offence by the number of days that the state of things created by the agreement, or the ownership of the shares, continued. The jury have found that this was 1033 days while the act of 1899 was in force, and 1488 days since the act of 1903

(verdict, *ante* p. 47). Accordingly the two offences were multiplied by 1033, and a penalty imposed of something between $200 and $5000 for each day under the act of 1899, amounting in all to $1,549,500, the average of which would be $1500 a day. The penalties under the act of 1903 were arrived at by multiplying the latter offence by 1488 and imposing a penalty of $50 a day, making in all $74,400. This was done in accordance with the judge's charge (*ante* p. 47, par. XIV).

The act of 1899 provides in s. 5 (*post* p. 215) that any person, partnership, association, or corporation "*violating* any of the provisions of this act shall forfeit not less than $200 nor more than $5000 *for every such offence*, and *each day* such person, corporation, partnership or association shall continue *to do so*, shall be a separate offence."

The act of 1903 in s. 11 (*post* p. 223) provides that every person, corporation, or association who shall "*violate* any of the provisions of this act shall for *each and every day* that *such violation* shall be *committed or continued*, forfeit and pay the sum of $50."

The state courts have treated these provisions as meaning that, if a corporation enters into an agreement, or acquires the shares of another, contrary to the act of 1899, it continues *to do so* every day that the agreement is in force or the ownership of the shares exists; and, if it violates the act of 1903 by acquiring such shares, the *violation* is continued every day that it owns the shares. Effect has been given to them accordingly, and they must be taken in this Court to have the meaning so attributed to them.

The legislature may provide that the penalty to be imposed for an act that is made a criminal offence shall be measured by the time that the act or the state of things produced by it continues, if the penalty is not thereby rendered excessive. But it is not possible to change the

nature of the act itself, or to turn a single act into several distinct acts, by a statutory provision that every day the act or its effects continue shall be a separate offence. In determining whether the penalties imposed are excessive, it cannot be put out of sight that there is only one act, even if the punishment may properly be aggravated by the continuance.

An *agreement* entered into contrary to a statute is only entered into once, even though the statute provides that every day it remains in force shall be treated as if a separate agreement were entered into on that day. If the statute provides that the *acquisition of shares* in a company shall be considered as if a new acquisition of the shares were made on every day that the ownership of them continues in the same person, the shares are still in fact only acquired once, however bad it may be to keep them. The person who makes the agreement or acquires the shares, is not in the position of one who commits a number of distinct burglaries or makes several illegal sales of intoxicating liquor. When he complains that the penalty imposed on him is unreasonably severe for a single offence, it is not an answer to him to say that the statute provides that *every day* the agreement remains in force or the ownership of shares continues shall be a separate offence, and that the magnitude of the penalty is attributable to his repeated violations of the law. That answer is no better than it would have been if the statute had provided that *every hour*, or *every minute*, should be a separate offence. If the penalty is excessive for the single act that has been done contrary to the statute, continued in effect as long as it has been, it is not made reasonable by a provision of the statute that the act shall be *deemed to be* as many different offences as there are days in the period during which the effect has continued.

The defendant, having been convicted of one offence committed by its becoming a party to the agreement with the Standard Oil Co. on the 1st June 1900 and remaining a party to it till the 31st March 1903, and of another offence committed by means of the Standard Oil Co.'s owning a majority of the shares during the same period, has for those two offences been subjected to a penalty of $1,549,500.

The defendant has also been subjected to the additional penalty of $74,400 for the continuance of the ownership of the shares by the Standard Oil Co. from the 1st April 1903 to the 29th April 1907.

The former penalty was imposed under a statute which provided that the penalty for every offence under it should be not less than $200 nor more than $5000. The statute under which the latter penalty was imposed reduced the penalty to $50 for a single violation of its provisions.

The penalties that have been so imposed on the defendant have no relation to the two offences of which the defendant has been convicted. The largest penalty that could have been imposed for each of them at the time it was committed was $5000. The rest of the gross sum has been arrived at by multiplying the original offence by the number of days that have since elapsed. During that period no other wrongful act has been committed that could aggravate the original offence. The defendant has only carried on a lawful business in a lawful manner. The original penalty of $5000 imposed by the act of 1899 was in itself a heavy one. It was so heavy that it was reduced to $50 by the act of 1903. But, taking $5000 as the maximum penalty that could have been imposed under either act, the penalty of $1,623,900, into which the original penalty has been magnified solely on the ground that the agreement and the ownership of shares, which constituted the two offences, have not been undone, is so enormous and so disproportionate to anything that

has been done by the defendant, that it cannot be regarded otherwise than as an excessive fine.

Nobody can hesitate to say that the penalties are properly described as enormous, having regard to the similar description applied in this Court to the penalties imposed by the statutes under consideration in *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. p. 100, and *Ex parte Young*, 209 U. S. p. 144–148. They are more than enough to answer the test, proposed in *State* v. *Laredo Ice Co.*, 96 Tex. p. 467–468, of being "so great as to shock the sense of mankind."

The 8th amendment to the Constitution provides that "Excessive bail shall not be required, *nor excessive fines imposed*, nor cruel and unusual punishments inflicted."

This amendment and those that precede it have been held not to apply to the different States (*Pervear* v. *Com.*, 5 Wall. 475; *O'Neil* v. *Vermont*, 144 U. S. p. 332). But it has also been considered to declare one of the fundamental rights of life, liberty, and property, the observance of which by the States, as well as by the general government, is essential to due process of law, and is enforced by the 14th amendment (*O'Neil* v. *Vermont*, 144 U. S. p. 339–341, 370).

In *O'Neil* v. *Vermont*, 144 U. S. 323, the defendant had been convicted of 307 offences of selling intoxicating liquor in Vermont contrary to law, and sentenced to pay a fine of $6140, and, if he did not pay it before a specified date, to be imprisoned for 19,914 days. The statute prescribed as the punishment a penalty of $20 for each offence, and, in default of payment, three days imprisonment for each dollar of the penalty (p. 331). The majority of this Court declined to consider the question whether the defendant had been subjected to cruel and unusual punishment, on the ground that the question was not assigned as error (p. 331),

but Blatchford J. in delivering the judgment of the Court quoted from the opinion of the state court, "If the penalty were *unreasonably severe for a single offence*, the constitutional question might be urged; but here the unreasonableness is only in the number of offences which the respondent has committed." Three judges dissented, and one of them, Field J., considered the effect of cumulative punishments for different offences, in making the punishment for them excessive, and he also gives an illustration of a single offence multiplied by statute into many offences. He says (at p. 340),

> "It is no matter that by cumulative offences, for each of which imprisonment may be lawfully imposed for a short time, the period prescribed by the sentence was reached, the punishment was greatly beyond anything required by any humane law for the offences. The State may indeed make the drinking of one drop of liquor an offence to be punished by imprisonment, but it would be an unheard-of cruelty if it should count the drops in a single glass and make thereby a thousand offences, and thus extend the punishment for drinking the single glass of liquor to an imprisonment of almost indefinite duration."

The defendant in the present case has not committed a great number of separate offences as the defendant had in that case. It has been convicted of only two distinct offences, which have by a process of statutory construction been treated as an immense number for the purpose of estimating the amount of the penalty to be imposed. That penalty is so enormous that it is in effect a confiscation of the defendant's property and so deprives the defendant of its property without due process of law.

For instances of penalties held to be excessive, see

*State* v. *Galveston, Harrisburg, San Antonio Ry. Co.*, 100 Tex. 153, 175; 97 S. W. 71.

*State* v. *Whitaker*, 43 La. Ann. 527.

See also *Porter* v. *Dawson Bridge Co.* 157 Pa. St. 374–379.

**10.** *Absence of Due Process of Law in the Proceedings at the Trial.*

The next question is whether the trial was so conducted according to the regular course of judicial proceedings that the judgment can be said to have been obtained by due process of law.

It is submitted that the judge wilfully and uniformly disregarded the rules of evidence throughout the trial and admitted against the defendant's objection a great mass of evidence that was so far from any connection with the case alleged against the defendant that it had no tendency to prove any part of the case, and could only confuse the jury or excite their prejudices against the defendant. Upon this evidence, and without having any evidence before the court that tended to establish the case against the defendant, the judge directed the jury to convict the defendant, if they found certain facts, of which there was no evidence, or for which the defendant was not in any way responsible.

The effect has been the same as if the jury had been allowed to convict the defendant without having any evidence whatever before them, or as if the case had been submitted to them upon such evidence as the newspapers and the letters of the state attorney-general that were put in evidence at the hearing of the motion for a change of venue (*Rec.* p. 208, 211, 253, 219–226), and without any other evidence.

There is no difference in principle between determining a case against a party in his absence and without his having had any opportunity of being present, and doing so in his presence without any evidence at all, or upon a mass of evidence that has no possible connection with the facts to be

established against him. (See *Hovey* v. *Elliott*, 167 U. S. p. 446.)

These objections are assigned as errors in this Court in the assignments of error, par. 13, 14, 15, 19, 24 (*ante* p. 68–77; *Rec.* p. 1198–1206). They were raised in the courts below by the objections and exceptions taken at the trial.

The action is stated in the petition to be brought against the defendant, which is described as acting as a corporation under a charter granted by the State of Missouri on the 29th May 1900 (*ante* p. 3; *Rec.* p. 2).

The petition begins by alleging *a conspiracy* in January 1870, between five persons mentioned by name, and others whose names are not given, to monopolise the trade in petroleum and its products throughout the United States, including Texas, and the defendant is said to have joined in this conspiracy (*ante* p. 3; *Rec.* p. 2).

In pursuance of the conspiracy, it is alleged, W. H. Waters, H. C. Pierce, the Chess-Carley Co., and the Standard Oil Co. (of Ohio) organised the *old* Waters-Pierce Co. under the laws of Missouri, with a capital of $100,000, and two fifths of the shares were issued to Waters and Pierce, two fifths to the Chess-Carley Co., and one fifth to the Standard Oil Co. This Waters-Pierce Co. is alleged to be in fact the same company as the defendant doing business under the charter of May 29th 1900, which adopted all the acts and carried out all the contracts and conspiracies of the company as originally organised and in every way has taken its place (*ante* p. 4; *Rec.* p. 3, 4–5).

The conspirators are alleged to have previously organised the Standard Oil Co. (of Ohio) and secured the control of a large number of corporations and firms, and to have conceived that the acquisition of all the oil business in the territory in which W. H. Waters and H. C. Pierce and the Chess-Carley Co. were engaged in business could be best

accomplished by forming a corporation in which those parties should have shares, and they and the corporation have ever since been parties to the conspiracy and acquiesced in the plans (*Rec.* p. 5).

As a part of the conspiracy, it is alleged, when the *old* Waters-Pierce Co. was formed, it was agreed that it should confine its business to Texas and certain other places and should not do business in other parts of the United States, and that the Standard Oil Co. should not do business in the territory so named as that of the Waters-Pierce Co., and this agreement has been acted upon by the defendant since its organisation to the present time (*Rec.* p. 6).

Certain persons and companies (39 in number) mentioned by name, and among them *H. C. Pierce* and the *Waters-Pierce Oil Co.*, and all companies and individuals mentioned in the Standard Oil Trust agreement afterwards set out (with 44 signatures), "and all officers and agents of said companies" are alleged to have been parties to the conspiracy and conspiracies (*Rec.* p. 3–4, 15).

Two trust agreements dated the 2nd and 4th January 1882 are set out (*Rec.* p. 7), to which it is alleged that the *old* Waters-Pierce Co. was a party, and by which the property of the parties was transferred to trustees for management and they received trust certificates for their respective interests (*Rec.* p. 7; *ante* p. 5–6). The shares in the *old* Waters-Pierce Co. held by the Chess-Carley Co. (400) and the Standard Oil Co. (200) were transferred to these trustees, who thus held three-fifths of all the shares (*Rec.* p. 18; *ante* p. 6). In 1892, when the trust was dissolved, the shares so held by the trustees were transferred to the Standard Oil Co. (of New Jersey) for the same purposes for which they had been held by the trustees (*Rec.* p. 20; *ante* p. 7). In 1900, when the *old* Waters-Pierce Co. was dissolved and the defendant company was formed, the Standard Oil Co. received the same number of shares in the new company as it had held in the old company (*Rec.* p. 24; *ante* p. 8–9).

The petition alleges that the defendant, in pursuance of the unlawful purposes, has given *rebates* secretly, has unfairly and secretly *reduced prices* where competition appeared "to less than schedule price," these acts constituting its ordinary course of business, and used *secret and questionable means* in obtaining information concerning the business of competitors (*Rec.* p. 34–35), and maintained a war of extermination against competitors and by *unfair competition* destroyed the business of competitors and established a monopoly in the state (*Rec.* p. 36–37).

At the trial no evidence was offered of the original conspiracy alleged to have been entered into in 1870, or of any of the other supposed conspiracies, or of any agreement to do any of the things alleged to have been the objects of the conspiracy.

Instead of it, the State only adduced evidence of the incorporation of the Standard Oil Co. (of Ohio) in January 1870, and this evidence was admitted against the objection of the defendant that it had no connection with the case against the defendant and that the event took place 30 years before the defendant was incorporated (*Rec.* p. 396; error assigned, p. 360, par. 116).

The incorporation of the *old* Waters-Pierce Co. in 1878 was put in evidence against the objection that it related only to a stranger to the case (*Rec.* p. 397; error assigned, p. 360, par. 117).

Then, against a like objection, the Standard Oil Trust agreements of the 2nd and 4th January 1882 were put in evidence (error assigned, p. 360, par. 118). But it was admitted by the State that even the *old* Waters-Pierce Co. had never executed either of them, and that *H. C. Pierce*, who owned 40 per cent. of the stock, neither signed, nor deposited any of his stock under, either of the agreements. It was agreed that H. A. Hutchins and W. P. Thompson, who then owned 40 per cent. and the Chess-

Carley Co., who owned 20 per cent., deposited their shares under the agreement, and that the trustees continued to hold 60 per cent. of the stock till 1892 (*Rec.* p. 398–400).

The absurd deposition of Ida M. Butts as to legal proceedings against the Standard Oil Co. in Ohio in 1892, which was on its face incompetent, and which was full of prejudicial language, was admitted against vigorous objection (*Rec.* p. 403–424).

The incorporation of the Standard Oil Co. (of New Jersey) in 1882, and of a number of other companies of which it held a majority of the shares, and an agreement by the parties that this Standard Oil Co. owned 2747 out of the total 4000 shares of the *old* Waters-Pierce Co. and since September 1900 has owned 2748 out of the total 4000 shares of the defendant company, were put in evidence, subject to objections of the defendant that they were irrelevant to any issue in the case (*Rec.* p. 400, 424–426; *ante* p. 20–21; errors assigned, *Rec.* p. 361–362, par. 128–140).

H. C. Pierce was not concerned in any of these companies, except the old and the new Waters-Pierce Co. (*ante* p. 21, 26).

The judgment against the *old* Waters-Pierce Co. in 1897, revoking its permit to do business in Texas, and the mandate of this Court reciting the affirmance of that judgment in 1900, were proved, against the objection that it was a judgment in a suit to which the defendant was not a party (*Rec.* p. 439; *ante* p. 21; error assigned, *Rec.* p. 363, par. 153–155).

The incorporation of the defendant company on the 29th May 1900 having been proved (*ante* p. 21), the State showed by a deposition of H. C. Pierce, that in 1878, when the *old* Waters-Pierce Co. was formed, it was agreed between him and the Standard Oil Co. that the *old* Waters-Pierce Co. should confine its operations within the territory in which his firm had previously transacted business, and this ter-

ritory, which he described, included Texas (*ante* p. 23), and that the *present* Waters-Pierce Co. in 1900 succeeded to the business of the old company and had since confined itself to building up the business in the territory formerly occupied by the old company and had not extended its business beyond that territory, where it was thoroughly and fully equipped (*ante* p. 24), but since that time there had never been any understanding or discussion with respect to the division of territory (*ante* p. 25).

It having been agreed by counsel that *Wade Hampton*, the general auditor of the Standard Oil Co., had written certain letters to the officers of the defendant company for the purpose of obtaining such information as would be revealed by an audit of its books and accounts (*ante* p. 27), the deposition of Wade Hampton, which had been previously taken by the State, was put in evidence by the State, not for the purpose of proving the facts to which he testified, but for the purpose, avowed in presence of the jury, of showing that he (who was charged in the petition as one of the "*conspirators*") was at the time he gave his testimony trying *to conceal* the facts that were afterwards admitted (*Rec.* p. 512, 513). This use of the testimony was objected to by the defendant on the grounds that he was not an agent of the defendant, that the general allegation (*Rec.* p. 3) of conspiracy did not make the testimony pertinent to such an inquiry (*Rec.* p. 512), that there was no conflict between the testimony and the admission, and that it was of no importance whether the auditors were sent by the Standard Oil Co. or the defendant (*Rec.* p. 530–551; *ante* p. 27).

In this deposition Wade Hampton testified that prior to May 29th 1900 the books of the *old* Waters-Pierce Co. were audited by him or under his direction (*Rec.* p. 518) and after that date the books were not audited under his direction, but by auditors of his employed by the Waters-Pierce Oil Co. direct (*Rec.* p. 520), and that he sent

the persons mentioned in the letters to be employed by that company to audit their books, and they were to be employed and paid by that company because they were performing work for it (*Rec.* p. 521; *ante* p. 27).

The judge admitted the evidence and left it to the jury to say whether there was any conflict between it and the admission (*Rec.* p. 531; *ante* p. 28), and it was assigned as error below (*Rec.* p. 364, par. 163–165).

The testimony of *A. H. Gardner* and *E. P. Pratt* (*ante* p. 29–30), employees of companies connected with the Standard Oil Co., as to the instructions they received from their employers, before the defendant was in existence, regarding the territory to which they were to confine their business, was objected to on the ground that it related to matters between other companies than the defendant and not concerning the defendant, but it was admitted on the ground that the companies to which it related were *alleged* in the petition to be *co-conspirators* with the defendant (*Rec.* p. 548, 549; errors assigned, p. 365, par. 175–178).

The witness *Royer Campbell* was allowed to testify, against the defendant's objections, to the competition he had with the *old* Waters-Pierce Co. in 1894, how that company dropped its price to meet his competition and solicited his customers (*Rec.* p. 697, 698, 699), and finally induced him to sell out his business and enter their employment (*Rec.* p. 701; errors assigned, p. 367, par. 199–201). He continued in their employment and that of the new company from 1894 to 1904 under the name of the Texas Oil & Gasoline Co., under which he had previously done business (*Rec.* p. 712, 724); rebates were sometimes paid to hold the trade, and in one instance, that of Horan & Co., rebates were paid after 1900 (*Rec.* p. 719, 729). He got information of outside business by spying on railroads and noting every suspicious tank car that came to town, and

reported it (*Rec.* p. 720–722; error assigned, p. 367, par. 204).

*A. W. Clem* was permitted to testify, against the defendant's objections, to his competition with the *old* Waters-Pierce Co. from 1890 to 1894 and the reduction of price made by that company, and how the price was advanced after he had sold his business to that company (*Rec.* p. 741–744; errors assigned, p. 368, par. 205–208).

The agreement of the 5th October 1894 by the Eagle Refining Co. and A. W. Clem with the *old* Waters-Pierce Co. (*Rec.* p. 39, C) was put in against the objection of the defendant (*Rec.* p. 646; error assigned, p. 367, par. 197).

*C. W. Cahoon* testified, against the defendant's objections (*Rec.* 799, 800), that during about 60 days in 1906 one kind of oil was sold in Texas by the defendant for another kind considered of higher quality, which the defendant could not procure; and, also against such objection (p. 807), as to the extent to which prices were changed to meet competition (errors assigned, p. 368, 369, par. 211, 216).

The testimony of the three witnesses (already referred to *ante* p. 85), as to disputes about the dividing lines in Missouri and Louisiana and directions not to sell beyond certain limits, related to the *old* Waters-Pierce Co. and to a time before the defendant existed, and was admitted against the defendant's objections (C. F. Hatfield, *Rec.* p. 435, 437; H. R. Knollenberg, p. 578; T. R. Hopkins, p. 581; errors assigned, p. 363, 366–367).

The testimony of the other witnesses already mentioned at p. 85–86, as to the orders given to them while they were in the employment of the Standard Oil Co. and other companies, also relate to a time preceding the incorporation of the defendant.

The evidence occupies pages 395–1140 in the printed record in this Court. In all this mass of testimony and documents, there is no evidence, direct or circumstantial, that the defendant ever entered into any kind of agreement or understanding with the Standard Oil Co. either to limit its business to any particular territory or to regulate or fix prices anywhere, or that it ever entered into any combination with that company or was a party to bringing its affairs under the same management or control as those of that company. If there was any such combination or common management or control, it consisted entirely in the ownership of a majority of the shares by the Standard Oil Co., in which the defendant had had no hand, and which arose from the interest acquired by that company, long before the passage of any anti-trust laws, in a property and business that the defendant afterwards took over. If there was any such agreement, it was only the agreement made by the *old* Waters-Pierce Co. in 1878, by which it agreed to limit the territory in which it should carry on business.

There is a great deal of documentary evidence relating to the formation of the Standard Oil Trust and of the Standard Oil Co. and the numerous companies that are connected with it in one way or another. The evidence shows the way in which the Standard Oil Co. came to have an interest in the defendant company, and why it did not acquire the entire interest in the shares of that company, and it has been shown that the transactions between them in the course of their business have been large, and the details of some of those transactions have been gone into. There is evidence that the *old* Waters-Pierce Co. carried on a vigorous competition with its rivals in Texas and lowered its prices in order to overcome their competition in a way that the petition calls "unfair competition," and that it systematically provided for ascertaining all that it could about the business carried on by its rivals. Whether this

course of business was right or wrong, none of the evidence relates to the defendant. Only one case is testified to in which the defendant ever gave rebates since 1900, that of Horan & Co., and no rule of law or morals has yet been laid down, that a man may not sell for such price, or make such discount from his asking price, as seems advantageous to him. There is evidence that the defendant did lower its prices at times to meet competition (as testified to by Cahoon), and that is the ordinary course of trade. But there is not a particle of evidence of the two principal things necessary to convict the defendant, namely, an agreement to regulate prices (or for a division of territory) entered into by the defendant with the Standard Oil Co., or a combination of any kind entered into by the defendant with that company.

It is not enough to say, as the Court of Civil Appeals says, that the evidence is very voluminous, and that to a large extent the case rests upon *circumstantial evidence* (*Rec.* p. 1161). Evidence is not circumstantial unless each part of it has some connection with and indicates in some degree the principal fact to be proved (1 Greenleaf Ev. s. 13, 13a; Best Ev. (5th ed.) 406, (9th ed.) 264). Independent circumstances that do not separately point to the desired conclusion, are not circumstantial, but only irrelevant, evidence (*Com.* v. *Jeffries*, 7 Allen p. 566, 567–568).

The fact that the defendant did not extend its business out of the district in which the *old* Waters-Pierce Co. had established the business afterwards acquired by the defendant, does not indicate in any degree that the defendant had made any agreement with the Standard Oil Co. not to extend its business into other places. Traders commonly limit their business to some locality, and, when they acquire a business established in a district, they generally continue to carry it on where they find it established, and there is no ground for inferring an agreement with some-

body not to extend it. The acquisition of a majority of the shares of the Waters-Pierce Co. by the Standard Oil Co. is not a ground for supposing that the Waters-Pierce Co. did anything to bring about the acquisition. The examination of the books of the Waters-Pierce Co. by auditors of the Standard Oil Co., which was the majority shareholder, and the information given to it by H. C. Pierce, the manager and minority shareholder, does not authorise a presumption that the Standard Oil Co. had any relations with the Waters-Pierce Co. except those of a large shareholder. The competition carried on by the *old* Waters-Pierce Co. with its rivals, the discounts or rebates that it gave to its customers, the means that it used to obtain information regarding the business of competitors, do not justify any inference that the defendant had entered into an agreement or a combination with the Standard Oil Co. These are *circumstances*, but they are not circumstances that have any tendency to prove the facts to be established. They are not links in a chain, and they cannot be fastened together to make a chain, for no one of them indicates the desired conclusion. A chain of circumstantial evidence can not be made out of any number of irrelevant circumstances, however great the number may be.

But the judge, with nothing but this great mass of irrelevant evidence before the jury, left to them the issues mentioned in par. VII–XI of his charge (*ante* p. 44–46; *Rec.* p. 288–291). In the four paragraphs VII–X, he directed them to convict the defendant if they found certain specified facts of which there was no evidence whatever. In paragraph XI, he directed them to convict *the defendant* if they found that the *Standard Oil Co.* had done certain things with a purpose and intention on the part of its officers to accomplish a certain result. The explanation in this last paragraph of what would constitute a combination was also sufficient to convict the defendant under paragraphs VIII–X for what the Standard Oil Co. had done.

The direction in par. XI necessarily involved the right of the defendant to its property against deprivation without due process of law, for it required the jury to impose penalties on the defendant, if they found that the Standard Oil Co. had violated the statute.

*Wilson* v. *Blackbird Creek Co.*, 2 Pet. p. 250–251.
*Kaukauna Water Co.* v. *Green Bay Canal Co.*, 142 U. S. p. 270–271.

There is no suggestion in the charge that any active participation on the part of the defendant was necessary. The direction was plain, that, if the *Standard Oil Co.* acquired a majority of the shares, and thereby effected a combination, and this was done with the specified purpose and intention on the part of its officers, *or* the effect of it tended to accomplish the specified object, then the penalties were to be imposed on the *defendant.*

This is nothing less than taking the property of the defendant and applying it in discharge of a penalty incurred by the Standard Oil Co., which does not differ in substance from transferring the property of the defendant directly to the Standard Oil Co., as already pointed out (*ante* p. 106–107).

*Davidson* v. *New Orleans*, 96 U. S. p. 102.

The definition of *combination* in par. XI, viz., if the Standard Oil Co. acquired a majority of the capital stock of the defendant corporation and "*thereby effected a combination* of said two corporations," applies equally to the combination which it was necessary to find in order to convict the defendant upon the issues submitted in the three other paragraphs VIII, IX, and X.

This definition in par. XI was given as a general definition of what would constitute a combination, and there is no suggestion of an intention that it should be considered as a definition only for the purposes of the issues

submitted in par. XI, and that something more was necessary to make a combination upon the other issues. Such an intention would not be a rational one: It could not be a combination under par. XI without being also a combination under par. VIII, IX, and X. The acts of the Standard Oil Co. alone were consequently sufficient under the judge's charge to make the defendant liable upon the other issues involving the charge of combination.

The admission of the evidence of the incorporation of the Standard Oil Co. (of Ohio) in 1870, and the subsequent incorporation of other Standard Oil Companies, and the organising of the Standard Oil Trust in 1882, and the incorporation of the *old* Waters-Pierce Co. in 1878, the subsequent revocation of its permit, and its dissolution, and the testimony regarding the doings and agreements of the agents of other companies than the defendant, against the objections of the defendant that these matters happened before the defendant existed and had no connection with the case against it, and the submission of the issues to the jury upon that evidence, and without any evidence according to the usual course of judicial procedure that the defendant had done any of the things that the judge authorised the jury to find that it had done, in themselves deprived the defendant of due process of law in the proceedings by which the penalties have been imposed upon it.

This deprivation was necessarily involved in the proceedings, and appears on the face of the record.

*Willson* v. *Blackbird Creek Co.*, 2 Pet. p. 250, 251.
*Kaukauna Water Co.* v. *Green Bay Canal Co.*, 142 U. S. p. 270–271.

If, instead of the 745 pages of evidence, there had been no evidence at all adduced at the trial, and the judge had directed the jury that the facts regarding the defendant were matters of such general knowledge in Texas that further

evidence was unnecessary, and that they might determine, according to such knowledge as they already had, whether the Waters-Pierce Oil Co. was "a trust," and that, if they found it to be a trust, they should impose penalties upon it at the rate of not less than $200 or more than $5000 a day, the objection that the defendant was deprived of its property without due process of law would be necessarily involved and would appear on the face of the proceedings, without an express reference to the Constitution of the United States.

It would be the same thing, if a lot of Texas newspapers like those already mentioned (*ante* p. 156) had been put in evidence, and the issues had been submitted to the jury upon that evidence alone.

It is submitted that the evidence upon which the issues have actually been submitted to the jury is as far removed from anything that could be considered evidence of the facts to be proved, as the newspapers would have been, and that the jury have found their verdict, not upon merely improper evidence, but upon no evidence at all, and that the judge arbitrarily and without any regard to the rules of law left the case to them with directions intended to mislead them into a conviction of the defendant without evidence.

The charge of *conspiracy* in the petition was made use of as an excuse for the admission of evidence of all sorts of agreements and acts of persons and corporations other than the defendant or its agents, whether the agreements or acts were made or done before or after the defendant came into existence. This charge was probably made in the petition for that purpose, and all companies and persons, whose doings it was desired to put in evidence, were named or described in it as *conspirators* (see the list, *Rec.* p. 3–4, 7–8, 15–16). But no pretence was made of adducing any *evidence* of any conspiracy between these companies and persons, or any of them, or of the concurrence of the *defendant*

in any of their agreements. The judge never once asked for evidence of conspiracy, or for an assurance that such evidence would be produced, as a condition of the admission of any evidence that was offered. He only asked if the evidence related to a company that was *alleged* to be a conspirator, and, on receiving an affirmative answer, immediately admitted the evidence (*Rec.* p. 548, 551, *A. H. Gardner, E. P. Pratt*). An instance of the way in which this general charge of conspiracy was worked is the case of Wade Hampton, the general auditor of the Standard Oil Co., whose testimony taken by deposition was put in evidence by the State for the purpose of showing a supposed *conflict* between his testimony and the subsequently admitted fact that the defendant's books and accounts were examined by the Standard Oil Co., and of inferring from that conflict an attempt by the defendant through him *to conceal* the admitted fact (*ante* p. 27; *Rec.* p. 512–513, 530–531). Wade Hampton is in the list of alleged conspirators in the petition (*Rec.* p. 3), but he was not connected with the defendant in any way, and there is no other evidence in the case about him or his doings.

The conspiracy alleged in the petition is, that about January 1st 1870 certain persons "conceived the scheme of monopolising and controlling the business of refining, transporting, and selling petroleum and the products thereof throughout the United States, including the state of Texas; that *to that end* they entered into a conspiracy and a series of conspiracies" (*Rec.* p. 2), but there is no allegation of any unlawful means used to carry out the scheme. It is not alleged that it was part of the scheme to exclude other persons from the business, either by contracts or otherwise. The allegation of a scheme of *monopolising*, without indicating the methods of accomplishing that purpose, is as vague and indefinite as a general charge of *conspiracy* would have been without specifying

the purpose, or the means of carrying it into effect (*Ambler* v. *Choteau*, 107 U. S. p. 591). If there was to be only a large combination, either in the form of a corporation or a trust, and it was not part of the scheme to exclude other persons by means other than inducing the public to trade with the combination, there was no monopoly, and they were only trying for what Lord Hannen says is the object of every trader. "*The object of every trader* is to procure for himself as large a share of the trade he is engaged in as he can" (*Mogul Steamship Co.'s Case*, [1892] A. C. p. 58).

The only evidence of anything that happened in 1870 was that of the incorporation of the Standard Oil Co. (of Ohio) on the 10th January 1870 by certain persons (of whom H. C. Pierce was *not* one) (*ante* p. 19; *Rec.* p. 396, 998), the purpose being "the manufacture of petroleum and to deal in petroleum and its products" (*Rec.* p. 999), and this is presumably the whole foundation of the charge of conspiracy at that time.

Four years after the incorporation of the *old* Waters-Pierce Oil Co. (*ante* p. 19), came the Standard Oil Trust agreements of the 2nd and 4th January 1882 (*ante* p. 19), to which the petition alleges that the Waters-Pierce Oil Co. became a party about those dates (*Rec.* p. 7), and *H. C. Pierce* is in the list of conspirators in the petition (*Rec.* p. 3). But it was agreed by counsel at the trial that the old *Waters-Pierce Oil Co.* did *not* sign either of the agreements, and that *H. C. Pierce*, who owned 40 per cent. of the shares, did *not* sign or deposit his shares under them, though the holders of the other 60 per cent. did sign or deposit their shares (*ante* p. 19; *Rec.* p. 399). Yet notwithstanding this admission that the *old* Waters-Pierce Co. did not become a party to the trust, and the fact that it was dissolved long before the defendant came into existence (*ante* p. 7, 20), and against the defendant's objections (*Rec.* p. 398), it was admitted in evidence (*Rec.* p. 400).

The purpose of this trust was to consolidate the business of a number of different companies and persons in the manner shortly described *ante* p. 5–6, and fully in the documents set out in the *Record* p. 7–15. It was a perfectly lawful and proper purpose, whether it was carried out by means of a trust or under the form of a corporation. At that time, even the laws of Texas had not attempted to prohibit such combinations in that state. When the trust was dissolved in 1892 in consequence of the legal proceedings in Ohio, of which Mrs. Ida Butts undertook to give an account (*Rec.* p. 403–424), it was because the Supreme Court of that state had decided that the transfer of the property and business of the Ohio corporation was *ultra vires*, as appears by *State* v. *Standard Oil Co.*, 49 Ohio St. 137. But whether the objects of this trust were lawful or unlawful, it ought not to have been brought into the case against *the defendant*, which never became a party to it.

By the Special Charge No. 13 (*Rec.* p. 303), which was refused, the judge was asked to direct the jury that, as this agreement and supplemental agreement were executed long prior to the creation of the defendant, and there was no evidence that the defendant ever adopted the agreement, they should not consider it as affecting the defendant.

This directly raised the question whether the defendant's property was to be taken from it in the form of a penalty on account of an agreement between other people, to which the defendant never was, and never could have been, a party, and necessarily involved its rights under the 14th amendment of the Constitution.

It is a matter of common knowledge that the Standard Oil Co. is an object of odium in some parts of the country, and it is evident that this is the general state of feeling towards it in Texas. The only purpose of all the evidence about the Standard Oil Trust and the Standard Oil Com-

panies and the *old* Waters-Pierce Oil Co. was to establish in the minds of the jury some connection between the Standard Oil Co. and the defendant that might have the effect of turning this feeling against the defendant. The judge did all he could to assist this purpose and with complete success.

He began his charge to the jury by repeating to them that the State alleged that in 1870 there was *a conspiracy* formed for monopolising and controlling the business, and that under this conspiracy the defendant had done various acts and entered into various agreements which constituted violations of the anti-trust laws (*Rec.* p. 284). He referred in par. V (p. 287) to the evidence of the doings and agreements of the agents of corporations other than the defendant and of the *old* Waters-Pierce Co. *before* June 1st 1900 and the doings of individuals *before* and after that date and within and out of Texas, and told them that none of it could be considered by them, *except* within the limitations and for the purposes afterwards stated. He then directed the jury that, if they found from the other evidence, that on June 1st 1900 there was formed *or existed* an *agreement* between the officers of *the defendant* and the officers of any of the other corporations, or any of the individuals, alleged in the petition to be *co-conspirators* with the defendant, relating to the management of the defendant's business, *then* they might consider for what they thought it worth, such acts or declarations of *all the parties* to the agreement and *their agents* during its existence and in furtherance of its execution for the purpose of determining its character and whether it contemplated a violation by the defendant of the Texas anti-trust laws.

This direction and his refusal to direct the jury (Special Charge No. 15, *Rec.* p. 304) that the defendant was not responsible for any act occurring prior to May 31st 1900 and that the jury should disregard evidence of acts and

transactions before that date, show that he meant to allow the jury to consider the evidence of such previous acts and transactions if they were done or made during the continuance of the agreement referred to. This could only be effected within the words of the charge by treating the agreement of the *old* company as an agreement of the *defendant*. He must have intended that this should be done, for otherwise he would not have referred expressly to acts and transactions *prior* to June 1st as well as to subsequent ones.

The intimation that an agreement relating to the management of the defendant's business might have *existed* on the 1st June 1900 (three days after the defendant had been incorporated) can only refer to the agreement made by the *old* Waters-Pierce Co. in 1878 for the division of territory. The jury were thus invited to treat that as an *existing* agreement of the defendant at its birth, and as a *conspiracy* which would entail the consequences that have been mentioned. There is no suggestion that the defendant need manifest *its assent* to the *existing* agreement before it would have such an effect, and for that purpose the jury were allowed to identify the defendant with the *old* Waters-Pierce Co.

No other justification has ever been given for admitting in evidence against the defendant all the details of the organisation of the Standard Oil Trust and the various Standard Oil Companies from 1870 down to 1900, and the testimony regarding their doings and those of other persons and companies, except the charge, unsupported by any evidence, of *a conspiracy*, to which the defendant is assumed to have become a party by an agreement made, not by *the defendant*, but by the *old* Waters-Pierce Co., with the Standard Oil Co. in 1878 for a division of territory.

The judge also told the jury in par. XIII (*Rec.* p. 292), that evidence had been introduced tending to show that

*the defendant* had given *rebates and discounts* in the course of its dealings; also that *the defendant* had made *contracts* and entered into *understandings* other than those submitted for the consideration of the jury in par. VII–XI; also tending to show the *general course of dealings* of the defendant, including some of its business methods in *meeting competition*.

This could not have been said to the jury unless the judge had intended that *the defendant* should be identified with the *old* Waters-Pierce Co. For, as already pointed out, the evidence of *rebates and discounts* applied almost wholly to the *old* company, and only Royer Campbell was able to mention one case, that of Horan & Co., in which this had been done since 1900, and the judge could hardly have intended that alone. The same remark applies to the other *contracts and understandings*, and the *course of dealings*, and methods in *meeting competition*. The testimony of Campbell, Clem, and Cahoon, on these points is mentioned *ante* p. 162-163.

But the judge proceeded to tell the jury that this evidence showed *no violation* of the anti-trust laws, *unless it tended to establish* one or more of the issues submitted to them in par. VII–XI, and they were therefore instructed to return a general verdict for the defendant, notwithstanding that evidence, *unless* they found in favor of the State on the issues submitted to them in one or more of those paragraphs.

The jury were thus directly authorised to consider the rebates and discounts, and other agreements and understandings, and methods of meeting competition, as much as they liked, upon any of those issues, although none of these doings were unlawful, and although almost all of them were doings of the *old* Waters-Pierce Co. and *not* of the defendant.

There is an insinuation in this part of the charge that these things, although not themselves contrary to the anti-trust laws, tended to prove that the defendant was

engaged in transactions that did violate them. But what possible connection was there between these things and the issues? *Rebates and discounts* from what a trader first gives out as his price, are common incidents of trade and bargaining, whether they are given to induce prompt payment or to attract desirable customers. They have been forbidden by recent statutes as to railway companies and some public carriers, but no attempt has yet been made to apply similar rules to private traders. The ordinary way of *competition* is by a lowering of prices in order to attract the trade that might otherwise fall to a competitor. It would be difficult to make a law encouraging competition, and at the same time providing that it shall not be carried so far as to interfere with the business of competitors. If the *old* Waters-Pierce Co. in 1894 lowered its prices in order to draw business away from Royer Campbell, and solicited business from his customers and from Mrs. Campbell (*ante* p. 37; *Rec.* p. 698–699), that had no tendency to show the existence of a combination between that company and the Standard Oil Co., or the effects of one. Campbell himself "cut his price" and tried to get away the customers of the *old* Waters-Pierce Co. "when the fight was on" (*Rec.* p. 698–699), but that was no evidence that *he* was in a combination with the Standard Oil Co. Yet he, as well as the *old* Waters-Pierce Co., engaged in *competition*, which the counsel for the State properly defined as *warfare* (*Rec.* p. 697, 699). Clem tried a similar competition by underselling the *old* Waters-Pierce Co. in 1890 and 1891 (*Rec.* p. 743, 748). As to the evidence that the *old* Waters-Pierce Co. had a system of *acquiring information* regarding the business of competitors, it can only be said that it would be strange if the company undertook to carry on a large business without taking steps to obtain such information, and the judge's reference to the defendant's *methods in meeting competition* can only be considered as a hint to the jury to consider this evidence to the defendant's disadvantage.

This evidence was adduced in support of the charges of *"unfair competition"* and maintaining *"a war of extermination of all competitors,"* which are contained in the petition (*ante* p. 13) and were read to the jury. These phrases appeal to popular sympathy, but they are meaningless as descriptions of anything except the *"competition, free, and unrestricted"* which the courts regard as "the general rule which governs all the ordinary business pursuits and transactions of life."

*U. S.* v. *Trans-Missouri Freight Association*, 166 U. S. p. 337.

*Thomson* v. *Union Castle Steamship Co.*, 149 Fed. R. p. 935 (Hough J.).

It is easy to see how these things might appeal to the prejudices of the jury, but it is not apparent how any one of them could relate to any of the issues.

A similar observation applies to the testimony of C. W. Cahoon (*ante* p. 163) regarding the sales of one kind of oil for another during a short period, and the extent to which prices were changed to meet competition. These matters had no possible relation to the issues in the case, but they were likely to have the effect, for which they were introduced, of prejudicing the jury (*Rec.* p. 799, 800).

The objections of the defendant to the admission of evidence were regularly and systematically overruled by the judge, although substantially all the evidence was irrelevant according to any established rules of evidence and could only have the effect of exciting prejudice against the defendant or of confusing its identity with that of some other corporation.

In one instance (*Rec.* p. 794) during C. W. Cahoon's testimony, a letter was offered, in which he asked whether he would be allowed to sell an inferior grade as Eupion oil, and the judge excluded it on the ground that it was

more calculated to arouse the *prejudice* of the jury, than to show that the anti-trust law had been violated, but everything else that could arouse their prejudice was admitted, even upon the subject to which this letter was said to relate. Cahoon's own testimony as to his actual sales of one kind of oil for the other was admitted, against the objection that it could only arouse prejudice (p. 799–800). And nothing was more calculated to arouse prejudice than the inflammatory statements in the petition (p. 33, 36–37) about unreasonable and unconscionable prices, cutting prices, the rebates, gratuities, and bribes, a system of spies, corrupting railway officials, the war of extermination and unfair competition, alleged to constitute the defendant's ordinary course of business. These statements were excepted to (p. 73, 75, par. 77, 80), but the exceptions were overruled (p. 97) though the statements were entirely irrelevant, and the counsel for the State were allowed to read those statements to the jury. The same thing may be said of the affidavit of H. C. Pierce set out in the petition with an allegation that the statements in it were false and fraudulent and made for the purpose of deceiving the officers of the state (p. 26–27), which was excepted to (p. 75, par. 81), but the exception was overruled (p. 97), though at the trial, after this matter had been read to the jury, the affidavit was excluded because it was irrelevant (p. 518).

It is not contended that this Court can revise the decisions of the state courts merely on the ground that those decisions are erroneous in law or fact. If the proceedings were conducted according to the regular course of judicial procedure and not in reckless disregard of the defendant's rights, the decisions of the state courts are conclusive, except upon questions arising under the Constitution or laws of the United States, and do not deprive him of his property without due process of law.

*In re Converse*, 137 U. S. p. 631.

*Backus* v. *Fort Street Union Depot Co.*, 169 U. S. p. 566.
*Smiley* v. *Kansas*, 196 U. S. p. 453–454.

But in order that the decision may have this effect, it is necessary that there be, not only the form, but the substance, of a trial according to the regular course of procedure, and not in reckless disregard of his rights.

See *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. p. 565–566.
*Fayerweather* v. *Ritch*, 195 U. S. p. 297–299.
*Patterson* v. *Colorado*, 205 U. S. p. 461.

The trial must be "according to the modes of proceeding applicable to such a case, secured by laws operating on all alike, and not subjecting the individual to the *arbitrary exercise* of the powers of government unrestrained by the established principles of private right and distributive justice. . . . But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its *judicial authorities* may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final *action* would be inconsistent with that amendment. In determining what is due process of law regard must be had to *substance*, not to *form*" (*Chicago, Burlington, & Quincy Rld. Co.* v. *Chicago*, 166 U. S. p. 234).

In *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. p. 569, 575, 576, it was said, "It is obvious that the award, whether adequate or not, was not in reckless disregard of their rights." "They were not denied 'due process of law.' The proceedings were had before a duly constituted tribunal, in accordance with the declared law of the state, with full opportunity to be heard." "The error, if any there be, was not one 'in *absolute disregard of their right* to just compensation,' but was only error in the administration of the law under which those proceedings were instituted."

In *Tracy* v. *Ginzberg*, 205 U. S. 170, where the cancellation of a liquor licence in which the plaintiff had an interest was held not to deprive him of his property without due process of law, the Court said (p. 178) that such "a deprivation . . . occurs when it results from the *arbitrary exercise* of power inconsistent with 'those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors,'" &c.

In *Patterson* v. *Colorado*, 205 U. S. p. 461, where the plaintiff had been committed for contempt of court, it was said that his acts were "far from showing that innocent conduct has been laid hold of as an arbitrary pretence for an *arbitrary* punishment."

In *Hovey* v. *Elliott*, 167 U. S. 409, where, the defendant being in contempt, his answer was struck out and judgment given against him, this Court said (p. 415), "It would be like saying to a party, appear and you shall be heard; and, when he has appeared, saying, your appearance shall not be recognised, and you shall not be heard." And at p. 446, "There is no distinction in principle between determining a cause upon issues not raised by the pleadings in the actual absence of the party, and rendering a decree by refusing to permit a defendant to be heard in his defence or to consider the merits of a sufficient defence, and indeed by striking the pleading containing such defence from the files."

In *Ex parte Virginia*, 100 U. S. p. 367, it was said by Field J. of the clause regarding the equal protection of the laws, "It opens the courts of the country to every one, on the same terms, for the security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts; it assures to every one the same rules of evidence and modes of procedure; it allows no impediments to the acquisition of property and the pursuit of happiness,

to which all are not subjected; it suffers no other or greater burdens or charges to be laid upon one than such as are equally borne by others; and in the administration of criminal justice it permits no different or greater punishment to be imposed upon one than such as is prescribed to all for like offences." See also p. 347.

The prohibitions of the 14th amendment extend to all acts of the State, whether done through its legislative, executive or judicial authorities, and whoever by his public position deprives another of any right protected by those provisions violates the Constitution, and, as he represents the State, his act is that of the State.

*Scott* v. *McNeal*, 154 U. S. p. 45.
*Waterworks Co.* v. *Owensboro*, 200 U. S. p. 45.
*Londoner* v. *Denver*, 210 U. S. p. 386.

In *Vandalia Rld. Co.* v. *South Bend*, 207 U. S. 359, where there was a question what matter was determined by the court below, it was said that the construction of a pleading and the validity of an agreement are as a rule local questions, and it was added (p. 367), "A case may arise in which it is apparent that a federal question . . . is avoided by giving an unreasonable construction to pleadings, but that is not this case."

In *Yick Wo* v. *Hopkins*, 118 U. S. p. 373, this Court said, "Though the law itself be fair on its face and impartial in appearance, yet, if it is *applied* and administered by public authority *with an evil eye and an unequal hand*, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

It is submitted that the defendant has not been tried according to the regular course of judicial procedure, but on the contrary has had a judgment given against it after

the form, without the substance, of a trial, in which no evidence was adduced against the defendant, but a great deal of evidence about other companies and persons was submitted to the jury, and the judge then left to them issues upon which there was no evidence whatever against the defendant. It appears by the evidence that was admitted and by the judge's rulings at the trial and his directions to the jury that this was done in reckless disregard of the defendant's rights. The defendant is in as bad a position as if its defence had been struck out and a verdict had been given against it without the pretence of any evidence. No consideration was given to the merits of its defence. The presence of the "evil eye and unequal hand" is evident throughout the proceedings.

It cannot be reasonably said that any of the doings or agreements of the *old* Waters-Pierce Co. had any such fair relation to the question whether the defendant had violated the Texas anti-trust laws, as to make it evidence upon that question.

There was no such relation between them as might have justified the legislature in providing that they should be evidence against the defendant.

See *People* v. *Cannon*, 139 N. Y. p. 43, 45.
*Com.* v. *Anselvitch*, 186 Mass. p. 378–379.

The defendant did not succeed to the liabilities or obligations of the *old* Waters-Pierce Co. (*Armour* v. *Bement's Sons*, 123 Fed. R. 56), and the legislature could not have imposed those liabilities or obligations upon the defendant (*Woodward* v. *Central Vermont Ry. Co.*, 180 Mass. 599).

If the evidence relating to the *old* Waters-Pierce Co. is struck out of the case, nothing remains that would give any color for the judge's directions to the jury or for their verdict.

There was in fact no relevant evidence in the case except

the incorporation of the defendant and the granting of the permit to do business in Texas.

It is useless to say that judgment cannot be given against a man without permitting him to be heard or without considering the merits of his defence, unless the defendant is entitled to have this Court consider the question whether the proceedings at the trial were not conducted without evidence and in arbitrary disregard of its rights. The jurisdiction of this Court could always be evaded by taking the course that was taken in the present case, and allowing a mass of testimony relating to other persons and things to be given and, after the form of a trial, arbitrarily pronouncing judgment against him. The reasons given for the decision in *Hovey* v. *Elliott*, 167 U. S. 409, and the other cases that have been referred to, seem to imply that this Court will look into the proceedings far enough to see whether they have been reasonably conducted, before deciding that they constitute due process of law.

It is submitted that this question appears on the record and was necessarily involved in the decision of the state courts, as plainly as it would have been if the judge had told the jury they might find a verdict against the defendant without any evidence at all (vid. *ante* p. 156, 168). The objection could not be taken at the trial before the judge himself, that he was wilfully perverting the course of justice and arbitrarily disregarding the defendant's rights. But if it appears on the record that he has done so, then the question of the defendant's constitutional rights is necessarily involved (*ante* p. 167, 168).

## 11. *The Permit a Contract with the State.*

It is stated in the petition that the defendant is doing business in Texas by virtue of a permit issued by the secretary of state on the 31st May 1900 (*ante* p. 3, 9; *Rec.* p. 2, 27).

By this permit, which was put in evidence by the State and bore date the 31st May 1900 (*ante* p. 21; *Rec.* p. 439, copy set out p. 1088), it was certified that the defendant, having that day paid the full amount of fees and taxes prescribed by the laws of the State and having complied fully with the law in all respects, was thereby granted permission to do business in Texas for the purposes mentioned *for a term of ten years* from the date thereof.

The statutory provisions under which this permit was issued are contained in the Revised Civil Statutes 1895, and are as follows,

> [page 187] "Art. 745. Hereafter any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other state, or of any territory of the United States, or any municipality of such state or territory, or of any foreign government, sovereignty or municipality, desiring to transact business in this state, or solicit business in this state, or establish a general or special office in this state, shall be and the same are hereby required to file with the secretary of state a duly certified copy of its articles of incorporation, and thereupon the secretary of state shall issue to such corporation a permit to transact business in this state. If such corporation is created for more than one purpose the permit may be limited to one or more purposes." [An amendment added by General Laws 1897, c. 119 (p. 167) is immaterial.]
>
> [p. 188] "Art. 748. No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the secretary of state."

[p. 481] "Art. 2439. The secretary of state, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the state the following fees: [p. 482] . . . Each foreign corporation shall pay fees as follows: If its capital stock be one hundred thousand dollars or less, a fee of twenty-five dollars to procure a permit; if its capital stock be more than one hundred thousand dollars, and less than five hundred thousand dollars, it shall pay a fee of fifty dollars; if its capital stock be five hundred thousand dollars, and less than one million dollars, it shall pay a fee of one hundred dollars; if its capital stock exceed one million dollars, it shall pay a fee of two hundred dollars. All fees mentioned in this article shall be paid in advance into the office of secretary of state, and shall be by him paid into the state treasury monthly."

[p. 1077] "Art. 5243i. Each and every private domestic corporation heretofore chartered or that may be hereafter chartered under the laws of this state, and each and every foreign corporation that has received or may hereafter receive a permit to do business under the laws of this state in this state, shall pay to the secretary of state, annually, on or before the first day of May, a franchise tax of ten dollars. Any such corporation which shall fail to pay the tax provided for in this article shall, because of such failure, forfeit their charter."

The permit so issued upon payment of the fees and taxes required by these provisions of law constituted a contract on the part of the State that the defendant should have a right to do business in Texas during the term specified in it, and the State was not at liberty to revoke the permission so given, unless the defendant gave sufficient cause for its revocation.

*American Smelting Co.* v. *Colorado*, 204 U. S. 103.

The time for which the right to do business in the state was to continue, which in the case just cited was inferred from provisions of the statute that such corporations should be subject to the same liabilities and restrictions as domestic corporations, is in the present case expressed in the permit

in accordance with the statute limiting the time to ten years. This case therefore is free from any question of construction like the one that was involved in that case.

It was said in that case (204 U. S. p. 111), "Undoubtedly, if the corporation violated the laws of the state properly applicable to it, or if otherwise it gave just cause for its expulsion, it could not insist on such a contract as a defence."

In *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. p. 47, it was held that the provisions of the statute under which a permit was issued justified its revocation for a violation of statutory provisions that were in force at the time of its issue, although they were invalid, on account of discrimination, so far as they assumed to impose pecuniary penalties, as already explained, *ante* p. 117. It is not questioned that the *permit* might also be annulled, as the *charter* of a corporation may be, for the violation of valid laws subsequently passed and regulating the use of its privileges, as shown, in the case of a charter, by *Cosmopolitan Club* v. *Virginia*, 208 U. S. 378.

But the permit cannot be revoked in any of these cases, unless a violation of the statutory provisions justifying its revocation is established according to due process of law. In *Cosmopolitan Club* v. *Virginia*, 208 U. S. p. 384–385, the proceedings were examined and held to be consistent with the due process enjoined by the Constitution. The decision in *American Smelting Co.* v. *Colorado*, 204 U. S. p. 111, 113, shows that the permit gives a right which cannot be revoked arbitrarily or at the pleasure of the State.

It was agreed that the defendant had paid the annual franchise taxes required by the laws, but the evidence was excluded on the ground that it was immaterial (*Rec.* p. 997). The evidence probably was immaterial, as the State made no claim on the ground that they had not been paid.

Accordingly it is submitted that, if the judgment is reversed as to the penalties, it should also be reversed on the same ground as to the cancellation of the permit, in each of the following cases, viz.,

(1) If the Court is of the opinion that the statutes are too indefinite in their terms to justify the imposition of penalties upon the defendant for the matters of which it has been convicted by the jury. The reasons for so considering them have been discussed under **8** (*ante* p. 134) and are applicable, as well to a deprivation of the right granted by the permit, as to the imposition of pecuniary penalties.

(2) If the proceedings at the trial were not consistent with the requirement of due process of law, as it is submitted that they were not. This point is discussed under **10** (*ante* p. 156).

(3) The revocation of the permit on account of an agreement made by the *old* Waters-Pierce Co. in 1878, long before the passage of either of the statutes, would likewise deprive the defendant of its property without due process of law, in the same manner as the imposition of penalties would do, which is considered under **1** (*ante* p. 83).

(4) The acts of the Standard Oil Co., in acquiring a majority of the shares of the *old* Waters-Pierce Co. and thereby forming the combination long before the passage of either of the statutes, were also no justification for depriving the defendant of the rights granted to it by the permit. These points have been considered under **4** and **6** (*ante* p. 103, 113).

**12.** *The Order for a Receiver dependent upon the Judgment.*

It is submitted that, if the judgment is reversed as to the penalties and the cancellation of the permit, or as to the penalties alone, the order for the appointment of a receiver should also be reversed, on the ground that it is dependent on the judgment and cannot stand when that foundation is taken away.

The order for the appointment of a receiver was made upon an application to the District Court in the original action after the judgment (*Rec.* p. 323, 327–329). All the proceedings in that court relating to the receiver are set out in the transcript of the whole record filed in the Court of Civil Appeals in the principal case to which reference has hitherto been made (*Rec.* p. 323–352, and these pages are identical with p. 1–30 in the record of the case No. 360 in this Court). The assignments of error in the court below relating to the receiver are set out in the same record (*Rec.* p. 381–384, par 285–298) and are the same as those set out in the record in the other case (*Rec.* No. 360, p. 31–34). The assignments of error in this Court are the same in both cases (*Rec.* No. 359, p. 1188; *Rec.* No. 360, p. 84). And the appointment of a receiver after judgment had been improperly given as aforesaid is assigned as error in this Court (*ante* p. 78, par. 28; *Rec.* No. 359, p. 1208; *Rec.* No. 360, p. 103).

Accordingly every question that is raised regarding the appointment of the receiver is presented by the record in the principal case, and the record in the other case contains nothing that is not in the record in the principal case.

The manner in which there came to be a second record

in the Court of Civil Appeals of the part of the proceedings relating to the receiver, although there was only one record in the District Court, and the circumstances in which the Court of Civil Appeals heard and gave judgment upon the part relating to the receiver before it determined the original appeal, have been stated *ante* p. 2–3 and in the brief accompanying the motion that has been made to consolidate No. 360 with the principal case, No. 359.

The Supreme Court of the State, in an opinion printed with the record in the latter case (*Rec.* No. 360, p. 75), said that the order appointing the receiver might have been reviewed upon the appeal of the principal case. It is plain therefore that the questions affecting that order arise upon the record in the principal case.

It should also be observed that the Supreme Court held in *Farmers & Merchants Bank* v. *Waco Electric Co.*, 89 Tex. 331, that two separate transcripts filed in the Court of Civil Appeals upon two appeals did not make two cases out of one.

The Court of Civil Appeals in delivering judgment in the principal case on the 11th December 1907 (*Rec.* No. 359, p. 1141), after having previously on the 23rd October 1907 (*Rec.* No. 360, p. 56) affirmed the order appointing the receiver, declined to reconsider its previous decision, saying (*Rec.* No. 359, p. 1152),

> "In reference to the assignments of error complaining of the order of the court appointing a receiver, it is sufficient to say that appellant has exercised its right to prosecute *a separate appeal** from that order, and this court, in considering that appeal, has decided against appellant. It is not entitled to have the order of appointing a receiver reviewed by this court twice in two distinct proceedings."

But the *judgment* of the Court of Civil Appeals in that

* It was not *a separate appeal*, but the same appeal with a separate transcript of part of the record. See *post* p. 210–211.

case was given upon the whole of the record (*Rec.* No. 359, p. 1162) and affirmed the whole of the judgment of the court below upon the whole of that record, which included, as well the original judgment for penalties and cancellation of the permit, as the subsequent order appointing the receiver.

Nobody would doubt this, if it were not known that the Court of Civil Appeals, upon a separate transcript of a part of the record, had separately affirmed the *judgment* of the court below as regards the receiver (*Rec.* No. 360, p. 56). But that fact does not appear in the record of the principal case and cannot be considered in determining what questions arise upon that record. The Supreme Court has decided that the validity of the order appointing the receiver was one of those questions. This question, being in the record, was not removed from it by the subsequent filing of a separate transcript of a part of the record or by the judgment given upon that separate transcript, and is still in the whole record as it is brought into this Court in the principal case.

The fact that the Court of Civil Appeals had already considered the question of the receiver upon the separate transcript, might have been a sufficient ground for not giving *its reasons* again for a like decision in the principal case if the same reasons were applicable, but *judgment* could not be given in the principal case without disposing of all the questions presented by the record. The judgment affirming the judgment of the court below was plainly intended as a disposition of all the questions so presented, and accordingly it extended both to the original judgment and the order appointing the receiver.

This point is not important if the motion for a consolidation of the two cases is granted. But if the cases are not consolidated in this Court, and the record in the principal case cannot be considered in disposing of the case relating only to the receiver, then it is submitted that

the record in the latter case cannot be used for the purpose of limiting the questions that arise upon the record in the former.

[The *Record* in the principal case, No. 359, will therefore continue to be referred to as the record, except where the other is specially mentioned.]

The order appointing the receiver is dependent upon the original judgment, and, if that is reversed as to the parts above-mentioned, the ground upon which the order was made no longer exists.

The application for the appointment of a receiver alleged the recovery of judgment in the same action and the other matters already mentioned (*ante* p. 48), and the defendant demurred to the application, and for answer thereto denied all and singular the allegations therein contained (*ante* p. 49; *Rec.* p. 325).

Upon the hearing of the application, as soon as counsel for the defendant had argued the demurrer, the judge stopped the counsel for the State, and, without hearing any evidence, announced his decision that he should take *judicial notice* of the proceedings in the main case and of the *judgment* against the defendant for violating the anti-trust laws (from which the defendant had already appealed, *Rec.* p. 319–320), and that it had been found guilty of violating the anti-trust laws on every day from the 1st June 1900 to the 29th April 1907, and that its permit had been cancelled by reason of the violations, and that it had since May 31, 1900, been a member of an agreement which had its existence in Texas in violation of the civil and criminal laws of Texas, and that it was in possession of certain instrumentalities by means of which, in violation of the public welfare and interests, it intended to continue its violation of the law pending appeal from the judgment of conviction, and that the judge would assume that a proper supersedeas bond would be given to super-

sede further proceedings on the judgment, but, as he had learned from interviews published in the *newspapers* that the defendant intended to continue its business in the state as before, notwithstanding the judgment, he would appoint a receiver to take charge of its property and business and deprive it of the instrumentalities by which it had violated the law and would continue to violate it. This appears more fully in the bill of exceptions (*Rec.* p. 341–342) signed by the judge (p. 349). An order for the appointment of a receiver was made accordingly (*Rec.* p. 327–329), and the receiver qualified by giving bond on the 19th June 1907 (*Rec.* p. 330–332), before which time the defendant had on the 15th June 1907 given a sufficient bond with sureties to supersede the original judgment (*Rec.* p. 320–322).

The defendant appealed from this order and gave a further supersedeas bond (*Rec.* p. 327–329, 349).

The bill of exceptions shows that the judge, in appointing a receiver, proceeded entirely upon the ground that *the judgment* had been rendered establishing the violation of the anti-trust laws by the defendant and that the defendant intended to continue to violate them pending the appeal, and the receiver was appointed for the purpose of giving future effect to the judgment by taking away from the defendant the means of continuing to violate them. So far as this point is concerned, it is unimportant that he may not have had the right to deprive the defendant of its property in order to prevent it from carrying on its business contrary to the statutes. That is what he assumed to do, and the whole ground upon which he assumed to do it was that the judgment established the fact that the defendant had been violating the law and that he had reason to believe that it intended to continue the violation.

If the judgment is reversed, then it would no longer remain an established fact that the defendant had violated the

law, and the ground upon which the receiver was appointed would no longer exist. The order appointing him therefore is dependent on the judgment and must fall with it.

The order appointing the receiver should be reversed even if the original judgment is reversed only as to the penalties, and not as to the cancellation of the permit, for the part of the judgment imposing the penalties is the only part that convicts the defendant of a violation of the law. The part that cancels the permit would by itself only show that the conditions had been broken upon which the defendant had been authorised to do business in the state. The consequence would be that the defendant would be obliged to stop doing business in the state, and there would be no excuse for taking away its property to prevent it from doing business there contrary to the anti-trust laws. So the order appointing the receiver is dependent upon the part of the judgment that imposes the penalties.

The Supreme Court of the State, in determining the question whether the order appointing the receiver was a final order and so subject to appeal, held that it was a final order because it was "*a consequence*" of the complete determination of the controversy (*Rec.* No. 360, p. 75).

In the motion filed by the State in this Court to dismiss the writ of error in the case relating only to the receiver, No. 360, it is said at p. 12,

> "A sworn petition, *whose material allegations were not denied*, was presented to the court. This petition showed every ground which authorised the appointment of a receiver under" the specified statutory provisions.

This is an obvious mistake and overlooks the fact that the answer to this petition says (*Rec.* p. 325),

> "And for answer to said application defendant denies all and singular the allegations therein contained."

The petition alleged (1) the recovery of the judgment, (2) that the charter of the defendant had been forfeited by proceedings in the Missouri courts, (3) that the property of the defendant within the state of Texas was inadequate to pay the judgment and by an act of April 11th 1907 (App. *post* p. 225) the State had a lien on all that property to secure payment of the judgment, and (4) that under the judgment of ouster in the case the defendant had no right to do business in the state and it was necessary to protect the rights of the State that the business should be kept a going concern in the state (*Rec.* p. 323).

The violation of the anti-trust laws as charged in the petition was the only thing that was established by the proceedings and judgment, of which the judge took judicial notice, and upon which, with the information he had got from newspaper accounts of a supposed interview with one of the counsel for the defendant, the judge made the order appointing the receiver. The judge did not even assume to act upon any of the evidence adduced at the trial, but upon the proceedings and judgment. None of the evidence at the trial related to the alleged forfeiture of the charter, or the adequacy of the property of the defendant in the state to pay the judgment, or the necessity of keeping the business in the state a going concern. The judge did not assume to determine new issues upon that evidence without hearing any further evidence. He acted only on the facts already found and the information obtained from the newspapers, the substance of which he stated (*Rec.* p. 341). He even intimated that, as the defendant would undoubtedly supersede the judgment by giving a sufficient bond, he would not have appointed a receiver, if he had not been induced to believe that the defendant intended to continue the violations of law established by the judgment (p. 341). If the judgment is taken away, the violation of the law is not established, and the only ground upon which the judge acted is gone.

Upon the reversal of the judgment, the defendant is entitled to be put in the same position as if there had never been any such judgment, in order that the defendant may "be restored to all things which it hath lost by reason of the said judgment," as prayed at the end of the assignment of errors (*Rec.* p. 1208).

2 Wms. Saund. 101 *gg*.
2 Tidd's Practice (9th ed. 1828) 1186–1187.
Tidd's Forms (1828) 540, 556–558.

Otherwise the defendant would be in the same position as if an order for the issue of an execution was left in force after the judgment of which it was a consequence had been reversed. The order appointing the receiver was in the nature of execution, for according to the judge's statement (*Rec.* p. 341), the purpose of it was, by taking away the property of the defendant, to make effectual in the future the judgment establishing the defendant's violation of the law. If anything had been actually taken away, the defendant would be entitled to restitution. (See notes in 2 Wms. Saund. 101 *gg.;* 2 Tidd Pr. (9th ed. 1828) 1186–1187.)

In ordinary cases, the right to execution or anything consequent upon the judgment would fall as of course with the reversal of the judgment, but the claim expressly asserted by the State, that the order for a receiver should stand notwithstanding the reversal of the judgment, makes it important that the judgment of reversal should extend expressly to that order as well as to the original judgment.

The opinion of the Court of Civil Appeals in the other case (*Rec.* No. 360, p. 57) is not material to the questions in the present case, for it avowedly proceeded on the ground that the court then had before it only a part of the record

of the proceedings in the court below. In the opinion it is said (p. 57),

> "The appellant has seen fit to perfect a separate appeal from the order appointing a receiver, and it has no statement of facts *in the record* showing that the facts which the court took judicial knowledge of did not exist and were not sufficient to authorize the action of the court in making the appointment. The effect of the action of the court was to hold that the facts that he took judicial knowledge of were sufficient to authorize and justify the appointment. *The record here* shows that the State has actually recovered a judgment for penalties and for cancellation of the permit to do business. The *presumption will be indulged* in favor of the action of the trial court, and no fact appearing *in the record brought up here* by the appellant which would negative and destroy the force of this presumption, we must hold that we have *in this record* facts sufficient to justify the judgment below."

In the present case the whole of the proceedings in the District Court upon which the judge acted are set out in the record, and the decision could not be put on the ground that they did not appear. The Court of Civil Appeals refused to consider the question in the present case in which the proceedings *are* set out, on the ground the court had already decided the question in the other case upon a part of the record in which they were *not* set out (*Rec.* p. 1152).

In the motion to dismiss the writ of error in the other case, No. 360, several purposes are mentioned, at p. 10–11, as those for which the receiver was appointed, (1) to preserve the property so that the judgment could be enforced, (2) to enforce the judgment of ouster, (3) to preserve the property for all interested persons.

It has already been shown that the receiver was not appointed for any of those purposes, none of which were considered, but for the sole purpose of preventing the continuation of the violations of law of which the defendant was convicted by the proceedings and judgment.

It is also argued in the motion, p. 11, that there are other statutory grounds upon which the court had authority to appoint a receiver.

If there was any such authority, it was not exercised and none of those grounds were even considered.

It is also asserted in the same motion, p. 12–13, that, irrespective of any questions in the present cases, the judgment of *ouster* will stand, and *it will be necessary and proper* for a receiver to wind up the affairs of the defendant so far as the state of Texas is concerned, and that, even if the defendant should abandon its appeal and pay off the judgment, this would be proper, because it is for the state court to decide upon all questions relating to the disposition of its property and the winding up of its affairs.

It is sufficient to say that a receiver has never been appointed on any such grounds, and the suggestion that a receiver may be necessary in the future for some of those purposes is no reason why this Court should affirm an order appointing a receiver for an entirely different purpose.

But it may be added that neither the Texas statutes nor the principles of equity authorised the appointment of a receiver for any such purposes, and, if any statute purported to authorise such a proceeding, it would be contrary to the Constitution because the defendant would be thereby deprived of its property without due process of law.

As for the judgment of *ouster*, if the defendant's permit is cancelled, it will be obliged to withdraw from the state, but there is no ground upon which it can be required to leave its property there to be disposed of by Texas officials.

If the judgment for the penalties is affirmed, the defendant will have to pay the judgment, and then the whole interest of the State in the property of the defendant will cease, and the defendant will be entitled to depart in peace and take its property with it.

In this action, which is brought by the State to obtain a cancellation of the permit and to recover penalties, the

court has nothing to do with winding up the affairs of the defendant or disposing of its property, except so far as may be necessary to satisfy the claims of the State. If there are other persons having claims against the defendant, they are at liberty to assert them as they may think fit, but it is not for the State to assume to assert such claims, and they are not involved in an action by the State for penalties and cancellation of the permit.

The Texas act of 1907, c. 87 (*post* p. 225), which in s. 1 gives a lien for penalties, and in s. 2 authorises the appointment of a receiver in certain cases, does not purport to authorise such a proceeding for any of those purposes. It is provided in s. 2 that an action against a corporation for any fine, forfeiture, or penalty shall not abate by reason of the dissolution of the corporation or by the forfeiture of its charter, and the section then proceeds (*post* p. 226),

> "Whenever a corporation against which the State has heretofore instituted suit, or shall hereafter institute suit, for forfeiture of its charter, or cancellation of its permit, or for fines or penalties under any law of this State, *shall dissolve* in this or any other State, or shall have a judgment rendered against it in this or any other State, for the *forfeiture of its charter*, the court in this State in which such suit is pending *shall appoint a receiver* for the property and business of such corporation within this State or that may come or be brought within this State during such receivership, *or the court may*, in any case wherein the State is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation, *whenever the interest of the State* may seem to require such action."

The provision for the appointment of a receiver in case of the *dissolution* of a corporation or the *forfeiture of its charter* while an action against it is pending, is evidently intended to provide a means of enabling the State to proceed to judgment and enforce the penalties notwithstand-

ing the corporation may have ceased to exist by reason of its dissolution or the forfeiture of its charter. This provision was probably suggested by the dissolution of the *old* Waters-Pierce Co. in 1900 and the consequent abatement of an action against it for penalties, as stated in the answer in the present case (*ante* p. 8; *Rec.* p. 85, 95–96). It does not apply to the present case, for the defendant has not been dissolved or forfeited its charter.

The subsequent provision, that the court *may* appoint a receiver *whenever the interest of the State* may seem to require such action, makes it necessary that the State have some interest in the property of the corporation, in order to justify the appointment of a receiver. The State can have no interest in the property of the defendant after the penalties are paid.

Even in the case of the *dissolution* or the *forfeiture of the charter* of a corporation, this statute would give no authority for the appointment of a receiver, except for the enforcement of penalties, and this is the whole object of the statutory provision.

If the statute assumed to go further and to authorise the appointment of a receiver on the application of the State for the purpose of winding up the affairs of a corporation of another State, it would be contrary to the Constitution, for the State would have no interest in the property or affairs of such a corporation and the proceeding would deprive it of its property without due process of law.

*Greenwood* v. *Freight Co.* 105 U. S. p. 19.
*People* v. *O'Brien*, 111 N.Y. p. 47–48, 63.

**13.** *Appointment of a Receiver after the Supersedeas.*

Even if the original judgment should not be reversed, it is submitted that the judge had no authority to complete the appointment of the receiver after the original judgment had been superseded, and that the order completing such appointment deprived the defendant of its property without due process of law.

This is not a merely formal objection, but is a substantial one. For, if the judge had no authority to complete the appointment while the appeal from the original judgment was pending, there will never be any occasion for his doing so, as the defendant has given a supersedeas bond in the sum of $3,275,000 (*Rec.* p. 320–322) and there is no question that the judgment will be paid if it is affirmed. But, if the appointment of the receiver is held to be in force, the State will claim the right to put the receiver in possession under it, whether the judgment is paid or not. The right to do so is insisted on in the motion to dismiss the writ of error in the other case, p. 13.

This objection is assigned as error in this Court (*ante* p. 77, par 25; *Rec.* p. 1206) and in the courts below (*Rec.* p. 382, par. 291) and by the exceptions taken by the defendant to the action of the judge in completing the appointment of the receiver (*Rec.* p. 348–349).

The appointment of the receiver was made on the 13th June 1907 and was conditional upon his giving security in the sum of $250,000 (*Rec.* p. 328). This security was given on the 19th June (*Rec.* p. 330–332) and before that time the defendant had on the 15th June given the bond necessary to supersede the original judgment (*Rec.* p. 320–322).

The appointment of the receiver was not complete and he was not legally clothed with that character until he had given the security.

Kerr on Receivers (3rd ed.) 128, 130.

It has already been shown that the receiver was appointed only on the ground that the original judgment established that the defendant had violated the anti-trust laws and for the purpose of preventing a continuance of that violation. As soon as the judgment had been superseded, it could no longer be considered as establishing any such violation of law. It was as if it had never been entered, so long as the appeal was pending. The defendant denied that what it had been doing was any violation of the law, and gave the supersedeas bond for the purpose of getting rid of all effects of the judgment during the pendency of the appeal. The judge would have had no right, after the supersedeas, to appoint the receiver on the ground that there had been such a judgment, and he had no right to go on and complete the appointment afterwards.

The Supreme Court of the State has held in this very case that the effect of a supersedeas is absolute and suspends all action of the court upon the judgment. In the opinion printed with the record in the other case (*Rec.*, No. 360, p. 77), after quoting the statute, the court says,

> "This is plain language that cannot be misconstrued, because its meaning is as definite as could be expressed to the effect that, when the appellant or plaintiff in error complies with the law, the judgment cannot be enforced during the pendency of the appeal. It only needs to be said that the law applies to this case and the enforcement of the order appointing the receiver was suspended by the appeal. . . .
>
> "This court has no power to direct or authorise Eckhardt to take charge of the property of the defendant company, when the statute expressly provides that the giving of the appeal bond shall suspend the action of the court in that regard. If the appeal did not have the effect to suspend the execution of the

order, the judge had authority to limit the appointment as he did by his order," &c.

This is equally applicable to completing the appointment of the receiver after the judgment upon which the appointment was dependent had been suspended by the appeal.

A supersedeas "stops all sort of proceedings."

*Smith* v. *Nicholson*, 2 Stra. 1186.

*Sampson* v. *Brown*, 2 East 439.

So, by the laws of Texas, as declared by its Supreme Court, the judge had no authority to go on and complete the appointment of the receiver after the original judgment had been superseded. In doing so he acted arbitrarily and without authority of law, and, if the appointment is allowed to be put in force, the defendant will be deprived of its property without due process of law.

The judge and officers of the court in completing the appointment of the receiver acted as representatives of the State, and their acts were those of the State.

*Scott* v. *McNeal*, 154 U. S. p. 45.

*Waterworks Co.* v. *Owensboro*, 200 U. S. p. 45.

*Londoner* v. *Denver*, 210 U. S. p. 386.

**14.** *The Receiver appointed arbitrarily and without Due Process of Law.*

The objection is assigned as error in this Court, that the judge arbitrarily appointed the receiver under color of the statute of 1907, c. 87 (*post* p. 226) for the purpose of depriving the defendant of its property and business and for the pretended purpose of preventing the defendant from a continued violation of the law, and not for any purpose authorised by the statute, and that the defendant was thereby deprived of its property without due process of law contrary to the Constitution (*ante* p. 77, par. 26; *Rec.* 1207).

The grounds upon which the judge assumed to appoint a receiver have been mentioned (*ante* p. 191–192) as they appear in the bill of exceptions (*Rec.* p. 341–342).

The appointment of the receiver on such grounds was assigned as error in the court below as contrary to the 14th amendment of the Constitution (*Rec.* p. 383, par. 297).

The judge did not make the appointment upon any of the grounds alleged in the application (*Rec.* p. 323), which are briefly mentioned *ante* p. 194.

It was objected by the defendant that those grounds were insufficient in law, and the defendant also denied all the allegations (*Rec.* p. 325).

At the hearing of the application, as soon as the insufficiency had been argued by counsel for the defendant, the judge announced that it was unnecessary for him to hear counsel for the State, and that he should take judicial notice of the proceedings and judgment by which the defendant had been convicted of violating the anti-trust

laws on every day from the 1st June 1900 to the 29th April 1907 (*Rec.* p. 341).

A bond in the sum of $3,275,000, with the American Surety Co. as surety, to supersede proceedings on the original judgment, had already been offered but not accepted (*Rec.* p. 338–339). The only substantial difference between this bond and the one afterwards accepted was that an individual was joined as an additional surety (p. 345–348).

The judge stated that he would assume that a proper supersedeas bond would be given, but, notwithstanding the defendant's right to give such a bond, he was of the opinion that the legislature had provided, as a means of preventing the defendant from a continued violation of the law, that a receiver should be appointed to take charge of its property and business and *deprive it of the instrumentalities* by which it had violated and would continue to violate the law; and that *because* of the statute and the declared purpose of the defendant, speaking through its general counsel, "*in newspaper interviews* which had been brought to the attention of the court," to appeal from the judgment and continue to carry on its business in the same manner as before "*notwithstanding such judgment of conviction;*" and without requiring the State to prove any of its allegations or permitting the defendant to disprove them or the facts assumed by the judge upon the newspaper statement, the judge announced that he would appoint a receiver as prayed (*Rec.* p. 341–342).

It is plain, from this statement of his reasons, that the judge did not proceed upon any of the grounds alleged in the petition. He did not appoint the receiver for the purpose of protecting the interest in the property of the defendant that the State had acquired by means of the judgment. He declared in substance that that was unnecessary, because the payment of the judgment was about to be secured by a proper supersedeas bond, as it was in fact secured before the appointment of the receiver

was completed. All right of enforcing or protecting the interest of the State in the property by reason of its lien for the judgment, was thereby superseded as effectually as if the right were derived from an attachment or an execution. No inquiry was had as to the existence of any of the other grounds alleged, and the proceedings and judgment of which he took judicial notice contained no evidence in support of any of the allegations.

The proceedings and judgment established (until the supersedeas bond was given) that the defendant had violated the anti-trust laws during the period mentioned by the judge. But it was the *supposed intention* of the defendant to continue those violations that was the ground of his decision to appoint a receiver.

In deciding that this intention existed, the judge proceeded without any trial or evidence, stating that his information regarding the existence of the intention had been derived from newspaper accounts of a supposed interview. This statement was made only in the announcement of his decision. There was no inquiry whether in fact any such interview had taken place and there was no opportunity to contradict the newspapers. Even the newspapers containing the information were not produced in court. The judge satisfied himself as to the existence of the intention before he came into court.

It is submitted that these proceedings were not conducted according to the regular course of procedure, or in accordance with the declared law of the state, or with full opportunity for the defendant to be heard. There was no opportunity to be heard on the question of the existence of the intention, or on that of its materiality. There was no evidence whatever of its existence.

If there had been a hearing, the defendant might have shown, not only that such an intention had never been

expressed, but that it was an impossible one in view of the existing laws. For by two statutes passed in April and May 1907 it was in substance made a felony for any person to act as an agent or employee of any corporation carrying on business in violation of the anti-trust laws, and this was punishable by imprisonment in the penitentiary for not less than *two years* nor more than *ten years* (General Laws 1907, p. 322, 456). These statutes were made the ground of a subsequent application by the state attorney-general to the Supreme Court of the state to put the receiver in possession, after his appointment had been superseded (*Rec.* No. 360, p. 64–66). They would have made it impossible for the defendant to procure employees for the purpose of carrying on its business, while it was uncertain whether the judgment would be reversed or affirmed.

This was pointed out by Bryant J. in a judgment printed in the record in *Palmer* v. *Texas*, No. 535 Oct. Term 1907 of this Court, at p. 209, and in a foot-note to the same case in 158 Fed. R. p. 719–720.

The object of appointing the receiver was to deprive the defendant of its property, viz., "to take charge of *its property and business* and *deprive it of the instrumentalities* by which it had so violated the law and would continue to violate the law" (*Rec.* p. 341).

This was depriving the defendant of its property without due process of law.

In the motion of the State to dismiss the writ of error in No. 360, it is asserted (at p. 11) that this was not *taking property* or *depriving anyone of property*, but *preserving it* to await the future action of the proper tribunals.

But it appears from the bill of exceptions (*Rec.* p. 341–342) that the receiver was not appointed for the purpose of *preserving* the property pending litigation in regard to it, but for the avowed purpose of *depriving* the defendant

of it and so preventing the defendant from carrying on its business, as the judge assumed that it was going to do.

An order appointing a receiver to preserve the property pending the litigation would have been an interlocutory order, which the Supreme Court of the state has decided that this was not. In the opinion already referred to that court says (*Rec.* No. 360, p. 75),

> "The order clearly comes within the definition of a final decree or order, for so far as the defendant was concerned, it finally disposed of the matter then before the court, which was the appointment of a receiver to take the property into his custody as a consequence of the complete determination of the controversy."

There is in the order no limitation of the time during which the receiver is to remain in possession, and none can be implied from the purposes for which he was appointed. In the motion to dismiss (p. 13) it is asserted that the defendant would not be entitled to a return of its property, even if it paid off the judgment. It is evident that the State does not mean that the property shall ever go back to the defendant if it can be once got into the hands of the receiver.

Even if the deprivation of property can be considered as in some way limited in point of time, still it would be a deprivation of property without due process of law. The provision of the Constitution does not allow a state to deprive a person either of his liberty or of his property, even for a limited time, without due process of law.

The extraordinary character of the judge's action is emphasised by the order he made for suspending the proceedings in regard to the receiver. The order was (*Rec.* p. 329) that, upon the defendant's giving a sufficient bond in the sum of $100,000 with the condition to be mentioned, further proceedings should be suspended pending appeal from the order appointing a receiver. This order is re-

ferred to by the Supreme Court (*Rec.* No. 360, p. 78) as operating independently of the statutory provisions for superseding proceedings upon the order. The condition of the bond (*Rec.* p. 349, 351) was only that the defendant, in case the judgment on appeal should be against it, should perform the judgment and pay all damages awarded and pay the value of the rent or hire of the property. There was no provision against a continuation of any violations of law.

But on the 15th June 1907, when this order for suspending the proceedings as to the receiver was made, the defendant had already on the same day given a bond in the sum of $3,275,000 to supersede the original judgment (*Rec.* p. 320–322). The security for payment of that judgment was already much more than sufficient, and was not really increased by the additional bond for $100,000 with the same sureties. There was however no security against the defendant's continuing its business, which was the alleged purpose of appointing the receiver.

These circumstances should be considered in connection with the question whether the original appointment of the receiver was made according to due process of law.

*Disposition of the principal Case No.* 359.

It is submitted that judgment should be entered in this case, reversing the judgment of the Court of Civil Appeals, and remitting the cause to that court with directions to reverse the original judgment of the District Court and the orders of that court relating to the receiver with costs.

*Disposition of the other Case No.* 360.

If the motion of the defendant to consolidate this case with the principal case is granted, the judgment will naturally follow the disposition already suggested as regards the principal case, viz., that the judgment of the Court of Civil Appeals be reversed and the cause remitted to that Court with directions to reverse the orders of the District Court relating to the receiver with costs.

If however the motion to consolidate should not be granted, still it is submitted that the same disposition should be made of the case.

The grounds upon which the judge appointed the receiver are set out in the bill of exceptions, which is part of the record in that case (*Rec.* No. 360, p. 19–20). The only purpose for which the judge took judicial notice of the proceedings and judgment in the principal case was to ascertain that the violations of the anti-trust laws by the defendant had been thereby established. That is the plain

meaning of the bill of exceptions. The newspapers furnished the ground of his belief that the defendant intended to continue the violations of law. It is also set out in the bill of exceptions that the defendant appealed from the original judgment on the 7th June 1907 (*Rec.* No. 360, p. 17) and that its supersedeas bond was approved (p. 24) on the 15th June 1907 (p. 26), and that the receiver's bond was afterwards received and approved on the 19th June 1907, the defendant objecting and excepting thereto (p. 27).

It thus appears in that record that the appointment of the receiver was completed after the original judgment had been superseded, which is the objection above considered under **13** (*ante* p. 200).

All the circumstances referred to under **14** (*ante* p. 203), as showing that the judge acted arbitrarily and without due process of law in appointing the receiver, appear in the same bill of exceptions.

The other ground for reversing the orders relating to the receiver, considered under **12** (*ante* p. 188), is that the order appointing the receiver should fall with the original judgment, if that is reversed. That is something that cannot appear in the record until it is done. But the judge in appointing the receiver took judicial notice of the original judgment, and, if he could take judicial notice of that fact by looking into the record of his own court, it is submitted that this Court can look into its own record for the purpose of ascertaining that the judgment is reversed, and can then reverse the order appointing the receiver on the ground that the judgment upon which it is dependent no longer exists.

In *Farmers & Merchants Bank* v. *Waco Electric Co.*, 89 Tex. 331, where there had been two appeals by different parties and separate transcripts filed in the Court of Civil Appeals, it was held by the Supreme Court that there was only one case in the appeal court, notwithstanding there

were two records, and that it should be dealt with accordingly. The court said (p. 332),

> "Two appeals in the same case do not make two cases. Here there was but one case in the appellate court, as there was in the trial court; and it should be so treated by the former court, whenever their attention is called to the fact."

It is submitted that it should be treated in the same way in this Court although the Court of Civil Appeals disregarded the rule so laid down and saw fit to advance the appeal regarding the receiver (*Rec.* No. 360, p. 55) and to decide it upon the ground that the *part of the record* then before the court did not contain all the matters upon which the judge had proceeded (p. 57), and afterwards to make this decision an excuse for not considering the question when the *whole record* came before it with both appeals (*Rec.* No. 359, p. 1152).

MOORFIELD STOREY.
J. L. THORNDIKE.

# APPENDIX

## TEXAS "ANTI-TRUST LAWS"

ACT of 1899, c. 146, approved 25th May 1899 (Gen. Laws 1899, p. 246), entitled,

An Act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suits therefor.

Be it enacted by the Legislature of the State of Texas:

Section 1. Any *corporation* organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this state, or any partnership, or individual, or other association of persons whatsoever, *who shall* create, *enter into*, *become* a member of or *a party to* any pool, trust, *agreement*, combination, confederation or *understanding* with any other corporation, partnership, individual or any other person or association of persons, *to regulate or fix the price* of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, *or to maintain* said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation *to fix or limit the amount* or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a *conspiracy to defraud*, and to *be subject to the penalties* as provided by this act.

Sec. 2. A "*monopoly*" is any *union or combination* or consolidation or affiliation of *capital*, credit, property, assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between *persons, firms or corporations*, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or *sought to be* accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are *reasonably calculated to be* produced; and a "monopoly," as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade, or other valuable thing or possession, whether *effected* by the *ordinary methods of partnership* or by actual union under the legal form of a *corporation* or an incorporated body resulting from the union of one or more distinct firms or corporations, or *by the* purchase, *acquisition* or control of *shares or certificates of stock or bonds*, or other corporate property or franchises, and *all corporations or partnerships* that *have been* or *may be* created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the meaning of this act, *if so created or entered* into for any one or more of *the purposes named* in this act; and a "monopoly," as defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons *engaged therein* shall be deemed and adjudged guilty of a *conspiracy to defraud*, and shall *be subject to the penalties* prescribed in this act.

Sec. 3. If any person, persons, company, partnership, association or corporation engaged in the manufacture of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction shall be subject to the penalties of this act.

Sec. 4. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this State or elsewhere, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State, their products for the purpose of driving out competition or financially injuring competitors engaged in similar business, said person, persons, company, partnership, association, corporation or agent resorting to this method of securing a monopoly within this State in such business, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subject to the penalties of this act.

Sec. 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than *two hundred dollars* nor more than *five thousand dollars* for every such offence, and *each day* such person, corporation, partnership or association shall continue to do so shall be a separate offence, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney-General or the district or county attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.

Sec. 6. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

Sec. 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the

preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other State or country, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, to the Commissioner of Insurance, Statistics and History of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

Sec. 8. It shall be the duty of the Secretary of State, on or about the first day of July of each year, and at such other times as he shall deem necessary, to address to the president, secretary or treasurer of each incorporated company doing business in this State a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer under oath of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry, as follows:

Affidavit.

STATE OF TEXAS,

County of .....

I,.....do solemnly swear that I am the.....(president, secretary, treasurer or director) of the corporation known and styled....., duly incorporated under the laws of....., on the..... day of....., 19...., and now transacting or conducting business in the State of Texas, and that I am duly authorized to represent said corporation in making this affidavit, and I do further solemnly swear that the said....., known and styled as aforesaid, has not since the.....day of

.....(naming the day upon which this act takes effect), created, entered into or become a member of or a party to, and was not, on the.....day of.....; nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation or understanding, with any other corporation, partnership, individual, or any other person, or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation, to fix or limit the amount of supply or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid, and that it has not issued, and does not own any trust certificates for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholders, or directors thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article; that it has not entered into any conspiracy, defined in the preceding sections of this act, to form or secure a trust or monopoly in restraint of trade; that it has not been since January 31, A.D. 1900, and is not now a monopoly by reason of any conduct on its part which would constitute it a monopoly under the provisions of Sections 2, 3, 4, 5, 6, 10 and 11, of this act, and is not the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw material or preparing the same for market by any wrapping, baling or other process, and while leasing, renting or operating the same refuses or fails to put the same on the market for sale; that it has not issued, and does not own any trust certificates, and has not, for any corporation or any agent, officer or employe thereof, or for the directors or stockholders thereof, entered into, and is not now in any combination, contract or agreement with any person or persons, corporation

or corporations, or with the stockholders, directors or any officer, agent or employe of any corporation or corporations, the purpose and effect of which combination, contract or agreement would be a conspiracy to defraud, as defined in Section 1 of this act, or to create a monopoly, as defined in Sections 2, 3, 4, 5, 6, 10 and 11 of this act.

.....

(President, Secretary, Treasurer or Director.)

Subscribed and sworn to before me, a.....within and for the county of....., this .....day of ....., 19.....

(Seal) .....

And on refusal to make oath, in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, such failure shall be prima facie proof that such incorporated company is transacting business in the State of Texas, and has violated the provisions of this act, every day after the expiration of thirty days from the mailing of said letter of inquiry, the Secretary of State shall certify to the prosecuting attorney of the district or county wherein said corporation is located, and it shall be the duty of such prosecuting attorney, at his earliest practicable moment, in the name of the State, and at the relation of said prosecuting attorney, to proceed against such corporation, if a domestic corporation for the recovery of the money forfeit provided for in this act, and also for the forefeiture of its charter or certificate of incorporation. If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and to forfeit its right to do business in this State; and provided, that whatever money, bonds, or other securities may be on deposit in this State shall remain subject to the decision of said court to secure whatever penalties or costs may be adjudged against said corporation or individual. It is provided, however, that all parties making the affidavit provided for in this section shall be exempt from criminal prosecution for any violation of law that may be disclosed by such affidavit. It is further provided, that the Secretary of State shall, from time to time, when he may have reason to believe that individuals or partnerships are doing business in this State in violation of this act, address the letter of inquiry herein provided for to such individuals or partnerships and require of them the same answers under oath prescribed in this section for the officers of corporations, the affidavit to which must be made by the individual addressed, or some member of the partnership addressed; the form of affidavit herein prescribed, with such changes as may be necessary to make it

applicable to individuals and partnerships shall be inclosed in said letter of inquiry.

Sec. 9. It shall be the duty of the Attorney-General and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The Attorney-General and the prosecuting attorney shall institute and conduct all suits begun in the district courts, and upon appeal the Attorney-General shall prosecute said suits in the courts of Civil Appeals and Supreme Court. The prosecuting attorney shall receive for his compensation one-fourth of the penalty collected; provided, the fees allowed the prosecuting attorney representing the State, provided for in the section, shall be over and above the fees allowed him by the general fee bill now in force.

Sec. 10. All actions authorized and brought under this act shall have precedence on motion of the prosecuting attorney or Attorney-General of all other business, civil and criminal, except criminal cases where the defendants are in jail.

Sec. 11. Each corporation, co-partnership, firm or individual who may be the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw materials or preparing the same for market by any wrapping, baling or other process, who shall lease, rent or operate the same in their own name and refuse or fail to put the same on the market for sale, shall be adjudged a monopoly, and be subject to all the pains and penalties provided in this act.

Sec. 12. The sale, delivery or disposition of any of the articles, commodities or things hereinbefore mentioned by any individual, company or corporation transacting business contrary to the provisions of this act, within this State or elsewhere, is hereby declared to be unlawful and contrary to public policy, and the purchaser of any article or commodity from any such offending individual, company or corporation shall not be liable for the price or payment thereof, and may plead this act as a defence to any suit for the price or payment, whether the purchase was made directly from the individual, company or corporation so unlawfully transacting business, or indirectly from one who acted for such individual, company or corporation as agent, representative, solicitor or canvasser; and provided further, that where any money or other thing of value is paid to such individual, company or corporation so unlawfully transacting business, its agent, representative, solicitor or canvasser, the person so paying the same may recover back the amount of the money or the value of the thing so paid.

Sec. 13. The following corporations, co-partnerships, firms or individuals are also adjudged a monopoly, and subject to all the pains and penalties provided in this act:

Every corporation, co-partnership, firm or individual which may

gather items of news or press dispatches for sale to newspapers and which shall refuse to sell said items of news or press dispatches to more than one newspaper to a stated number of inhabitants in any city, town or subdivision of the State of Texas, or within a certain radius of territory. Every association of newspapers formed for the purpose of exchanging items of news and press dispatches which may require of its members under pain of forfeiting their membership, that they do not sell to or exchange with newspapers not members of said association any items of news or press dispatches.

Sec. 14. The provisions of the foregoing sections, and the pains and penalties provided for for violations of this act shall be held and construed to be cumulative to all laws now in force in this State. And provided that the provisions of this act shall not exempt from punishment or forfeiture any person, firm, association of persons or corporation, who may have violated or offended against any law now in existence that may be or may be construed to be repealed by this act or in conflict herewith. And provided further, that nothing in this act shall be deemed or construed to affect any suits or prosecutions now pending or hereafter to be instituted upon any cause of action, forfeiture or penalty accruing or to accrue prior to the date of the taking effect of this act, but all such rights to maintain, institute or prosecute all such causes of action are hereby reserved to the State, in the same manner and with the same effect as if this law had not been passed; provided further, that this act shall take effect from and after January 31, A.D. 1900.

Sec. 15. The near approach of the end of the session, and the fact that we now have no adequate anti-trust law upon the statutes, and the importance of such legislation, create an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

ACT of 1903, c. 94, approved 31st March 1903 (Gen. Laws 1903, p. 119) entitled,

An Act to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies, and to provide for the suppression of the same and to promote free competition in the State of Texas, and to repeal all laws in conflict therewith.

Section 1. Be it enacted by the Legislature of the State of Texas: That *a trust* is a *combination of capital*, skill or acts by *two or more*

persons, firms, corporations or associations of persons, or either two or more of them for either, any, or all of the *following purposes:*

1. To create or *which may tend* to create or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof.

Sec. 2. That *a monopoly* is a *combination* or consolidation *of two or more corporations* when effected in either of the following methods:

1. When the *direction of the affairs* of two or more corporations is in any manner *brought under the same management or control* for the purpose of producing, or *where* such common management or control *tends* to create a trust as defined in the first section of this Act.

2. Where *any corporation acquires* the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition *tends* to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

Sec. 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations, or associations of persons who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation, or association of persons any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

Sec. 4. Any and all trusts, monopolies and conspiracies in restraint of trade as herein defined, are hereby prohibited and declared to be illegal.

Sec. 5. Any corporation holding a charter under the laws of the State of Texas, which shall violate any of the provisions of this Act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

Sec. 6. For a violation of any of the provisions of this Act by any corporation mentioned herein, it shall be the duty of the Attorney-General, upon his own motion, and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis County, at Austin, or at the country seat of any county in the State, where such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

Sec. 7. When a corporation organized under the laws of this State shall have been convicted of a violation of any of the provisions

of this Act, and its charter and franchise has been forfeited, as provided in section 5, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

Sec. 8. Every foreign corporation violating any of the provisions of this Act is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision by injunction or other proceedings in the district court of Travis County, in the name of the State of Texas.

Sec. 9. The provisions of Chapter 92 of the Revised Statutes of this State of 1895, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this Act.

Sec. 10. When any foreign corporation has been convicted of a violation of any of the provisions of this Act, and its right to do business in this State has been forfeited, as provided in Section 8 of this Act, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

Sec. 11. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this Act shall for *each and every day* that such violation shall be committed or continued, *forfeit and pay* the sum of *fifty dollars*, which may be recovered in the name of the State of Texas in any county where the offence is committed or where either of the offenders reside, or in Travis County, and it shall be the duty of the Attorney-General, or the district or county attorney under the direction of the Attorney General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this Act shall be over and above the fees allowed him under the general fee bill.

Sec. 12. Any contract or agreement in violation of the provisions of this Act shall be absolutely void and not enforceable either in law or equity.

Sec. 13. And in addition to the penalties and forfeitures herein provided for, every person violating this Act may further be punished by *imprisonment in the penitentiary* not less than one nor more than ten years.

Sec. 14. In prosecutions for the violation of any of the provisions of this Act, evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or

interest of the corporation of which he was acting as the agent, was the act of the corporation.

Sec. 15. Upon the application of the Attorney General, or of any district or county attorney, made to any justice of the peace in this State, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice of the peace is an officer, knows of a violation of any of the provisions of this Act, it shall be the duty of the justice of the peace to whom such application is made, to have summoned and to have examined, such witness in relation to violations of any of the provisions of this Act, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn and the justice of the peace shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such sworn statement shall be delivered to the Attorney General, district or county attorney upon whose application the witness was summoned. Should the witness summoned, as aforesaid, fail to appear, or to make statement of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person so summoned and examined shall not be liable to prosecution for any violation of the provisions of this Act about which he may testify fully and without reserve.

Sec. 16. All actions authorized and brought under this Act shall have precedence, on motion of the prosecuting attorney or the Attorney General, of all other business, civil and criminal, except criminal cases where the defendants are in jail.

Sec. 17. That all laws and parts of laws in conflict with this Act be and the same are hereby repealed, and that Title CVIII of the Revised Civil Statutes of the State of Texas of 1895, and articles 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321, and 5321a, thereof, be and the same are hereby expressly repealed; and that articles 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 988a, 988b, 988c, 988d, of Chapter 7, in Title XVIII, of the Penal Code of the State of Texas of 1895, be and the same are hereby expressly repealed; and that an Act entitled "An Act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this Act," approved April 30, 1895, and known and published as Chapter 83 of the General Laws of the Twenty-fourth Legislature, be and the same is hereby expressly repealed; and that An Act entitled "An Act to prohibit pools, trusts,

monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violate the terms of this Act, and to authorize the institution and prosecution of suits therefor," approved May the 25th, 1899, and published and known as Chapter CXLVI of the General Laws of the Twenty-sixth Legislature, be and the same are hereby expressly repealed; and that An Act entitled "An Act to amend Article 5318, Title 108, of the Revised Civil Statutes of the State of Texas, prescribing penalties against trusts and conspiracies against trade," approved June 5th, 1899, and known as Chapter CLXXII of the General Laws of the Twenty-sixth Legislature, be and the same is hereby expressly repealed; provided nothing in this Act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this Act takes effect.

Sec. 18. The fact that the anti-trust laws enacted by the Legislature of the State of Texas in 1895 have been held to be unconstitutional, creates an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended and that this Act take effect and be in force from and after its passage, and it is so enacted.

ACT of 1907, c. 87, approved 11th April 1907 (Gen. Laws 1907, p. 175), entitled,

An Act relating to fines, penalties and forfeitures due or to become due to the State of Texas by foreign or domestic corporations; to provide for the securing and enforcement of payment thereof; *to fix liens* upon the property of such corporation to secure payment thereof; to provide for the survival of actions and causes of action in case of the dissolution or forfeiture of charter or cancellation of permits of such corporation; to provide for the *appointment of receivers;* fixing venue; providing that this act shall be cumulative of all other laws in force in this State, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Whenever any corporation created under the laws of this State, or any foreign corporation authorized to do business in this State, shall violate any law of this State, including any law against trusts, monopolies and conspiracies, or combinations or

contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time of such violation, or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for all costs of suit and of collection, and the State of Texas shall have *a lien* on all such property from the date that suit shall be instituted by the Attorney General or District or County Attorney acting under his direction in any court of competent jurisdiction within this State for the purpose of forfeiting the charter or cancelling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture shall constitute notice of such lien. Where any such law has heretofore been violated, or shall be violated before the taking effect of this act, and a cause of action exists for such fine, penalties or forfeiture, or shall come into existence before the taking effect of this act, and suit shall be filed in such case, the State shall have *a lien* to secure the payment of such fine, penalties and costs from the time this act shall take effect on all property of such corporation within this State or which shall thereafter become or be brought within the State.

Sec. 2. Any action or cause of action for any fine, forfeiture or penalty that the State of Texas has or may have against any corporation chartered under the laws of this or any other State, Territory or Nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter. *Whenever a corporation* against which the State has heretofore instituted suit, or shall hereafter institute suit, for forfeiture of its charter, or cancellation of its permit, or for fines or penalties under any law of this State, *shall dissolve* in this or any other State, or shall have a judgment rendered against it in this or any other State, for the *forfeiture of its charter*, the court in this State in which such suit is pending *shall appoint a receiver* for the property and business of such corporation within this State or that may come or be brought within this State during such receivership, *or the court may*, in any case wherein the State is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation, *whenever the interest of the State* may seem to require such action. If such dissolution shall take place or judgment of forfeiture be rendered against such corporation before this act takes effect, the court shall, upon the taking effect of this act, appoint a receiver for the property and business of such corporation in this State; and the State shall have the right to the writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this act; and all property that may come into the possession of any receiver appointed under the provisions

of this act, not otherwise exempt by law, shall be subject to the lien herein created, and for the payment of any such fine or penalty.

Sec. 3. The Attorney General, or any District or County Attorney acting under his direction, may bring suit in the name of the State of Texas for the foreclosure of such lien in the District Court of any County in the State of Texas, and in case the suit for foreclosure should be brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent of any such corporation in this State at the time of such dissolution or forfeiture of charter or cancellation of permit.

Sec. 4. The rights and remedies given by this act shall be construed as cumulative of all other laws in force in this State, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, penalties and forfeitures.

Sec. 5. In case any suit should heretofore be brought in any of the courts of this State for the recovery of penalties mentioned in this act, the same shall not be settled or compromised without trial upon the merits thereof without the consent and approval of the Attorney General of the State.

Sec. 6. The fact that there is no law that prevents the abatement of actions or causes of action for fines and penalties when corporations becoming liable for same shall dissolve or be dissolved by the forfeiture of their charters, or cancellation of their permits, and the fact that there is no adequate remedy for the collection and enforcement of such fines and penalties, creates an emergency and an imperative public necessity demanding that the Constitutional rule requiring bills to be read on three several days in each house be suspended, and it is so suspended, and that this act shall take effect and be in force from and after its passage, and it is so enacted.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1908.

WATERS-PIERCE OIL COMPANY,
*Plaintiff in Error,*
*vs.*
THE STATE OF TEXAS,
*Defendant in Error.*
} No. 360.

## BRIEF FOR DEFENDANT IN ERROR.

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# Supreme Court of the United States

OCTOBER TERM, 1908.

WATERS-PIERCE OIL COMPANY,
*Plaintiff in Error,*
*vs.*
THE STATE OF TEXAS,
*Defendant in Error.*
No. 360.

## BRIEF FOR THE STATE OF TEXAS, DEFENDANT IN ERROR.

### STATEMENT OF THE CASE.

On September 22, 1906, the State of Texas brought a suit against the Waters-Pierce Oil Company, a corporation created under the laws of the State of Missouri, having the privilege of doing business in the State of Texas for ten years, from the 31st day of May, 1900, by virtue of a permit issued by the State of Texas on the last mentioned date.

The purposes of the suit were to recover penalties from and cancel the permit of the Waters-Pierce Oil Company for alleged violations of the laws of the State of Texas against conspiracies, combinations and agreements in re-

straint of trade, commonly known as the "anti-trust" laws of the State, it being alleged that the Waters-Pierce Oil Company had violated two statutes of the State, one of which was in force at the date of the granting of the above-mentioned permit (known as the act of 1899), and the other of which took effect on March 3, 1903 (known as the act of 1903).

The suit was tried resulting in a verdict and judgment on the 1st day of June, 1907, which verdict and judgment found and adjudged the Waters-Pierce Oil Company guilty of violating each and both of said statutes, such violations being from the date of the granting of its permit to the date of the filing of the amended petition in the case upon which the parties went to trial. Said verdict and judgment assessed penalties aggregating One million, six hundred and twenty-three thousand, nine hundred dollars ($1,623,900), and cancelled the permit of the Waters-Pierce Oil Company to do business in the State, and the said judgment prohibited the Waters-Pierce Oil Company from thereafter doing any business in the State, except an interstate business.

On the same day that the judgment was entered in said cause, the State of Texas, by its attorneys, filed in said cause an application for the appointment of a receiver for all of the property of the Waters-Pierce Oil Company situated in the State of Texas, which application was set down for hearing, and after notice thereof, duly issued and served, and after an answer had been filed thereto by the Waters-Pierce Oil Company the court, after hearing and considering the said application, granted the same, and appointed a receiver for all the property and assets of the said Waters-Pierce Oil Company, situated within the State, pending the final disposition of the main cause. From the judgment of the court appointing such receiver, the said Waters-Pierce Oil Company perfected an appeal to the Court of Civil Appeals of the State of Texas, that being the proper court

under the procedure and practice to which to appeal such cases. This appeal was a distinct and separate appeal from that perfected in the main case, and the proceedings had in relation to the appointment of a receiver were alone sought to be reviewed on this appeal. Under the statutes of Texas, and the decisions of the Texas courts in this case, the Waters-Pierce Oil Company had a right to perfect a separate appeal in the receivership matter.

When the case reached the Court of Civil Appeals a motion was made to consolidate the same with the main case, which had also been appealed in the regular way, but the Court of Civil Appeals refused the motion.

Upon a consideration of the case, the Court of Civil Appeals affirmed the judgment of the trial court in appointing a receiver, and after a motion for rehearing had been overruled, the Waters-Pierce Oil Company applied to the Supreme Court of Texas for a writ of error to review and revise the decision of the Court of Civil Appeals. This was denied by the Supreme Court, and thereupon the said Waters-Pierce Oil Company sued out a writ of error from this court to the said Court of Civil Appeals of Texas, and the case is before this court for determination.

The questions for determination by this court are:

1. Is there a substantial Federal question raised in the case?

2. Was such Federal question, if any, properly presented to the State court, if presented at all?

3. If the alleged Federal questions were properly raised in the State court and in this court, do the proceedings complained of constitute due process of law?

4. Has a substantial Federal question been raised in the case whereby this court has acquired jurisdiction?

5. If the case involves a Federal question has it been so presented in the State court as to require a decision by that court and authorize a revision by this court?

6. If a Federal question was properly present in the State court was it properly decided by that court?

## BRIEF AND ARGUMENT.

### First Proposition.

*There being no substantial Federal question involved in this suit, this court is without jurisdiction to pass upon the merits of the controversy.*

## STATEMENT.

Sub-division 3 of Article 1465 of the Revised Civil Statutes of Texas, passed in 1887, provides, among other things, as follows:

> "Receivers may be appointed by any judge of a court of competent jurisdiction in the state in the following cases: * * * 3. In cases where a corporation has been dissolved or is insolvent, or in imminent danger of insolvency, or has forfeited its charter rights."

The permit of the Waters-Pierce Oil Company, which was ordered cancelled by the judgment in the original suit, was granted on May 31, 1900. Sections 1, 2 and 3 of the Acts of the Legislature of April 11, 1907, authorizing the appointment of a receiver in this kind of a case, were as follows:

> "Section 1. Whenever any corporation created under the laws of this State, or any foreign corporation authorized to do business in this State, shall violate any law of this State, including any law against trusts, monopolies and conspiracies or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time

of such violation or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for all costs of suit and of collection, and the State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney-General or district or county attorney acting under his direction in any court of competent jurisdiction within this State for the purpose of forfeiting the charter or cancelling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties and forfeiture shall constitute notice of such lien. Where any such law has heretofore been violated, or shall be violated before the taking effect of this act, and a cause of action exists for such fine, penalties or forfeiture, or shall come into existence before the taking effect of this act, and suit shall be filed in such case, the State shall have a lien to secure the payment of such fine, penalties and costs from the time this act shall take effect on all property of such corporation within this State, or which shall thereafter come or be brought within the State.

"Section 2. Any action or cause of action for any fine, forfeiture, or penalty that the State of Texas has or may have against any corporation chartered under the laws of this or any other State, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter. Whenever a corporation against which the State has heretofore instituted suit or shall hereafter institute suit, for forfeiture of its charter, or cancellation of its permit, or for fines or penalties under any law of this State, shall dissolve in this or any other State, or shall have a judgment rendered against it in this or any other State for the forfeiture of its charter, the court in this State in which the suit is pending shall appoint a receiver for the property and business of such corporation within this State or that may come or be brought within this State during such receivership, or the court may, in any case wherein the State is suing for such

corporation for the forfeiture of its charter or for its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation, whenever the interests of the State may seem to require such action. If such dissolution shall take place or judgment or forfeiture be rendered against such corporation before this act takes effect, the court shall, upon the taking effect of this act, appoint a receiver for the property and business of such corporation in this State; and the State shall have the right to the writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this act; and all property that may come into the possession of any receiver appointed under the provisions of this act, not otherwise exempt by law, shall be subject to the lien herein created, and for the payment of such fine or penalty.

"Section 3. That Attorney-General, or any district or county attorney acting under his direction, may bring suit in the name of the State of Texas for the foreclosure of such lien in the district court of any county in the State of Texas, and in case the suit for foreclosure should be brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent for any such corporation in this State at the time of such dissolution or forfeiture of charter or cancellation of its permit."

The original application for a receiver, filed in the District Court of Travis County, Texas, in cause No. 24,551, The State of Texas vs. The Waters-Pierce Oil Company, was as follows:

"And now comes the State of Texas, acting by and

through her Attorney-General, and the county attorney of Travis County, Texas, acting under the direction and supervision of said Attorney-General, and shows to the court:

"First. That on the first day of June, 1907, in this court, in the above entitled and numbered cause, a judgment was rendered in favor of the State of Texas against the defendant, the Waters-Pierce Oil Company, for the sum of one million six hundred and twenty-three thousand nine hundred dollars ($1,623,900), and said judgment further providing for the cancellation of the permit of the said defendant to do business in the State of Texas; that said cause of action and said judgment was based upon alleged violation of the anti-trust law of the State of Texas.

"Second. That in a certain suit pending in the State of Missouri wherein the State of Missouri is plaintiff and the said above named defendant, the Waters-Pierce Oil Company, among others, is defendant, a suit was instituted for the forfeiture of the charter of said defendant, Waters-Pierce Oil Company, for prohibiting it doing business in said State, said suit being instituted in the Supreme Court of the State of Missouri; that in pursuance to law the said Supreme Court of the State of Missouri appointed a commissioner to hear the testimony and make his report and findings of fact, and recommendation of law thereon; that, after hearing the testimony, the said commissioner found in favor of the State of Missouri on all issues in said cause, and recommended to the said Supreme Court of Missouri that the charter of the said Waters-Pierce Oil Company be canceled; that plaintiff is informed and believes that said recommendations have the force and effect of a judgment forfeiting the charter of said defendant, Waters-Pierce Oil Company.

"Third. That the penalties recovered in this cause by plaintiff, the State of Texas, can not be collected outside the State of Texas, and the property of the defendant situated in the State of Texas, as the plaintiff is informed and believes, is wholly inadequate to pay

the above mentioned judgment; that the great bulk of the property within the State of Texas belonging to the defendant, subject to the payment of said judgment, consists of current accounts with merchants and dealers in the State of Texas, of tank cars, of money on hand, of oil that is easily removed, and property of that kind and character, practically the whole of it being personal, movable property, and if carried beyond the limits of this State can not be pursued by the State of Texas, and the State would have no way of collecting the above mentioned judgment; that under and by virtue of an act of the Legislature of the State of Texas, approved April 11, 1907, the State has a lien upon all of said property to secure the payment of the above mentioned judgment.

"Fourth. That under the judgment of ouster rendered in this case the defendant has no right to do business in this State, and has been convicted of doing business in this State in violation of the law for each and every day since the issuance of its permit seven years ago; that it is necessary to preserve and protect the rights of the State that said business of said defendant should be conducted and carried on, at least temporarily, and be kept a going concern in this State.

"Wherefore plaintiff requests the court to appoint a receiver to take charge of all the property and assets of every kind, character and description of the defendant situated within the State of Texas, pending the hearing of this application, that this court grant its most gracious writ of injunction, restraining and prohibiting the defendant, its officers, agents, attorneys and employes, or any of them, from removing from the State of Texas any part of the property or assets of said defendant situated within the State of Texas." (Rec., pp. 1-3.)

Upon presentation of this application to the judge of the court in which this suit was pending, the court endorsed thereon the following order:

"Austin, Texas, June 1, 1908. In Chambers. The above application for the appointment of a receiver of the property and assets of the Waters-Pierce Oil Company being presented to me, it is hereby set down for hearing on the 8th day of June, 1907, at ten o'clock A. M., at the Court House in Travis County, Texas, and the clerk will issue a notice to the defendant accordingly. Upon consideration, the application for a temporary injunction pending the hearing of said application is hereby granted, and the clerk of this court is instructed to issue such temporary injunction under his hand and the seal of court, restraining and prohibiting the defendant, its officers, agents, attorneys and employees, or any of them, from removing beyond the State of Texas, any of the property or assets of defendant until the further orders of this court.

"(Signed) V. L. BROOKS,
*"Judge 26th Judicial District of Texas."*
(Rec. p. 3.)

Notice of this application was duly issued and served on the Waters-Pierce Oil Company, and thereafter it duly filed in the cause an answer to the application for receiver, which was as follows:

"Filed June 10, 1907.
"In District Court of Travis Co., Texas, 26th Judicial District.
"No. 24,551.
"The State of Texas
vs.
"Waters-Pierce Oil Company.

"Now comes the defendant in the above entitled and numbered cause, by its attorneys, and excepts to the application filed by the plaintiff herein on June 1, 1907, for the appointment of a receiver of the property and assets of this defendant, and says that said application is insufficient in law, and shows no sufficient cause for

the appointment of such receiver, and of this defendant prays judgment of the court.

"CLARK & BOLINGER,
"COCHRAN & PENN,
"D. W. ODELL,
"N. A. STEDMAN,
*"Attorneys for Defendant."*

"And for answer to said application defendant denies all and singular the allegations therein contained.

"CLARK & BOLINGER,
"COCHRAN & PENN,
"D. W. ODELL,
"N. A. STEDMAN,
*"Attorneys for Defendant."*

"And for further answer to said application, and for the purpose of replying to the portion thereof relating to the said suit pending in the State of Missouri, defendant says that it is not true, as stated in said application that the recommendation of said commissioner have the force and effect of a judgment forfeiting the charter of this defendant, but, on the contrary, no judgment has been rendered in said cause in said Supreme Court of Missouri, and said report of said commissioner does not have the effect of a judgment, but that said report and recommendations of said commissioner may be either approved and rejected by said Supreme Court of Missouri, and will have no force and effect unless confirmed and approved by said Supreme Court of Missouri.

"CLARK & BOLINGER,
"COCHRAN & PENN,
"D. W. ODELL,
"N. A. STEDMAN,
*"Attorneys for Defendant."*

"Before me, the undersigned officer, on this day personally appeared D. W. Odell and R. L. Penn, who each being by me first duly sworn on oath deposes and

says that he is one of the attorneys for defendant in the above numbered and entitled cause and that the facts stated in the foregoing special plea are true as he is informed and verily believes.

"D. W. ODELL.
"R. L. PENN.

"Subscribed and sworn to before me by D. W. Odell and R. L. Penn, this 10th day of June, A. D. 1907.

"D. J. PICKLE,
*"Clerk District Court, Travis Co., Texas.*
"By E. Huppertz, *Deputy.*"

(Rec., pp. 4-5.)

After a hearing, certain orders were made by the court, which were amended by an order entered on June 15, 1907, which amended order is as follows:

"And now, on this 15th day of June, A. D., 1907, at a regular term of this court, it is considered, ordered, adjudged and decreed by the court that the orders of this court made and entered in said cause on the 10th day of June, A. D. 1907, and on the 13th day of June, A. D. 1907, be so amended as to hereafter read as follows:

"And now, on this 10th day of June, 1907, at a regular term of this court, there came on to be heard the application of the State of Texas for the appointment of a receiver of the property and assets of the Waters-Pierce Oil Company, a corporation, pending the further disposition of this cause, and the court, after duly considering said application, is of the opinion that the prayer should be granted and a receiver appointed to take charge of all the property and assets of the defendant, the Waters-Pierce Oil Company, situated within the State of Texas, or that may hereafter come within the State of Texas, and that such receiver shall immediately take charge of all of said property and assets, and hold the same subject to the further orders of this court, and said receiver is hereby directed and instruct-

ed to continue and carry on the business of the defendant until such future time as the court may direct, keeping and preserving the property coming into his custody and carrying on the business of marketing and supplying oil to the public in the State of Texas, with the right, power and authority to continue the various clerks, servants and agents of every class and grade now in the employ of the defendant or to discharge them and employ others at his discretion, and to require such bonds and security to himself as receiver from any of the present employees or those thereafter engaged by him as he may think expedient and proper; and to sell the present stock of oil and other products and personal property in the hands of the defendant and which may come into his hands as receiver, and to purchase and sell other oil, products and personal property in the regular course of business of the defendant to the same effect as the defendant could or might have done in the continuation of said business, so that said business may be kept up to its present condition as near as may be; and the said receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to insure the same against loss and destruction by fire or otherwise as he may deem proper, to receive rents, collect, compound for, compromise demands, employ one or more attorneys at law, make transfers and generally to do such acts respecting the property as the court may authorize, and all the expenses of said receivership, including taxes, insurance premiums, attorneys' fees, his own compensation and all expenses of said receivership to be paid as a part of the court costs of the suit. That the temporary injunction heretofore granted, prohibiting the defendant from moving any of its property and assets beyond the limits of the State of Texas, be, and the same is hereby, continued in force until the further orders of this court.

"To all of which action the defendant in open court excepts, and in open court gives notice of appeal to the

Court of Civil Appeals of the Third Supreme Judicial District of Texas.

"And on this 13th day of June, A. D. 1907, the court confirming said order, and in pursuance thereof, names and appoints as receiver herein of the property in said order described Robert J. Eckhardt, who is a resident of the county of Williamson, in the State of Texas, with the duties and powers therein named, and fixes the amount of his bond as such receiver at two hundred and fifty thousand dollars ($250,000), to be made payable to the judge of this court, and his successors in office, for the use of all parties interested in said property and this suit." (Rec., pp. 7-8.)

From this order appointing a receiver the Waters-Pierce Oil Company prosecuted an appeal to the court of civil appeals, assigning as errors committed in the trial court the following, which were all of the errors assigned:

I.

"The court erred in overruling defendant's general exception to the motion or application of the State for the appointment of a receiver.

II.

"As the judgment recovered by the State of Texas against defendant on June 1, 1907, was a personal judgment and did not attempt to foreclose the lien claimed on defendant's property in the State, the Court was without jurisdiction by motion filed in the same cause to appoint a receiver, and erred in considering the same and in appointing the said Eckhardt receiver upon said motion.

III.

"The court erred in overruling defendant's request

for a postponement of action upon the said application until defendant should have a reasonable time to file a supersedeas bond in connection with its appeal from the main judgment rendered against it on June 1, 1907.

IV.

"The Court erred in making its order granting the application of the State of Texas for the appointment of a receiver of defendant's property by its order entered on June 10, 1907.

V.

"The Court erred in making and appointing Robert J. Eckhardt to be the receiver of defendant's property by its order entered on June 13, 1907.

VI.

"The Court erred in refusing to consider and approve defendant's supersedeas bond in the sum of One Hundred Thousand Dollars ($100,000.00) tendered on June 15, 1907, and in witholding its approval thereof until after the bond of the said Robert J. Eckhardt as receiver was tendered and approved on June 19, 1907.

VII.

"When defendant's appeal bond was approved and filed on June 15, 1907, superseding the judgment recovered against it by the State of Texas on June 1, 1907, in the main cause, the appointment of said Robert J. Eckhardt as receiver, and all orders and proceedings therefore had in connection with such appointment, were thereby vacated and becomes null and void, and the said Court erred in not entering a formal order recognizing the legal effect of the said supersedeas bond and vacating said appointment and setting

aside all of its said orders, and in further considering said appointment as in force for any purpose.

VIII.

"The Act of the Legislature of the State of Texas approved April 11, 1907, under which the court acted in appointing the said receiver, is unconstitutional, null and void in so far as it attempts to create a lien upon this defendant's property for acts committed before the said act took effect, in violation of Section 16, Article 1, of the Constitution of the State of Texas.

IX.

"The Act of the Legislature of the State of Texas approved April 11, 1907, under which the court acted in appointing the said receiver, is unconstitutional, null and void in that it attempts to create a lien upon this defendant's property for acts committed before said act took effect, in violation of Section 10, of Article 1, of the Constitution of the United States, which denies to any State the right to pass an *ex post facto* law, and the court erred in considering said act as the basis of its order appointing the said receiver.

X.

"The said Act of the Legislature of the State of Texas, approved April 11, 1907, under which the court acted in appointing the said receiver, is unconstitutional, null and void in so far as it authorizes the appointment of a receiver in a suit brought to recover a personal judgment in which no lien upon defendant's property was set up and adjudicated, and the action of the court in appointing the said receiver in this cause was in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it results in depriving defendant of its property without due process of law and in denying to defendant the equal protection of the laws.

XI.

"The said Act of the Legislature of the State of Texas, approved April 11, 1907, under which the Court acted in appointing the said receiver, is unconstitutional, null and void, in so far as it authorized the appointment of a receiver in a suit brought against the defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated in the opinion of the court at the time said appointment was made, was unauthorized in law, and in violation of Section 17, of Article 1, of the Constitution of the State of Texas.

XII.

"The said Act of the Legislature of the State of Texas, approved April 11, 1907, under which the court acted in appointing the said receiver, is unconstitutional, null and void, in so far as it authorizes the appointment of a receiver in a suit brought against a defendant to recover fines and penalties for offenses committed in violation of the anti-trust laws of the State, as a means of preventing the defendant from the further or continued violation of such laws, and the action of the court in appointing a receiver for defendant's property on that ground and for that purpose, as indicated in the opinion of the court at the time said appointment was made, was unauthorized in law, and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that the result of said action was and is to deprive the defendant of its property without due process of law and to deny to defendant the equal protection of the laws.

## XIII.

"The Court erred in appointing the said receiver without any evidence being introduced before it at the time said appointment was made, to show that defendant did not intend to change its status and methods of doing business so as to conform to the laws of the State of Texas, and without evidence affirmatively showing that defendant could not make use of its property and carry on its business in accordance with law, and in holding that the court was authorized to so appoint a receiver for defendant's property in the State of Texas and deprive defendant of the instrumentalities by which it had been convicted of violating the laws of said State, based upon its past conduct and the said judgment of conviction rendered against it on June 1, 1907.

"Wherefore, defendant says that the said action of the court was unauthorized and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and has the effect of depriving defendant of its property without due process of law and in denying to it the equal protection of the laws.

## XIV.

"The Court erred in disregarding the supersedeas bond filed by the defendant in connection with its appeal from the main judgment recovered against it on June 1, 1907, and in requiring defendant to file the additional bond in the sum of One Hundred Thousand Dollars to supersede the order appointing the said receiver and to avoid having to surrender its property to said receiver by reason of said appointment, and this action on the part of the Court was without lawful warrant and in violation of section one of the Fourteenth Amendment to the Constitution of the United States, in that the effect of such action by the Court was to deprive the defendant of its property without due pro-

cess of law and to deny to it the equal protection of the law.

XV.

"The Act of the Legislature of the State of Texas, approved April 11, 1907, being Chapter 87 of the General Laws of the State of Texas, passed by the Thirtieth Legislature at its regular session, in so far as it authorizes the appointment of a receiver of appellant's property in this suit or prosecution instituted against appellant prior to the passage of said act, and for offenses alleged to have been committed prior to its passage, is unconstitutional, null and void, in that it violates the tenth section of Article 1 of the Constitution of the United States, which provides that no State shall pass a bill of attainder or an *ex post facto* law.

XVI.

"The said Act of the Legislature of the State of Texas, approved April 11, 1907, is unconstitutional, null and void, in so far as it attempts to create a lien upon appellant's property for the alleged violation of the anti-trust laws of said State, in that the lien is not created by the terms of the Act, based alone upon the commission of the offense, but is left to be created by the action of the prosecuting officer in filing suit to recover the prescribed penalties. The statute therefore does not prescribe a fixed and uniform rule of law, applicable to all persons alike, but is a delegation of the legislative power to officer of the executive department to create the lien, or not to create it, and to arbitrarily discriminate betwen persons at will, and the appointment of the receiver to take charge of appellant's property under this statute, results in depriving appellant of its property without due process of law, and in denying to it the equal protection of the law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States are here urged and relied upon by appellant as against the validity and application

of said Act of the Legislature of the State of Texas to the matters involved in this case, and to the act of the court in appointing the said receiver thereunder." (Rec., 31-35.)

This appeal was prosecuted under the Texas statute, which authorizes an appeal from an order appointing a receiver without, in any wise, appealing from or carrying up the main case. The main case was carried up by separate appeal, and the two were docketed in the Court of Civil Appeals of the State of Texas, as Nos. 4212 and 4213. The Waters-Pierce Oil Company made a motion to consolidate the two causes, which motion was, by the court, overruled (Rec., p. 55), and they remained separate cases all the way through the Court of Civil Appeals, separate applications for writs of error were made to the Supreme Court, and separate applications for writs of error were made to and granted by one of the justices of this court.

Upon a hearing of the cause in the Court of Civil Appeals, it affirmed the judgment of the trial court, delivering an opinion in the following language:

"Fisher, C. J.—This is an appeal by the appellant from an order entered by the trial court appointing a receiver for the properties of the appellant company situated within the State of Texas. The history of the proceeding and the subject matter of controversy and the result reached by the trial court is fully explained and set out in the opinion of this court handed down in this case on June 28, 1907. There is also set out in that opinion the act of the Legislature of April 11, 1907, which we there construed and held to authorize the course pursued by the trial court, which is objected to in the appeal we are now considering. It is unnecessary for us to recapitulate what was stated in the opinion referred to. We there, in effect, held that the act of the Legislature referred to was constitutional,

which ruling, after further consideration, we adhere to. The act in question clearly authorized the procedure pursued by the trial court, and the spirit, meaning, and purpose of the act authorized the court, upon dissolution of the permit to do business within this State of the appellant's company at the instance of the suit by the State, to appoint a receiver for its property within its jurisdiction. The reason for this conclusion we undertook to state in the opinion referred to, which agrees with the conclusion of the trial judge, as stated in the bill of exception which is a part of the record in this case.

"Independent of the power conferred by the act of the Legislature reviewed, we are of the opinion that the court had the authority to appoint a receiver by virtue of Subdivision 3 of Article 1465, Sayles' Civil Statutes, 1897. That subdivision is to the effect that a receiver may be appointed where a corporation is dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights. The corporate right of the appellant company to do business within this State was by virtue of a permit that had been granted to it by the State, and, when an action is brought by the State to cancel and dissolve that permit, it is a proceeding which in our opinion comes within, if not the exact letter, the spirit and meaning of that part of the subdivision of the statute which relates to the forfeiture of the corporate rights of the corporation.

"It is contended by the appellant that in the appointment of the receiver the trial court proceeded without pleading and evidence. The record and proceedings brought to this court by the appellant for our review contains no statement of facts, but there is a bill of exception which was approved by the court, in which it is stated that the court, in passing upon the question of the appointment of the receiver, took judicial notice of the facts exhibited in the main case upon which the receivership is predicated, and of the judgment and decree rendered in that case, wherein it appears from the record in this case the judgment against the appel-

lant corporation was for a large sum, and also for forfeiting its permit to carry on and conduct its business wtihin this State. That branch of the case in which the receiver was appointed is merely an arm of the main case, and is incidental to that proceeding. Both of the statutes quoted and mentioned authorize and empower, if they do not expressly direct, the trial court to appoint a receiver when the State obtains its judgment canceling the permit. And there is another provision of the Act of 1907 which authorized a receiver to be appointed when the interests of the State might require it to be done. In view of these statutes, it is folly to say that the trial court must lose sight of the main controversy when he undertakes to appoint a receiver, and that before that jurisdiction can be exercised he must again rehear and review the facts that were established in the original case upon which the receivership depends; and we are of the opinion that the court was correct in the conclusion that it could take judicial knowledge of the facts established in the main case and the judgment based thereon. The appellant has seen fit to perfect a separate appeal from the order appointing a receiver, and it has no statement of facts in the record showing that the facts which the court took judicial knowledge of did not exist and were not sufficient to authorize the action of the court in making the appointment. The effect of the action of the court was to hold that the facts that he took judicial knowledge of were sufficient to authorize and justify the appointment. The record here shows that the State has actually recovered a judgment for penalties and for cancellation of the permit to do business. The presumption will be indulged in favor of the action of the trial court, and, no fact appearing in the record brought up here by the appellant which would negative and destroy the force of this presumption, we must hold that we have in this record facts sufficient to justify the judgment below.

"It is contended by the appellant not only that the facts are not sufficient, which contention we have just

disposed of, but that the appointment was made by the court without being predicated upon any pleading in the nature of a petition or bill by the State asking for and showing grounds for the appointment of a receiver. The document filed by the State upon which the court acted in making the appointment we construe to be of the nature of a pleading. It is addressed to the court, and states facts under the statutes discussed that would authorize the court to appoint a receiver. A general demurrer was interposed, it seems, to this application, and was overruled. It states grounds and reasons why the court should make the appointment, and some of these reasons stated are of the nature embraced in the statutes upon which a court may act in making the appointment. But, however, if it could be held that the application of the State could not be regarded as a petition or a bill or something in the nature of a pleading requesting the appointment of a receiver, or if an instrument of this character but fatally defective, then the question in the case of forfeiture of the franchise or permit and the power of the court to appoint a receiver is set at rest by the case of San Antonio Gas Co. vs. State, 22 Texas Civ. App., 118, 54 S. W. Rep., 293. It is there, in effect, held that where there is a judgment forfeiting the corporate rights the court can, independent of the request of any one, exercise his judicial discretion as to whether he will or will not appoint a receiver. It is unnecessary to repeat what the court in that opinion says upon the subject. The proposition is forcibly discussed, and the ruling is squarely to the effect that the court can, without request, make the appointment in such a case.

"As said before, we find no constitutional objection to the statutes under which the court acted in making the appointment. What we have said is all that we think necessary to be said in disposing of this appeal." (Rec., pp. 56-58.)

Thereupon the Waters-Pierce Oil Company filed in the cause a motion for rehearing, as follows:

"IN THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

"WATERS-PIERCE OIL COMPANY, *Appellant*,
*vs.*
"THE STATE OF TEXAS, *Appellee*.

"APPELLANT'S MOTION FOR REHEARING.

"In the above cause now comes the appellant, the Waters-Pierce Oil Company, and moves the court to set aside its judgment herein entered on the 23d day of October, A. D. 1907, affirming the action of the District Court of Travis County in appointing Robert J. Eckhardt as receiver of appellant's property, and to grant to appellant a rehearing in this court of all matters involved in this appeal, and as grounds relied upon for such rehearing appellant says that this court erred in its said judgment of affirmance and in support thereof, in the following particulars, viz.:

"1. This court was without jurisdiction, and acted in excess of and beyond the proper exercise of its jurisdiction in considering the validity of the appointment of the said Eckhardt as receiver before considering and deciding the validity of the judgment rendered June 1, 1907, against appellant in said district court, which said judgment was made the basis for said appointment in the application filed for the State for the appointment of a receiver.

"2. The court erred in overruling appellant's motion to consolidate this proceeding with appellant's appeal from said judgment of June 1, 1907, and from said orders appointing said Eckhardt as receiver in said main cause, as shown by the transcript of the entire record of the judgment of all orders and proceedings in said main cause, including the orders and proceedings in connection with said appointment of Eckhardt as receiver, which said appeal embracing the entire case was first docketed in this court as Cause No. 4212, and is now pending and undetermined before this court.

"3. This court erred in overruling appellant's eighth assignment of error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, approved April 11, 1907, to appoint a receiver to take charge of appellant's property, because said Act of the Legislature is void and is an *ex post facto* law, in violation of Section 10, Article 1 of the Constitution of the United States, in attempting to create a lien upon appellant's property for the acts committed by it before said Act took effect in violation of the Anti-trust Laws of the State of Texas, and for which it was convicted and penalties assessed against it in said judgment of conviction rendered against it on June 1, 1907.

"4. This court erred in overruling appellant's sixth assignment of error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas of April 11, 1907, to appoint a receiver to take charge of appellant's property, because said Act of the Legislature, in attempting to create a lien upon appellant's property for the alleged violation of the Anti-trust Law of the State of Texas, by providing that the State shall have such lien from the date of the institution of a suit by the Attorney-General, or a district or county attorney under his direction, in any court of competent jurisdiction in this State for the purpose of forfeiting the charter or cancelling the permit of a corporation violating the said Anti-trust Laws, and for fines and penalties against such corporation for such violation, does not prescribe a fixed and uniform rule of law applicable to all persons alike, but is a delegation of the legislative power to officers of the Executive Department to create the lien, or not create it, and discriminate between persons at will, and therefore the appointment of a receiver to take charge of appellant's property under this statute was unconstitutional, since it results in depriving appellant of its property without due process of law, and in denying to appellant the equal protection of the law, in violation of Section 1 of the 14th Amendment of the Constitution of the United States, which provides that no State shall

deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

"5. The court erred in overruling appellant's thirteenth assignment of error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, approved April 11, 1907, to appoint a receiver to take charge of the property of appellant, because said Act of the Legislature is void and an *ex post facto* law, in violation of Section 10, Article 1 of the Constitution of the United States, in attempting to confer authority for the appointment of a receiver to take charge of appellant's property as an incident to, and in aid of, the said judgment of conviction rendered against appellant on June 1, 1907, in that the appointment of such receiver has the effect of inflicting an additional punishment upon appellant, and of increasing the penalties prescribed under the previous laws for acts committed prior to April 11, 1907.

"6. This court erred in overruling appellant's ninth assignment of error and in holding that said District Court was authorized to appoint a receiver to take charge of appellant's property by the Act of the Legislature of the State of Texas, approved April 11, 1907, because under said Act of the Legislature the right to appoint a receiver is limited to actions against corporations, whereas, in a similar suit against an individual charged with violating the same laws, there is no provision made for the appointment of a receiver to take charge of his property, thereby making an arbitrary distinction between persons similarly situated, and rendering said Act of the Legislature unconstitutional and in violation of Section one of the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

"7. The court erred in overruling appellant's first assignment of error in holding that said District Court was authorized to appoint a receiver to take charge of

appellant's property by the Act of the Legislature of the State of Texas, approved April 11, 1907, because the right, if any existed, to appoint a receiver under said Act could be exercised only in an orderly manner upon pleadings setting up the particular grounds upon which such appointment was sought to be made, and showing sufficient reasons for the appointment of a receiver, and because there being no proper pleadings in this cause the appointment of a receiver for appellant's property was unconstitutional, being in violation of that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prescribed that no State shall deprive any person of life, liberty or property without due process of law.

"8. The court erred in holding that said District Court was authorized to appoint a receiver to take charge of appellant's property by virtue of Subdivision 3, Article 1465, Sayles' Civil Statutes of Texas, which is to the effect that a receiver may be appointed where a corporation has forfeited its charter rights, because treating, as the court did, the cancellation of the permit of appellant to do business in the State of Texas, as the forfeiture of the corporate rights of appellant, such forfeiture was made by virtue of the judgment of said District Court entered June 1, 1907, in the main suit convicting appellant of violating the Anti-trust Laws of the State of Texas, and was a part of that judgment; and further, because the appellant having superseded the execution of said judgment in such a manner that no process could be issued or proceedings had in aid of its enforcement from the date of its rendition, the appointment of the receiver to take charge of appellant's property was without authority; and because further to sanction and sustain the appointment of the receiver and to hold that said appointment has any legal effect, results in denying to appellant the benefit and protection which all other litigants enjoy under the laws of the State of Texas by superseding a judgment, and would therefore be unconstitutional and in violation of that part of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which pro-

vides that no State shall deny to any person within its jurisdiction the equal protection of the laws.

"9. This court erred in not sustaining appellant's second proposition under its fifth assignment of error, and its fourteenth assignment of error submitted as a proposition in connection with said fifth assignment of error, wherein appellant claimed the protection of said Section 1 of the Fourteenth Amendment to the Constitution of the United States, because of its said bond superseding and staying the execution of said judgment of June 1, 1907, rendered against it, and the action of this court in affirming the judgment of said District Court appointing the receiver, and in holding that said appointment has any legal effect, results in denying to this appellant the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

"10. This court erred in overruling appellant's eleventh assignment of error and in holding that the said District Court was authorized by the Act of the Legislature, approved April 11, 1907, to appoint a receiver to take charge of appellant's property in a suit brought against appellant to recover fines and penalties for offenses committed in violation of the Anti-trust Laws of the State, as a means of preventing the appellant from the further or continued violation of such laws, and the action of said District Court in appointing a receiver for appellant's property on that ground and for that purpose, as indicated in its finding—the time of the making of said appointment, by virtue of said Act of the Legislature, is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the result of said action, under said Act of the Legislature, is to deprive appellant of its property without due process of law and to deny to it the equal protection of the laws.

"11. The court erred in overruling appellant's twelfth assignment of error and in holding that the said District Court was authorized by the Act of the Legislature of the State of Texas, approved April 11, 1907, to appoint a receiver to take charge of appellant's prop-

erty without any evidence being introduced before the court at the time the appointment was made to show that appellant could not make use of its property and carry on its business in accordance with law, and such action by said District Court so affirmed by this court results in depriving appellant of the use of its property for the purpose of conducting an interstate business guaranteed to it under the provisions of the Constitution of the United States in paragraph four, Section 8, of Article 1 of said Constitution.

"12. This court erred in holding that Subdivision 3, Article 1465 of the Revised Statutes of the State of Texas, has any application to the appointment of the receiver involved in this appeal, because the said Subdivision of said Article has no application to the cancellation of the permit of appellant as a foreign corporation and it has the right to continue in possession and enjoy the use of its property after the cancellation of its permit, and may conduct a business protected under the Commerce Clause of the Constitution of the United States, and may sell or remove its property at will, and to deny to it the possession and use of its property for these purposes by the appointment of a receiver to take charge of its property, as was done under the orders of said District Court and affirmed by the judgment of this court, results in depriving appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

"13. This court erred in holding that the appointment of the receiver in this proceeding at the suit of the State was authorized by said Act of the Legislature of the State of Texas, approved April 11, 1907, and also under the provisions of Subdivision 3, Article 1465 of the Revised Statutes, independent of the rights of the State as a creditor holding a legal interest in appellant's property, and since the judgment of the State against appellant was secured by the supersedeas bond given by appellant upon said judgment, as required by law, the State had no such interest in appellant's property as to authorize the appointment of a receiver,

and both of said statutes, when construed as authorizing the appointment of a receiver for appellant's property, are unconstitutional, and this action of the court based thereon results in depriving appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

"14. This court erred in its finding and conclusions of law in holding that the District Court was authorized at the hearing of the application for the appointment of a receiver in this proceeding, to consider the evidence which was submitted in the main cause, and that the appointment of the receiver herein should be affirmed, based upon the presumption that sufficient evidence was introduced at the hearing of the main cause to show that the interests of the State of Texas required such appointment. This holding on the part of the court was erroneous because if the trial court could take judicial notice of what occurred in the main cause, this court is also required to take like notice thereof, and this can only be done by considering the appointment of a receiver in connection with the appeal in the main cause now pending before this court. This holding is also erroneous because the application upon which an appointment was made did not set out any facts showing that the State had any interest requiring the appointment of the receiver beyond the collection of its judgment, and the act of this court in sustaining the appointment based upon the presumption that something may have been shown at the hearing of the main case, although it was not set out in the application, results in depriving appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

"Wherefore, and upon each of the foregoing grounds of error committed by this court, appellant moves the court to grant it a rehearing herein, and to set aside and vacate its said judgment affirming the judgment of District Court of Travis County appointing the said Robert J. Eckhardt receiver of appellant's property.

"Appellant represents that the Hon. R. V. Davidson,

who is the Attorney-General of the State of Texas, and Jewel P. Lightfoot, an Assistant Attorney-General of said State, and T. W. Gregory and R. L. Batts, composing the firm of Gregory & Batts, and George W. Allen and W. D. Hart, composing the firm of Allen & Hart, are the attorneys of record for the appellee, the State of Texas, and that each of said attorneys reside in Travis County, Texas, and service of this motion is prayed to be had upon one of said attorneys, as required by law.

"Respectfully submitted,

"CLARK & BOLINGER,
"N. A. STEDMAN,
"D. W. ODELL,
"COCHRAN & PENN,
*"Attorneys for Appellant."*

(Rec., pp. 59-64.)

This motion was overruled without a written opinion (Rec., p. 64). Thereupon the Waters-Pierce Oil Company filed an application to the Supreme Court of the State of Texas, praying for a writ of error to the Court of Civil Appeals to review its decision. This application was denied (Rec., p. 82), and thereupon the Waters-Pierce Oil Company sued out a writ of error to this court and brought the case here for revision, and assigned errors in this court.

AUTHORITIES.

St. Louis Giradea & Ft. Smith Railway Co. vs. The State of Missouri, 156 U. S., 478;
Armstrong vs. Athens Co., 16 Pet., 281;
New Orleans Water Works Co. vs. Louisiana, 185 U. S., 336;
Simon vs. Craft, 182 U. S., 427;
New Orleans vs. New Orleans Water Works, 142 U. S., 79;
Terrett vs. Taylor, 9 Cranch., 43;
Murray vs. Hoboken Land & Imp. Co., 18 Howard, 272;

Hammond vs. Johnson, 142 U. S., 73;
Crowell vs. Randell, 10 Peters, 368;
McKinney vs. Carroll, 12 Peters, 66;
Commercial Bank vs. Buckingham, 5 How., 317;
Detroit, etc., vs. Guthard, 144 U. S., 133.

## ARGUMENT.

The first case cited, *supra,* that of Railroad Co. vs. State of Missouri, is decisive of the question presented here. In that case, two State courts of concurrent jurisdiction had each appointed receivers for the property of a railroad company and one set of litigants applied to the Supreme Court of Missouri for a writ of prohibition against the judge of the other court, and the complainants in the case in the latter court and the receiver appointed in that court, to the end that the court in which the first suit was instituted, should be declared to have acquired jurisdiction of the property, and that the last named court should be directed to cease from taking any further action in that court in the case in which it was attempting to exercise jurisdiction, and directing its receiver to turn over all the property of the railway company in his hands as receiver to the receiver appointed in the first suit. From a judgment granting the writ of prohibition, the aggrieved parties undertook to have the judgment revised by this court, and this court, speaking through Mr. Justice Shiras, in dismissing the writ of error, says:

> "The mandatory portion of the writ as granted, commanding the receiver appointed by one State court to turn over the property in his hands belonging to the defendant corporation to the receiver appointed by another did not operate to take away from the defendant its property, and bestow it upon a third person. *The title to its property continued in the company as before, and that title was no more disturbed or impaired by the judicial order establishing the right of custody to belong to one of two contending receivers, than it was*

> *by the original order appointing a receiver.* That in a foreclosure suit, to appoint a receiver is to deprive the defendant of its property within the meaning of the Constitution of the United States, is a novel proposition, and does not, in our view, raise a real, as distinguished from a fictitious, Federal question."

By the allegations made in the motion for the appointment of a receiver in this case, the State asserted a lien on the property of the Waters-Pierce Oil Company, alleged the forfeiture of its corporate rights, alleged that all of its property in the State subject to the State's debt was insufficient to meet such debt. Under the practice in the State courts of Texas, the court forfeiting the corporate rights of a corporation could wind up its affairs so far as property and claims in the State were concerned, and all matters involving any claim to or against any of the property placed in the hands of a receiver could be settled and determined in that suit.

See—

East Line & Red River R. Co. vs. The State, 75 Texas, 451-452; and Texas Trunk Ry. Co. vs. The State, 83 Texas, 3-7;
Also Farmers' L. & T. Co. vs. Railway, 177 U. S., 61.

Mr. Justice Peckham, delivering the opinion of the court in the case of New Orleans Water Works Co. vs. State of Louisiana, *supra*, collates and discusses all of the leading authorities on the question of when a substantial Federal question is made in a case, and, speaking for the court says that it is not every case in which a Federal question is fully set out in the assignments of error, or the application for a writ of error, that this court will take jurisdiction of the controversy; but that the question must be real and not colorable, and in discussing the question says:

"It has long been the holding of this court that in order to warrant the exercise of jurisdiction over the judgment of the State courts there must be something more than a mere claim that a Federal question exists. There must, in addition to the simple setting up of the claim, be some color therefore, or, in other words, the claim must be of such a character that its mere mention does not show it destitute of merit; there must be some fair ground for asserting its existence, and, in the absence thereof, a writ of error will be dismissed, although the claim of a Federal question was plainly set up. Thus, in Millinger vs. Hartupee, 6 Wall., 258, 18 L. Ed., 829, the Chief Justice (at page 261 L. Ed., p. 839) said: 'Something more than a bare assertion of such an authority seems essential to the jurisdiction of this court. The authority intended by the act is one having a real existence, derived from competent governmental power.'

"This case arose under the 25th section of the judiciary act, and jurisdiction was sought to be maintained upon the assertion that the validity of an authority exercised under the United States was drawn in question, and the decision was against its validity. It was held not sufficient to make the claim, but there must be some color of foundation for its assertion."

After citing and discussing numerous cases, he says:

"These cases show the rule and its limitations, and where by the record it appears that although a claim of a Federal question had been plainly made, if it also clearly appears that it lacked all color of merit, and had no substance or foundation, the mere fact that it was raised was not sufficient to give this court jurisdiction.

"We must look at the question submitted by the plaintiff in error in the light of these decisions for the purpose of determining whether there is any fair foundation for the several claims. It must also be remembered that for years prior to and at the time of the formation of this corporation, it was the unquestioned law that all corporations were created by the State,

subject to its implied power, if not stated in the charter, to dissolve the corporation for a misuse or for a nonuse of its corporate powers or obligations. The contract contained in the charter is also subject to this power residing in the State.

"Thus in the case of Terrett vs. Taylor, 9 Cranch., 43, 3 L. Ed., 650, it was stated by the court (p. 51, L. Ed., p. 653):

> " 'A private corporation created by the legislature may lose its franchises by a misuse or a nonuser of them; and they may be resumed by the government upon a judicial judgment upon a *quo warranto* to ascertain and enforce a forfeiture. This is the common law of the land, and is a tacit condition annexed to the creation of every such corporation.' "

The language used in the above-named opinion is especially applicable to the facts in this case. When the record is sifted there is only the barest suggestion of one Federal question in the case and that is contained in No. 28 of the assignments of error, filed with the application for a writ of error in this court, which is as follows:

> "There is also manifest error in this that after judgment was improperly given upon the said verdict, as aforesaid, for the plaintiff, the court appointed a receiver of the property and assets of the defendant, the Waters-Pierce Oil Company, as specified in the order appointing a receiver, whereas the court ought not to have appointed such receiver. And by the appointment of such receiver, the defendant is deprived of its property without due process of law, contrary to the provisions of said Constitution."

It must be borne in mind that the Court of Civil Appeals, which was the highest court in this case, because a writ of error was denied by the Supreme Court of Texas, held that

the trial court was authorized to appoint a receiver, under two separate and distinct laws or statutes of the State of Texas, which are set out above.

Every assignment of error made in the trial courts, in the Court of Civil Appeals, and in this court, attacked the Act of the Legislature of the State of Texas of April 11, 1907, on the ground that it was unconstitutional and void because of violation of the Constitution of the United States, prohibiting the passage by State legislatures of an *ex post facto* law, claiming that this law was an *ex post facto* law in that it undertook to fix a lien upon the property of a corporation convicted of acts committed prior to the passage of such law; and further, was not due process of law, and did not give the equal protection of the law, because such lien could arise or be created only by the act of an executive or judicial officer of the State, and was given only on property of corporations so violating the law.

These questions are not in the case in any manner, or form (although they are stated with great particularity in all of the different assignments of error) for the reason that the question of the lien has never been decided by any State court, and this court will certainly not consider the validity of the statute unless the State courts, whose decisions are sought to be reviewed, have an opportunity to pass upon them. It may be that upon a hearing of the question of the validity of the lien that the trial court will hold that the law is invalid, because in violation of the Constitution of the United States. The question of the constitutionality of the law because of the lien sought to be created by the act, has never been passed on either in the trial court, the Court of Civil Appeals or the Supreme Court of the State, and could not possibly arise in the controversy that has gone through those courts. This question can only arise when the State undertakes, if it ever does, to foreclose the lien sought to be given by this act. All that has been held

so far was that the court was authorized to appoint a receiver under the laws of Texas. But even if there had been no statute of 1887 and 1907, the court having general equity jurisdiction could have appointed such receiver pending the final disposition of the cause, because every fact was alleged that would warrant such appointment by a court of equity.

It might as well be contended that a receiver should not be appointed in a suit brought for the foreclosure of a mortgage, when it is alleged that facts exist that warrant the appointment of a receiver pending the final disposition of the controversy, because such mortgage is invalid, without consideration, or void for any reason that would be a bar to the cause of action asserted, although the court might be of the opinion it was necessary to appoint a receiver. All that would be necessary in a suit of that sort would be for the complainant to make out a *prima facie* case by showing that he asserts a mortgage or lien upon the property, and by alleging facts that would render it necessary for the court to appoint a receiver to take charge of the property, pending the adjudication of the controversy. Any suit for the appointment of a receiver could be defeated, if the plaintiff in error's contention is correct, by setting up facts that would be a bar to the cause of action and saying to the court you must pass finally on all these questions in bar, and then appoint a receiver after they have been litigated through all the courts. It would then be too late to make such appointment.

The sole purpose of appointing a receiver in any case is that an officer of the court may be named to take possession, as an arm of the court, of the *res* involved in a controversy, and hold it while the main controversy is being waged. In every contested suit in which a receiver is appointed, if it should be finally adjudicated that the plaintiff has no cause of action, that determines the receivership, unless other par-

ties having rights have intervened. Therefore, it is idle to say that a Federal question can be raised in this case by attacking the law of 1907, claiming it invalid as an *ex post facto* law, in that it undertakes to give a lien on property of a corporation for acts committed prior to the passage of such law, when the question of the validity of that lien has never been called in question or adjudicated in the State courts. All that the trial court said, or that the appellate courts have said, was that there was a claim of a lien made by the State, and that, pending the determination of the question as to whether or not it had a debt and a lien, the court, for reasons that were sufficiently shown, would appoint a receiver to preserve the property of the Waters-Pierce Oil Company. That is all that is involved in the controversy in so far as the Act of 1907 is concerned.

But even if a Federal question could be raised as to the Act of 1907, that is eliminated from this controversy for the reason that the Court of Civil Appeals expressly holds, in its opinion, that not only was the trial court justified, but it was its duty to appoint a receiver upon the rendition of the judgment, forfeiting the corporate rights of the Waters-Pierce Oil Company, because Section 3 of Article 1465 of the Revised Statutes of Texas, that were in force long before the Waters-Pierce Oil Company ever obtained its permit to do business in Texas, provides for such procedure. Therefore, the sole proposition to be determined in this case in disposing of the controversy, is whether or not there is a Federal question involved in the case under Section 3, Article 1465 of the Revised Statutes of the State of Texas, in view of the decisions of the Court of Civil Appeals in this case? Because if the Court of Civil Appeals is right (and that question cannot be passed on by this court) in its construction of that Subdivision of the Revised Statutes, then independent of the Act of 1907, the court was warranted in appointing a receiver.

Now, what is the Federal question raised in view of that holding? The one sought to be raised, and the only one, as shown above, that vaguely hints at a Federal question, is: That the defendant is deprived of its property without due process of law, contrary to the provisions of said Constitution. It does not say what Constitution, whether State or Federal. But if it be assumed that the Federal Constitution is intended, then the so-called Federal question is presented by the contention: That the defendant is deprived of its property without due process of law by the action of the court in appointing a receiver.

As has been held every time the matter came before this court, to properly raise such a Federal question the party must invoke the protection of the Constitution or laws of the United States by proper pleading in the State court. That was not done in this case, as will be more fully shown in another portion of this brief. The point we are now making is, that even if any provision of the laws or Constitution of the United States had been invoked that for the reasons pointed out by Judge Peckham in the case of New Orleans Water Works Co. vs. State of Louisiana, *supra,* no Federal question has been raised. We further quote from that opinion:

> "The State in this case has secured the forfeiture of the charter of the defendants by means of a judicial decree obtained in a State court which had jurisdiction to give the relief prayed for, and after a hearing of of the defendant in the usual manner pertaining to courts of justice. The facts upon which such forfeiture was based have been judicially decreed and found, and the defendant has had full opportunity for its defense upon such hearing. The cause of forfeiture was the fact, which was found by the court, that the corporation had charged illegal rates for the water it furnished, and the right to declare such forfeiture, because of a violation by defendant of the conditions of its charter, was

implied in the very grant of the charter itself. The claim, therefore, that the forfeiture was a violation of the charter, and of the contract therein contained, and was on that account a taking of defendant's property without due process of law, or that the State by such judgment had denied the defendant the equal protection of the law, cannot obtain. Whether defendant had so violated its charter was a fact to be decided by the State court. That court had full jurisdiction over the parties and the subject-matter and its decision of the question was conclusive in this case so far as this court is concerned.

"Neither the legislative resolution, nor the action of the attorney-general, nor that of the Supreme Court of the State, nor all combined can, as contended for by plaintiff in error, be in anywise regarded as the taking by the State of property without due process of law through the instrumentality of its legislative, its executive and its judicial departments, either jointly or severally. When analyzed, the whole claim is reduced to the assertion that in enforcing a condition which is impliedly a part of the charter, the State, through the regular administration of the law by its courts of justice, has by such courts erroneously construed its own laws. This court in such a case has no jurisdiction to review that determination."

The whole matter briefly stated is this: At the time the Waters-Pierce Oil Company applied for a permit to do business in the State of Texas, there was upon its statute books a law which provides that, if the Waters-Pierce Oil Company, or any other corporation, violated any of the laws of the State, the permit of such corporation, if it was a foreign one, should be cancelled. There was also a provision in force long before the Waters-Pierce Oil Company applied for its permit, to the effect that when the corporate rights of a corporation were forfeited in a judicial proceeding, it was the duty of the court to appoint a receiver for its property and assets. These were laws that were in force at the

time the Waters-Pierce Oil Company sought and obtained the privilege of doing business within the State, and, of course, that privilege was granted subject to these laws, and the Waters-Pierce Oil Company accepted this privilege and submitted to these provisions. Where then, is there a lack of due process of law? These provisions, as stated were part of its contract with the State of Texas, and when it breached that contract the State could, without judicial ascertainment, have enforced these forfeitures if it had so desired. But it did not do so. On the contrary, it went into a court of competent jurisdiction; notice was issued and served upon the Waters-Pierce Oil Company; it answered fully; a trial was had before a jury; that trial resulted in a verdict of conviction upon which a judgment was based finding it guilty; it had the right to appeal through all the State courts and did appeal. A forfeiture being had of its corporate rights, and a receiver appointed on such forfeiture, after due notice and full hearing, it now claims that it is deprived of its property without due process of law, although the order of the court appointing a receiver on its face shows that the property is only taken into custody of the court, pending the final determination of the main controversy. The title is not divested from the Waters-Pierce Oil Company and vested in some one else. The property is not confiscated. The Waters-Pierce Oil Company is not deprived of its value. The receivership is simply a judicial sequestration by which the property is taken out of the hands of the directors and officers of a corporation, after such directors and officers have violated the law and shown that they were unfit trustees to handle the property of the stockholders of such corporation, and after they had violated repeatedly the laws of the State in which they were doing business.

As was said in Den *ex dem.* Murray vs. Hoboken Land & Improvement Co., 18 How., *272*, 15 L. Ed., *372*:

"The question of what amounted to due process of law was examined, and the proceedings in that case held valid. Mr. Justice Curtis said, in delivering the opinion of the court:

> "'To what principles, then, are we to resort to ascertain whether this process, exacted by Congress, is due process? To this the answer must be twofold. We must examine the Constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.'

"And in Simon vs. Craft, 183 U. S., 427, it was held that the essential elements of due process of law were notice and an opportunity to defend, and in determining whether those rights were denied the court will be governed by the substance of things, and not by mere form; that the due process clause in the Fourteenth Amendment of the Constitution did not necessitate that the proceedings in a State court should be by a particular mode, but only that there should be a regular course of proceeding, in which notice was given of the claim asserted and opportunity offered to defend against it."

In this case not only was there notice given and an opportunity to defend, but there was an appearance by the Waters-Pierce Oil Company in the proceeding, an answer made and an actual defense asserted, and only after such appearance and answer was there an appointment of a receiver. The acts done and shown to have been done by the record in this case, clearly indicate that the Waters-Pierce Oil Com-

pany had its day in court; had notice of the proceeding; had an opportunity to defend, and did defend; and even if the court misconstrued the State statutes or erroneously applied the law to the facts in the case, a review by this court would not be authorized.

## SECOND PROPOSITION.

*The alleged Federal question not having been called to the attention of the trial court or the appellate court until after final judgment was rendered in the latter court, this court has no jurisdiction over this controversy.*

### AUTHORITIES.

Hulburt vs. Chicago, 202 U. S., 275;
Lawler vs. Walker, 14 Howard, 149;
Chapin vs. Fye, 179 U. S., 127;
Bolin vs. Nebraska, 176 U. S., 83;
Clark vs. McDade, 165 U. S., 168;
Oxley Stave Company vs. Butler, 166 U. S., 648;
T. & P. R. R. Co. vs. S. P. R. R. Co., 137 U. S., 48;
Endowment, etc., vs. Kansas, 120 U. S., 103;
Weber vs. Rogan, 188 U. S., 10;
Pim vs. St. Louis, 165 U. S., 273;
Railroad Co. vs. McGuire, 196 U. S., 128;
Allen vs. S. P. R. R. Co., 173 U. S., 479;
M. K. & T. R. R. Co. vs. Ferris, 179 U. S. 602;
Hammond vs. Johnson, 142 U. S., 73;
Kennard vs. Louisiana, 92 U. S., 480;
Lent vs. Tillson, 140 U. S., 316;
C. B. & Q. R. R. Co. vs. Chicago, 166 U. S., 226;
Rule 29, page 659, 94 Texas;
Simmerman vs. Nebraska, 116 U. S., 54;
Coons vs. Gallaher, 15 Peters, 18;
Ocean Ins. Co. vs. Polleys, 13 Pet., 157;
Mills vs. Brown, 16 Pet., 525;
Moore vs. Mississippi, 21 Wallace, 638;
Poydras vs. Louisiana, 18 How., 192.

## STATEMENT.

The application for a receiver and answer of the Waters-Pierce Oil Company are set out in full under proposition one and are not again copied here. The assignments of error in the trial court and in the Court of Civil Appeals are also set out in full under defendant in error's first proposition, and are not here again copied. The motion for rehearing in the Court of Civil Appeals by the Waters-Pierce Oil Company is also set out in full under defendant in error's first proposition and is not copied here for that reason.

## ARGUMENT.

It will be noticed that there are three Federal questions attempted to be raised by the assignments of error in this court. (1) That the Act of the Legislature of the State of Texas, approved April 11, 1907, violates the Constitution of the United States in that it is an *ex post facto* law, because it undertakes to create a lien upon the property of the defendant for violations of the law prior to the passage of the Act; (2) that the Act of the Legislature of the State of Texas, approved April 11, 1907, and the procedure provided for thereunder does not constitute due process of law and does not give to the Waters-Pierce Oil Company the equal protection of the laws with other litigants, and (3) that Subdivision 3 of Article 1465 of the Revised Statutes of Texas and the acts done thereunder in this cause do not constitute due process of law.

In so far as the plaintiff in error undertakes to raise a Federal question in this cause on account of any title, right, privilege or immunity claimed under the Constitution of the United States or any statute of the United States, the authorities are uniform that such title, right, privilege or immunity must be specially set up or claimed in the trial court, or the question must have been directly passed upon

by the State court. Of course, so far as any such question is attempted to be raised in regard to due process of law and the equal protection of the laws, no such privilege or immunity was claimed or set up in the trial court; were not passed on in that court and were not passed on in the appellate court. It is true that by assignments of error filed in the appellate court of Texas, the plaintiff in error undertook to raise the federal questions in a denial of equal protection of the laws, and a denial of due process of law on account of the Act of 1907, but those questions are of no avail and have no bearing on this case for the reason that the Court of Civil Appeals, by its decision, held that the court was authorized and justified in appointing a receiver for the property of the plaintiff in error, without reference to the Act of 1907. Therefore, they did not pass on the question as to whether or not the Act of 1907 violated the provisions of the United States Constitution and it was not necessary for them to do so, and would not have given this case a Federal question if they had done so, because the holding of the Court of Civil Appeals of Texas that an entirely independent act, not complained of in the lower court or in the appellate court until after final judgment, authorized the procedure taken.

It is equally well settled that the attempted raising of a Federal question, whether on account of the third provision of Section 709 of the Revised Statutes of the United States, or the first or second provisions of said section, comes too late when raised for the first time on a motion for a rehearing in the State appellate court, after judgment has been rendered.

In Weber vs. Rogan, *supra*, this court, speaking through Mr. Justice Brown, says:

> "There is hardly a semblance of a Federal question in this case. No such was noticed in the original peti-

> tion or in either opinion of the court; and it was not until after the application was made for a rehearing that petitioner discovered that the act of the legislature of 1895, as amended by the act of 1897 (Rev. Stat., 421), above cited, constitute a contract on the part of the State to sell all isolated and detached sections and fractions of sections of public school lands to any purchaser who would offer $1 per acre therefor, which had been impaired by the Supreme Court of the State in holding that the commissioner of the land office might refuse to execute such contract by declining to award the land applied for, and therefore violated its obligation."

After discussing the question as to whether or not a contract was created and impaired, the court proceeded:

> "In addition to this, however, the question was not made until after the final decision of the State court, and upon application for a rehearing. This was clearly too late. Miller vs. Texas, 153 U. S., 535, 38 L. Ed., 812, 14 Sup. Ct. Rep., 874."

The situation then is this: In so far as the Act of the Legislature of the State of Texas, approved April 11, 1907, is concerned, the court did not pass on its validity or invalidity, as to the lien sought to be created, because that question was not before the court, and therefore could not have been passed upon. And in so far as the provisions of Section 3, Article 1465 of the Revised Statutes are concerned, no Federal question was attempted to be raised in connection with the court's decision until after final decision in the Court of Civil Appeals of Texas. Under the Texas practice no question is noticed until the assignment of error, specifically calling in question the action of the trial court on any particular matter, is made; and unless the assignment is briefed in the presentation of the case to the appellate court, it is considered waived (Rule 29, p. 659, 94 Texas). The

court might have declined to pass on the so-called federal questions, upon the ground that they were not assigned as errors in the trial court and not briefed in the upper court.

In the case of Lawler *et al.* vs. Walker *et al., supra,* this court says:

> "The conflict of a State law with the Constitution of the United States and the decision by State courts in favor of its validity must appear on the face of the record, before it can be re-examined in this court; it must appear in the pleadings of the suit or from the evidence in the cause, in trial on instructions asked for or from exceptions taken to the ruling of the court; it must be that such a question was necessarily involved in the decision and that the State court would not have given a judgment without deciding it."

In Hulbert vs. Chicago, *supra,* this court, speaking through Mr. Justice McKenna, says:

> "According to the practice of the court" (speaking of the Supreme Court of Illinois) "an error not assigned is not open to review. Berry vs. Chicago, 192 Ill., 154, 61 N. E., 198. Errors assigned, but not noticed or relied on in the brief and argument of counsel, will be regarded as waived or abandoned. Keys vs. Kimmel, 186 Ill., 109-114, 57 N. E., 851. And such rule of practice will be recognized by this court. Erie R. Co. vs. Purdy, 185 U. S., 148."

The same rule applies in Texas as in Illinois. See Rule 29, page 659, 94 Texas.

Again, it is held in the case of Pim vs. St. Louis, etc., 165 U. S., 271-3:

> "We held at the present term, in Chicago N. W. R. Co. vs. Chicago, 164 U. S., 454, as had frequently before been adjudged, that this court could not review the final judgment of the highest court of the State, alleged

to have been denied a right protected by the Constitution of the United States, unless such right was specially set up and claimed in the State court by the party against whom the judgment was rendered. U. S. Rev. Stat., Par. 709.

"It is contended in this writ of error that the judgment below deprived the plaintiff in error of her property without due process of law, and that this result was accomplished by applying to the case a certain statute of limitations of Missouri as construed and enforced by the highest court of that State.

"Upon inspecting the record we find that no Federal right was set up or claimed, in any form, until after the final decision of the case by the Supreme Court of Missouri, and then by a petition for rehearing. That petition was overruled by that court without any determination of the alleged Federal question, indeed, without any allusion to it. The claim of a Federal right came too late, so far as the revisory power of this court is concerned."

Again in the case of Chicago I. & L. R. Co. vs. McGuire, 196 U. S., 127, this court, speaking through Mr. Justice Brown, said:

"Motion is made to dismiss this writ of error upon two grounds: (1) That the supposed Federal question was not set up and claimed until too late. (2) That there is no Federal question in the case."

After discussing the reason for holding that the question was raised too late, the court proceeds:

"In this connection the plaintiff in error urges upon us the proposition that, as it relied solely upon the title derived by a foreclosure and sale in a Federal court, the State court must necessarily have considered and decided that question, and that in such cases the Federal Constitution need not be specially set up and claimed. This argument would necessarily not apply

to the Supreme Court of the State, which, as above indicated, might have held, and probably did hold, that the Federal question, not having been suggested in the court below, could not be made available on appeal. The appellant court did not discuss it. There are doubtless a few cases which hold that, where the validity of a treaty or statute or authority of the United States is raised, and the decision is against it, or the validity of a State statute is drawn in question, and the decision is in favor of its validity, and the Federal question appears in the record and was decided, or such decision was necessarily involved in the case, the fact that it was not specifically set up and claimed is not conclusive against a review of such question here. But as the validity of no statute, state or Federal, or authorities thereunder, was called in question here, this rule does not apply. * * *

"This case is the not unfrequent one of an attempt to clutch at the jurisdiction of this court as an afterthought, when all other resources of litigation have been exhausted.

"The Federal question, if any existed, as to which we express no opinion, was not set up or claimed at the proper time, and the writ or error must therefore be dismissed."

Again, in T. & P. Ry. Co. vs. S. P. Co., 137 U. S., 48, the court, speaking through Chief Justice Fuller, says:

"We are of the opinion that in Louisiana, as elsewhere, a title, right, privilege or immunity, is not properly claimed under the act of Congress, when suggested for the first time in a petition for rehearing, after judgment. The case of Stewart vs. Kahn, 78 U. S., 11, Wallace 493, cited for plaintiff in error, is not to the contrary. The petition referred to there seems to have been simply one for review on appeal, and not a petition filed after the case had been decided by the Supreme Court, and the record showed the decision of the Federal question by both tribunals."

## THIRD PROPOSITION.

*The action taken and proceedings had in the State courts constituted due process of law.*

### STATEMENT.

Same as under Defendant in Error's First Proposition.

### AUTHORITIES.

Remington Paper Co. vs. Watson, 173 U. S., 443.
New Orleans Water Works Co. vs. Louisiana, 185 U. S., 336; Ry. vs. Mo., 156 U. S., 478.
Iowa C. R. Co. vs. Iowa, 160 U. S., 389.
New Orleans Debenture Redemption Co. vs. Louisiana, 180 U. S., 320.
Murray vs. Hoboken Land Imp. Co., 18 Howard, 272.
Rothschild vs. Knight, 184 U. S., 334.
Simon vs. Craft, 182 U. S., 427.
Consolidated Rendering Co. vs. State of Vermont, No. 5, Oct. Term, 1907, Sup. Ct. Reports, p. 178.
Cosmopolitan Club vs. Virginia, No. 9, Sup. Ct. Rep., p. 394, October Term, 1907.

In the case of Remington Paper Co., vs. Watson, *supra,* this court held:

> "The appointment of a receiver to take possession of the property of an insolvent corporation upon the petition of a creditor is certainly 'due process.' This, of course, is not denied, but the invalidity of the order of appointment is asserted because it was made *ex parte,* and because Watson had not fully qualified. It is hence argued that the appointment was a nullity, constituted no legal obstacle to the proceeding in the United States Circuit Court. * * * * The action was regularly proceeded with and was determined against plaintiff in error on grounds that did not involve

Federal questions and therefore it is not within our power to review the judgment of the Supreme Court of the State. The plaintiff in error thus sought in the State court and was given opportunity to litigate the rights claimed by it and it cannot complain that the guaranties of the Constitution of the United States were denied because the litigation did not result successfully."

Again it was held in the case of Cosmopolitan Club vs. Virginia, *supra*:

"It must, therefore, be held that the contract between the club and the State did not authorize the club to disregard the valid law of the State regulating the licensing and sale of liquors. Such a course upon the part of the club was alleged to be a misuse of its corporate privileges and franchises. The distinct charge against the club in the corporation court was that it was being conducted for the purpose of violating and evading the statute regulating the licensing and sale of liquors—a statute which the commonwealth could rightfully enact under its power to care for the health and morals of its people. And the court adjudged the charge against the club was sustained, the result being that, by the statute, the chartered rights and franchises of the club ceased without any further proceedings. Even if this court could re-examine the judgment of the corporation court on the facts, the present record would not justify us in holding that error was committed.

"Was this result consistent with the due process enjoyed by the Constitution? This question must be answered in the affirmative. The proceedings against the club were had in a court competent under the Constitution and laws of Virginia to determine the questions raised by the complaint against the club. This must be assumed to be the case after the highest court of Virginia refused a writ of error, upon the ground that the judgment of the corporation court was plainly

right. The mode of proceeding against the club was not unusual in such cases. As early as Terrell vs. Taylor, 9 Cranch., 43, 51 L. Ed., 650, 653, this court said: 'A private corporation created by the legislature may lose its franchises by a misuser or a non-user of them; that they may be resumed by the government under a judicial judgment upon a *quo warranto* to ascertain and enforce the forfeiture.' So, in New Orleans Water Works Co. vs. Louisiana, above cited, the first of several questions raised there was that, since the charter of a certain water works company prescribed mandamus as the remedy to maintain a lawful tariff of water rates, was not the substitution by the writs of forfeiture of charter, as a remedy for the maintenance of unlawful rates, a breach of the contract, and a deprivation of property without due process of law, and a denial of the equal protection of the laws? The court answered the question by saying: 'The answer to the first question is, as to mandamus being the exclusive remedy for illegal rates, is that the State court has otherwise construed the charter, and has held that mandamus is not the only remedy, but that the company was liable to be proceeded against by *quo warranto* at the suit of the State, through its Attorney-General. The claim that, by so proceeding, there is an impairment of the obligation of a contract by any subsequent legislation, or that there has thus been a deprivation of property without due process of law, or a denial of the equal protection of the laws, has no colorable foundation. An examination of this question, among others, was made by the State court after full hearing of all parties and all that can possibly be claimed on the part of the plaintiff in error is that such court erroneously decided the law. That constitutes no Federal question.'

"It thus appears that the club ceased to exist as a corporation in virtue of a judgment of a court of competent jurisdiction, all the parties being before it and given full opportunity to be heard. Such a judgment cannot be held to have violated any right belonging to the club under the contract or other clause of the

Federal Constitution. Foster vs. Kansas, 112 U. S., 201, 206, 28 L. Ed., 629, 697, 5 Sup. Ct. Rep. 8, 97; Kennard vs. Louisiana, 92 U. S., 480, 23 L. Ed., 478; New Orleans Water Works Co. vs. Louisiana, above cited."

In the case of New Orleans Debenture Redemption Co. vs. Louisiana, *supra*, the court, on page 330, says:

"Nor do the facts in this case furnish any foundation for the claim on the part of the plaintiffs in error that the State after having granted the right to be a corporation could not, after the corporation was created, deny to it the common right to pursue any lawful business or enterprise not inconsistent with the object and purposes of its creation. The claim rests upon the proposition that the State cannot deny to the company the common right to pursue any lawful business or enterprise. If the business or enterprise be not lawful, the whole argument fails. If not created for a lawful purpose the company was not created at all. It is not a question of the right to do certain business after it was authorized by the State to organize as such corporation. Its legal creation depended upon the lawful character of the work it was organized to do. Whether the business be lawful is, in a case like this, a question of local law, and a decision by the State court upon that question is not reviewable here. The right to be a corporation was given by the State upon the terms that the business transacted should be lawful, and it certainly must rest with the State to determine whether the business thus transacted by a corporation is or is not lawful. Whether such business could be done by individuals without the intervention of a corporation is not to the point. The State having the right to say upon what terms and upon what conditions it will grant the right of incorporation, it must have the right to determine through its courts whether these conditions have been complied with. It granted the right by the act of 1888 to transact any

lawful business, as a corporation, upon filing articles, etc. It rests with its own courts to say whether the business transacted by such assumed corporation, by virtue of that act, is or is not lawful. Having decided that it was unlawful, the court had the right, under the State law, to declare the charter null.

"Then as to the rights of the individual corporators. Has their property been in any way taken without due process of law by this decree? Clearly it has not. Nor have they been denied the equal protection of the laws. As already stated, the decree adjudges the charter, under color of which the defendant company claimed corporate existence, to be null and void, and it enjoins the officers and stockholders from acting as a corporation, in the terms already set forth. This simply holds the property until it can be properly disposed of according to law."

In the case of Simon vs. Craft, *supra*, this court, speaking through Mr. Justice White, says:

"It is also urged as establishing the nullity of the appointment of a guardian of the estate of Mrs. Simon, that the proceedings failed to constitute due process of law, because (1) they were special and statutory, and the petition failed to state sufficient jurisdictional facts; (2) a jury was not impaneled as provided by law; and (3) there was no finding in the verdict of the jury or the order entered thereon, ascertaining and determining all the facts claimed to be essential to confer juristliction to appoint a guardian. But the due process clause of the Fourteenth Amendment does not necessitate that the proceedings in a State court should be by a particular mode, but only that there shall be a regular course of proceedings in which notice is given of the claim asserted, and an opportunity afforded to defend against it. Louisville and N. R. Co. vs. Schmidt, 177 U. S., 230, 236, 44 L. Ed., 747, 750, 20 Sup. Ct. Rep., 230, and cases

cited. If the essential requisites of full notice and opportunity to defend were present, this court will accept the interpretation given by the State court as to the regularity, under the State statute, of the practice pursued in the particular case. Tested by these principles, we accept as conclusive the ruling of the Supreme Court of Alabama and the jury which passed on the issues in the lunacy proceeding was a lawful jury, that the petition was in compliance with the statute, and that the asserted omissions in the recitals in the verdict and orders thereon were at best mere irregularities which did not render void the order of the State Court appointing a guardian of Mrs. Simon's estate."

## FOURTH PROPOSITION.

*The Act of April 11, 1907, is not repugnant to any provision of the Constitution of the United States in that it undertakes to create a lien in favor of the State upon property of corporations that violate the anti-trust laws of Texas by acts committed prior to the passage thereof.*

### AUTHORITIES.

Bangor vs. Goding, 35 Maine, 73.
Bolton vs. Johns, 5 Pa. St., 145.
Gordon vs. Canal Co., 1 McAr., 513, Federal Case No. 5621.
O'Neil vs. St. Olof's School, 26 Minn., 329.
Colpetzer vs. Trinity Church, 24 Nebraska, 113.
Kellogg vs. Howes, 81 Col., 170, 6 L. R. A., 588.
Davis-Henderson Lehr Co. vs. Gottschalk, 81 Col., 641, 22 Pacific Rep., 860.
Gurney vs. Walsham, 16 R. I., 698.
Livingston vs. Moore, 7 Peters, 546, 562.
Louisiana vs. New Orleans, 102 U. S., 207.

It is shown elsewhere in the brief that the State courts, neither the trial nor appellate passed upon the validity of the lien given by the statute of 1907, because the statute

was not before them except as to whether it authorized the appointment of a receiver, and therefore it was neither necessary nor proper for them to pass upon the validity of the lien. The question of the validity of the lien can only arise when the State undertakes to foreclose that lien, if it ever does.

But counsel for plaintiff in error have so many assignments of error calling in question the validity of the statute because it undertakes to give a lien upon the property of violators of the anti-trust laws of Texas, for acts committed prior to its passage, and they have so strenuously dwelt upon that question that we feel constrained to discuss it briefly and cite the above authorities. While we feel sure this court will not pass upon that feature of the law for the reason that the State courts have not passed upon it, we nevertheless deem it our duty, in view of the contentions of the plaintiff in error, to call attention to the above authorities, which hold that statutory liens are merely remedies afforded for the collection of debts, and laws creating such liens to secure pre-existing debts are valid, and not repugnant to any provision of the Constitution of the United States, or amendment thereto.

The contention of counsel that the Act of 1907 is unconstitutional because it is repugnant to the provisions of the Federal Constitution which prohibits States from passing or enforcing *ex post facto* laws, is also without merit. It is not a punishment prescribed, it is simply a remedy for the enforcement of a right. It is immaterial what motive influenced the trial court, or what it had in mind as a reason for appointing a receiver. The Court of Civil Appeals held that it was within its power and that it was its duty, without any request being made therefor, to appoint a receiver in this cause.

The case of Havemeyer vs. Superior Court, etc., cited by counsel for plaintiff in error, is not in point for the rea-

son that the Supreme Court of California held that there was no statute of that State authorizing the appointment of a receiver in that class of cases; that it could only be done upon the application of a creditor, and that the State was not such creditor, as was contemplated by the statute.

Counsel also cite authorities, and say at page 202 of their general brief: "So, by the laws of Texas, as declared by its Supreme Court, the judge had no authority to go on and complete the appointment of the receiver after the original judgment had been superseded." But they cite no authority of the Supreme Court of Texas holding any such doctrine. They entirely ignore the fact that the Court of Civil Appeals held in this very case that the trial court was authorized to do everything he did, and affirmed his judgment, and the Supreme Court of Texas, by refusing a writ of error in this case, affirmed the judgment of the Court of Civil Appeals, and made the judgment of the latter court its judgment. So it is idle to speculate as to what the courts of Texas would have held in a different case, and whatever the laws of Texas are as construed by its courts in other cases, we are confronted with the proposition that in this case they said the trial court was right in appointing a receiver under the circumstances that existed.

*As to the disposition of this case in the event this court reverses the judgment of the State courts in No. 359 in any particular.*

Counsel for plaintiff in error assume that this cause will be reversed in the event that cause No. 359 is reversed. We do not understand that any such result necessarily follows. We have shown in other portions of our brief, we believe conclusively, that there is not the shadow of a Federal question raised in this case. In our reply to the motion to consolidate made in this court, we have shown that

they were separate and distinct cases, governed by different and distinct questions of practice. We also say that counsel for plaintiff in error entirely misapprehend and misconstrue the rights of the State in this case. This is not a proceeding in the nature of an execution. No such remedy is known to the practice in Texas. The matter is solely the right of the State to have a receiver appointed in the cause. It does not make any difference whether the application for such appointment was made in the beginning, in the middle or at the end of the main cause; nor does it matter what was the form of the application or whether there was an application at all. The State courts have passed upon all these questions, have decided them adversely to the contention of plaintiff in error, and this court will not review them unless there is a Federal question, and that Federal question is properly before this court. We have undertaken to show, and we believe we have shown, in other portions of this brief, that there is no Federal question in this case, and that if one could have been properly raised it was not done.

We understand that the court in cause No. 359 will only pass upon the questions of the constitutionality of the Act of 1899 and the Act of 1903, as construed by the highest State court of Texas. That if *either* of said acts are held to violate the Federal Constitution, it would only reduce the judgment to the extent that penalties were recovered under the act so declared unconstitutional, and affirm it as to the remainder; and in the event the penalties should be stricken out under *both* the statutes, then this court would still affirm the judgment as to the cancellation of the permit of the plaintiff in error. Because, even though the laws might be unconstitutional, the Act of 1899 was in force in Texas at the date of the issuance of the permit to the plaintiff, and it would therefore authorize a cancellation of the permit, even though no penalties could be recovered under it.

In either event the judgment of the State courts in appointing and in affirming the appointment of a receiver, would have to be affirmed, and would be affirmed by this court.

We respectfully suggest that the judgment of the State courts in this cause should be, in all things, affirmed.

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IN THE

# Supreme Court of the United States

OCTOBER TERM 1908.

THE WATERS PIERCE OIL CO.,
*Plaintiff in Error.*
*vs.*
THE STATE OF TEXAS,
*Defendant in Error.*
No. 359.

## BRIEF FOR THE STATE OF TEXAS, DEFENDANT IN ERROR.

### STATEMENT OF THE CASE.

The repeated misstatements of material facts in the three briefs filed for plaintiff in error renders necessary a comprehensive statement by defendant in error.

### STATUTES.

The parts of the acts of 1899 and 1903 necessary to be considered are as follows:

Sections 1, 2, 5 and 7 of the Act of 1899

"Section 1. Any corporation organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this State, or any partnership, or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act.

"Sec. 2. A 'monopoly' is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill, or acts, or of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a 'monopoly,' as thus defined and contemplated, includes not

merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stock or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a 'monopoly,' as defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or associations of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

"Sec. 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney General or the district or county attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.

"Sec. 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other State or country, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its right and privilege thereafter to do any business in this State and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in trarsacting its business in this State, has been, while actng as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, to the Commisioner of Insurance, Statistics and History of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation." Laws of 26th Legislature of Texas, p. 246.

Sections 1, 2, 3, 8, 11 and 17 of the Act of 1903:

"Section 1. That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

"1. To create or which may tend to create or carry out restrictions in trade or commerce or tids to commerce or in the preparation of any product for market

or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

"2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

"3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

"4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

"5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any

article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

"6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

"7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof.

"Sec. 2. That a monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

"1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first section of this act.

"2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

"Sec. 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade:

"1. Where any two or more persons, firms, corporations, or associations of persons who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation, or association of persons any article of merchandise, produce or commodity.

"2. Where any two or more persons, firms, corpora-

tions or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

"Sec. 8. Every foreign corporation violating any of the provisions of this act is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision by injunction or other proceedings in the district court of Travis county, in the name of the State of Texas.

"Sec. 11. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the Attorney General, or the district or county attorney under the direction of the Attorney General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this act shall be over and above the fees allowed him under the general fee bill.

"Sec. 17. That all laws and parts of laws in conflict with this act, be and the same are hereby repealed, and that Title CVIII of the Revised Civil Statutes of the State of Texas of 1895, and Articles 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321 and 5321a, thereof, be and the same are hereby expressly repealed; and that Articles 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 988a, 988b, 988c, 988d of Chapter 7, in Title XVIII, of the Penal Code of the State of Texas of 1895, be and the same are hereby ex-

pressly repealed; and that an act entitled 'An Act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act,' approved April 30, 1895, and known and published as Chapter 83 of the General Laws of the Twenty-fourth Legislature, be and the same is hereby expressly repealed; and that an act entitled 'An Act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violate the terms of this act and to authorize the institution and prosecution of suits therefor,' approved May 25, 1899, and published and known as Chapter CXLVI of the General Laws of the Twenty-sixth Legislature, be and the same are hereby expressly repealed; and that an act entitled 'An Act to amend Article 5318, Title 108, of the Revised Civil Statutes, of the State of Texas, prescribing penalties against trusts and conspiracies against trade,' approved June 5, 1899, and known as Chapter CLXXII of the General Laws of the Twenty-sixth Legislature, be and the same is hereby expressly repealed; provided nothing in this act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this act takes effect." (Laws of 28th Legislature of Texas, page 119.)

## PLEADINGS OF PLAINTIFF.

The following is a synopsis of plaintiff's petition:

It alleges that about 1870 a number of persons conceived the scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof, throughout the United States, including the

State of Texas; that to that end they thereafter entered into a conspiracy and, from time to time, a series of conspiracies, by and among themselves, and by and with other individuals and corporations, including the plaintiff in error, and that none of said conspiracies had been abandoned, and that each had continued and were being carried out. (Rec., p. 2.)

That about May 7, 1878, W. H. Waters and H. C. Pierce were engaged in the business of refining and selling petroleum and its products in the State of Missouri and in the State of Texas, and the Chess-Carley Company and the Standard Oil Company of Ohio, the last named company being controlled by the conspirators before named, were also engaged in the sale of petroleum and its products in the States of Missouri and Texas and elsewhere; that upon said date said named individuals and corporations, and the officers and agents of the latter in further pursuance of said conspiracy to monopolize and control the oil business, and especially for the purpose of monopolizing and controlling the oil business in a section of the United States, including the State of Texas, made and entered into a conspiracy to secure control and monopolize the oil business in said section, including the State of Texas, and to fix and control the price of oil in said territory and to eliminate and prevent all competition by and among themselves and between themselves and others in said business; that this conspiracy and the acts thereunder had been adopted by the other conspirators, including the plaintiff in error, and had not been abandoned, but was still being carried out. (Rec., 4 and 5.)

That in the accomplishment of the conspiracy and the unlawful purposes, said parties caused a corporation to be created under the laws of Missouri, under the name of the Waters-Pierce Oil Company, its charter being issued by the State of Missouri on May 7, 1878, with a capital stock

of $100,000, which was afterwards increased to $400,000. (Rec., p. 5.)

That prior to May 7, 1878, the conspirators had taken steps to secure the control of the oil business in the United States, and to that end had organized the Standard Oil Company of Ohio, and had bought the property of and secured the control of a large number of corporations and firms, and had apportioned the territory of the United States to such corporations as they chose or saw fit to use for the transaction of the oil business; that the conspirators conceived that the acquisition of all the oil business in the territory which W. H. Waters and H. C. Pierce and Chess-Carley Company were operating could best and most easily be accomplished by the formation of a corporation in which the last named parties should have stock, and said parties acquiesced in the policy and became parties to the conspiracy, and said parties and their successors and assigns, and the corporation aforesaid and its assigns and its stockholders, directors and officers had ever since then and up to the time of filing the amended petition, been parties to the conspiracy and have acquiesced in and adopted and aided in carrying out the plans formed for the consummation of the purposes of the conspiracy. (Rec., p. 5.)

That in pursuance of and as a part of the general plan and conspiracy for the monopolization of the oil business it was agreed and understood when the Waters-Pierce Oil Company was formed in 1878 that it should confine its business to the States of Texas and certain other States and the Republic of Mexico, and that it was not to attempt to do any business in any other part of the United States, or elsewhere, and it was agreed that neither the Standard Oil Company of Ohio, nor any of its subsidiary companies, nor dependent companies and none of the other companies set forth in an agreement which was set out in full in the petition, nor any company controlled by any of the conspira-

tors named, should sell any oil, products of petroleum, or do any business in the products of oil in any of the territory named as territory of the Waters-Pierce Oil Company. That this understanding and agreement had been observed and carried out and insisted upon and been treated as effective by and between all corporations, trusts, *quasi* or reputed corporations and all concerns owning or claiming to own the property, stock or business, or any part thereof, of any of the corporations primarily entering into the agreements or understandings, and their successors and assigns, from the time of the creation of the Waters-Pierce Oil Company up to the time of the filing of the amended petition, and during all such time the agreements and understandings had been so observed by and between the Waters-Pierce Oil Company and the Standard Oil Company of Ohio, and its successors, and the subsidiary companies and the other companies named, and all companies the control of which were in the Standard Oil Trustees and now controlled by the Standard Oil Company, in and with reference to the State of Texas, as to prevent all competition between said companies in said State, and to create a monopoly therein in the State of Texas, and that the officers, agents and employees of the Waters-Pierce Oil Company in Texas had observed, abided by and acted upon said understanding and agreement and had during all said time made same operative and effective, and said agreement and understanding had been observed and acted upon by the plaintiff in error from the date of its incorporation to the time of the filing of the amended petition.

That as a part of the contract, agreement, understanding and conspiracy at the times aforesaid, and as a consideration by which exclusive territory was set aside for the use, exploitation and enjoyment by said Waters-Pierce Oil Company, it agreed and contracted to purchase all its supplies of refined and unrefined oils, naval stores and other articles

in which it was authorized to deal, from the Standard Oil Company and companies controlled by it, which said contract, agreement and understanding was enforced and observed by the plaintiff in error, and had at all times been observed by it since the date of its incorporation to the time of the filing of the amended petition. (Rec., p. 6.)

After setting out what was known as the original Standard Oil Trust agreement, the details of which it is not necessary here to state, and alleging that the Waters-Pierce Oil Company, which was organized in 1878, became a party to such agreement, and that same had been acted upon and carried out by it in Texas from its organization to the time of its purported dissolution, and that a majority of its stock was held and voted, first by the Standard Oil Trustees, and afterwards by the Standard Oil Company of New Jersey, the petition further alleged that said Waters-Pierce Oil Company from a time prior to the 6th day of July, 1889, and continuously thereafter, up to May 31, 1900, did business in the State of Texas, under a permit granted it by the State of Texas. That by virtue of such permit it engaged in business in the State, established itself in every county throughout the State, and while so engaged violated the statutes of the State against illegal combinations in restraint of trade and competition and thereby incurred a forfeiture of its permit to do business in Texas. That suit was filed by the State of Texas in the District Court of Travis County for the cancellation of its permit, and that same resulted in a verdict and judgment in favor of the State cancelling such permit, and that such judgment was affirmed by the State courts of Texas and by the Supreme Court of the United States, and said corporation was thereby deprived of the right to do any business in Texas except an interstate business.

That in further pursuance of the conspiracy and for the purpose of maintaining the monopoly and control which

had been acquired by the conspirators through the operations of the Waters-Pierce Oil Company in the State of Texas, and for the purpose of fraudulently rendering ineffective the judgments of the courts of the State of Texas and the Supreme Court of the United States, the managers, officers and agents of the Standard Oil Company, the Waters-Pierce Oil Company, and its officers and H. C. Pierce and the other conspirators named, determined to go through the form of dissolving the corporation known as the Waters-Pierce Oil Company and of creating a new corporation for the holding of property and the transaction of the business of the Waters-Pierce Oil Company and carrying out the plans and conspiracies aforesaid, which was accomplished by such organization. (Rec., p. 21.)

That in the organization of the new corporation, which was done on May 29, 1900, the same name was adopted, the same amount of capital stock was fixed, and the stock distributed to the holders of stock in the old corporation in the same proportion held by them in said old corporation. That for a long time a portion of the stock in the new corporation, being a majority of the capital stock, although in fact owned by the Standard Oil Company of New Jersey, stood in the name of H. C. Pierce to cover up the conspiracy and fraud in the transactions, and many other things of like character were alleged to have been done, all being effected and enforced with the full knowledge and sanction of the plaintiff in error, and all its stockholders, and by said stockholders and for the purposes before alleged. (Rec., pp. 23-25.)

That the conduct of the business of the new corporation (which is the plaintiff in error herein), was in no sense changed, that among other things it made the same reports to the Standard Oil Company as had been made by the old company, and the same instructions were received from the said Standard Oil Company, and the same control

exercised by the later company as had been exercised over the old corporation; that the old contract and understanding and agreement about the division of territory was maintained and respected and enforced. (Rec., p. 25.)

That by and through the machinery therein and theretofore described, and in pursuance of the conspiracy to monopolize the entire oil business, it was alleged that the conspirators before named had, in addition to the corporations, concerns and business therein specifically named, taken over and acquired a large number of companies, the names of some of which were given. That the purpose of such acquisition was to prevent competition with the Waters-Pierce Oil Company, and it had had that effect; and that said companies had either been entirely put out of business or were being used and controlled so as to aid in the scheme of monopoly; and that the plaintiff in error was a party to said acquisition for said purpose, and now participates in and is a party to the arrangement, which prevents competition from said companies, and had done so ever since its incorporation. (Rec., p. 28.)

That a large number of corporations, including the plaintiff in error, were controlled by the same persons, with the acquiescence and consent of the plaintiff in error and its stockholders and officers. That by this control all competition in Texas between said companies was destroyed; that certain sections and parts of the United States were assigned to said companies for business; that the plaintiff in error was permitted to do business in Texas, and with its knowledge and consent and upon its insistence and demand all other companies under said control are excluded from Texas. That by reason of said control said companies, including defendant, are required (and plaintiff in error acquiesced in and agreed to the arrangement), to secure all the oil used and sold by them from such refineries and at such prices as are determined by that organization

and said persons, whereby a monopoly in the selling of oil is accomplished, and plaintiff in error is excluded (with its consent) from buying oil from refineries not controlled by said organization, and thereby the price is affected and increased; that by said control a large number of corporations are brought under the same management and said consolidation and affiliation is made for the purpose of and has the effect of monopolizing, controlling and affecting the business in oil and the products of petroleum in Texas, and affecting the prices in said State of said products. (Rec., pp. 29-30.)

That by virtue of all these acts and various other acts alleged to have been done, it was charged in said petition that the following unlawful results had been accomplished:

(1) The plaintiff in error is dominated and controlled by and its business dictated by the Standard Oil Company of New Jersey.

(2) A large number of individuals and corporations doing business in the sale of petroleum products, are excluded from doing business in the State and competition was lessened.

(3) The price of oil had been maintained at an exorbitant figure, being from ten to twenty-five per cent higher than that of oil sold in the territory not claimed by plaintiff in error.

(4) Competition had been suppressed and business destroyed in the State by unconscionable and unfair means.

(5) A substantially complete monopoly in petroleum products had been established, the plaintiff in error having sold during the period of ten years past, at least ninety-five per cent of all petroleum products sold. (Rec., p. 36.)

There was a prayer for the penalties provided under both the acts of 1899 and 1903, and for the cancellation of the permit of the plaintiff in error to do business in Texas. (Rec., p. 39.)

## TRIAL.

The case coming on for trial defendant made a motion for change of venue. The motion was overruled. The action of the court was not assigned as error in this court, but is the subject of criticism by counsel in their briefs.

The motion for change of venue having been overruled, a trial before a jury was begun. Because of the misstatements heretofore referred to a concise synopsis of the facts proved is given. That the court may verify the charge that the briefs of plaintiff in error do not accord with the record, the names of witnesses and pages of record are indicated.

## STATEMENT OF FACTS PROVED.

The State charged that on or about January 1, 1870, John D. Rockefeller and numerous others entered into a conspiracy to monopolize and control the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas.

That said conspiracy is still in existence and is still carried out and actively prosecuted. (Rec., p. 2.)

The facts show that the conspirators began by organizing the Standard Oil Company of Ohio, January 10, 1870. (Rec., p. 396.)

May 7, 1878, they organized the Waters-Pierce Oil Company under the laws of the State of Missouri. (Rec., pp. 397, 486.)

That among the directors during the first years were Horace A. Hutchins and William P. Thompson, who were connected with the Standard Oil Co. (Rec., pp. 438-434; 435; 571.)

That at the time of the organization of the Waters-Pierce Oil Co. in 1878, the following firms and co-opartnerships who were doing business in the States of Texas, Arkansas, Missouri, Louisiana, and other territory in the Southwest, acquired interests in that corporation, whereupon competition between them ceased:

Standard Oil Company of Ohio (Rec., p. 473).
Waters-Pierce and Company (Rec., pp. 443, 497).
Chess-Carley Co. (Rec., pp. 569, 570).
M. K. & T. Tank Line (Rec., pp. 569, 570, 572).

After the organization of the Waters-Pierce Oil Company in 1878, the southern half of Missouri, all the State of Louisiana west of the Mississippi river, the entire States of Arkansas, Texas, the Indian Territory and Republic of Mexico, was assigned as the exclusive territory for the Waters-Pierce Oil Company, and a map was subsequently made in the offices of the Standard Oil Co. at 26 Broadway, New York, defining the territory of the Waters-Pierce Oil Co.

(Rec., pp. 442, 443, 448, 434, 435, 539, 579, 450.)

There has been no change in the territory parceled out to the Waters-Pierce Oil Co. since 1878 (Rec., p. 443).

In the year 1882, and in furtherance of the conspiracy charged, an arrangement called the "Standard Oil Trust Agreements" was made, which consolidated numerous competing concerns into one great pool or trust (Rec., pp. 7 to 18, 398, 399).

The following sixteen stockholders of the Standard Oil Company of Ohio became signers of the "Standard Oil Trust Agreements":

John D. Rockefeller,
William Rockefeller,
D. V. Harkness,
H. M. Flagler,
O. H. Payne,
Benj. Brewster,
O. B. Jennings,
A. M. McGregor,
W. C. Andrews,

A. J. Pouch,
J. Huntington,
D. M. Harkness,
Josiah Macey,
W. H. Macey,
W. T. Wardwell,
F. J. Vandergrift.
(Rec., pp. 15, 16, 17, 18, 396, 397.)

The following named stockholders and directors of the Waters-Pierce Oil Company also signed said agreements:
W. P. Thompson,
H. A. Hutchins.
(Rec., pp. 16, 397.)

The Standard Oil trust secured in 1882 60 per cent of the capital stock of the Waters-Pierce Oil Co. and held it down to the pretended dissolution of the said Trust in the year 1882 (Rec., p. 399).

There were nine trustees under the agreements, six of whom were stockholders of the Standard Oil Co. of Ohio, viz.:
John D. Rockefeller,
O. H. Payne,
Wm. Rockefeller,
J. A. Bostwick,
H. M. Flagler,
Benj. Brewster.
(Rec., pp. 11, 396, 397.)

The power of the Trustees over the various subsidiary companies was complete. (Rec., pp. 7 to 18.)

The scheme of the Trust Agreements contemplated the organization of corporations in several of the different States under the name of the Standard Oil Company to take over

the property of other corporations and co-partnerships coming into the Trust.

(Rec., pp. 8, 16, 17.)

Such companies were organized, among them being the—

1. Standard Oil Co. of New Jersey (Rec., p. 1011).
2. Standard Oil Co. of Kentucky (Rec., p. 1031).
3. Standard Oil Co. of Pittsburg (Rec., p. 1042).
4. Standard Oil Co. of Indiana (Rec., p. 427).
5. Standard Oil Co. of Iowa (Rec., p. 1034).
6. Standard Oil Co. of New York (Rec., p. 1057).
7. Atlantic Refining Co. (Rec., p. 1064).

The territory of each was parceled out and each had certain limits of operation, as follows:

The Waters-Pierce Oil Company as already set forth.

The Standard Oil Co. of Indiana does business in the following States:

Indiana,
Illinois,
Iowa,
Wisconsin,
Michigan,
Kansas,
South Dakota,
North Dakota,

A part of Missouri, that State being divided between it and the Waters-Pierce Oil Co.

(Rec., pp. 1024, 443, 552, 553, 575, 576, 577).

The Standard Oil Co. of New York does business in the following States:

New York,
Connecticut,
Rhode Island,
Massachusetts,
Vermont, and

New Hampshire.
(Rec., p. 1024.)

The Standard Oil Co. of Kentucky transacts business in the following States:
Kentucky,
Tennessee,
Georgia,
Florida,
Alabama,
Mississippi and a portion of Louisiana, that portion east of the Mississippi river.
(Rec., pp. 1024, 443.)

The Continental Oil Co. does business in the following States:
Colorado,
New Mexico,
Utah,
Montana, and
Wyoming.
(Rec., pp. 1024, 548.)

The territory of the Waters-Pierce Oil Company is completely surrounded but not invaded by the following companies, as shown above, viz.:
Standard Oil Co. of Indiana in northern half of Missouri and Kansas (Rec., pp. 552, 553).
Standard Oil Co. of Kentucky, Tennessee, Mississippi, and Louisiana, east of Mississippi River.
Continental Oil Co. in Colorado and New Mexico.
(Rec., pp. 539, 429.)

In the year 1892 the Supreme Court of Ohio, enjoined the Standard Oil Company of Ohio from paying any further dividends to the trustees of the Standard Oil Trust

and granted further relief (49 Ohio State Rep.), and the Trust Agreements were put in process of dissolution.
(Rec., pp. 403, 423.)

The capital stock of the Standard Oil Company of New Jersey was increased to One hundred and ten million dollars (Rec., p. 1017), and the number of directors increased from three to nine by the Trustees of the Standard Oil Trust to correspond with the number of Trustees in the Trust (Rec., pp. 1016, 11); and the Standard Oil Co. of New Jersey became the holding company instead of the Trustees of the Standard Oil Trust, one share of the capital stock of the Standard Oil Co. of New Jersey being exchanged for each trust certificate (Rec., pp. 403 to 424).

In the year 1892, when the foregoing acts were decided upon the following named composed the nine Trustees of the Standard Oil Trust:

Paul Babcock, Jr.,
J. H. Alexander,
T. C. Bushall,
W. H. Tilford,
Jas. D. Archbold,
W. H. Rogers,
O. R. Jennings,
Wm. Rockefeller.
(Rec., p. 1016.)

Of those named all except two, T. C. Bushnell and O. R. Jennings, were stockholders of the Standard Oil Company of New Jersey.
(Rec., pp. 1020, 1021, 1022.)

Pursuant to this arrangement the Standard Oil Co. of New Jersey acquired a majority of the capital stock of many corporations, including the following, and still owns same:

Waters-Pierce Oil Co.
Standard Oil Co. of Indiana.
Standard Oil Co. of New York.
Standard Oil Co. of Kentucky.
Continental Oil Co. of Iowa.
Republic Oil Co. of New York.
(Rec., p. 1024, 1025.)

During all this time they were perfecting their monopoly of the oil business, in pursuance of the conspiracy charged, by the acquisition and consolidation of rival and competing concerns throughout the United States.

The business of Cochran Lyman & Co.,
Alexander McDonald & Co.,
Peoria Tank Line Co., and
The Des Moines Oil Tank Line Company were consolidated into one concern under the name of the
Consolidated Tank Line Company (Rec., pp. 536, 537, 538, 552, 553), which was in turn absorbed by the Standard Oil Co. of Kentucky (Rec., pp. 552, 538).

The Scio Refining Co., the Cleveland Refining Co. and the business of Scofield, Shurmer and Teagle were absorbed by the Republic Oil Co., a corporation organized for the purpose of absorbing these competing concerns.
(Rec., pp. 540, 541, 542, 543, 736.)

> "The Republic Oil Co. aimed to supply the trade known as dissatisfied trade formerly supplied by Scofield, Shurmer and Teagle, and finally confined their greatest efforts to supplying the trade demanding goods made by independent companies, having no affiliation with the Standard Oil Co., commonly known as the Trust."
> (Rec., p. 543.)

The Standard Oil Co. acquired and owned a majority of the shares of stock of the Republic Oil Co. practically from the date of its organization.

(Rec., p. 1024, 1025.)

The Vacuum Oil Company of Rochester, New York, was absorbed by the Standard Oil Co., but their brands of oil were continued and the traveling salesman was retained, when soliciting orders in the territory of the Waters-Pierce Oil Company the business was turned over to that company, likewise to the Standard Oil Company when the order was secured in its territory.

(Rec., pp. 578 to 581.)

The Trustees of the Standard Oil Trust, and the subsidiary companies owned by it, occupied quarters at 26 Broadway, New York, where reports of the activities and business of each company was received.

(Rec., pp. 466, 480, 482, 565, to 568, 538, 544, 545, 548, 549, 554, 555, 557, 560, 561, 562, 563, 467, 573, 736, 737.)

The same arrangements were continued after the dissolution of the Trust Agreements, and the business at 26 Broadway was organized into departments, with various committees composed of representatives of the different companies in charge of the business. They had what was called the

Domestic Trade Committee in charge of business in the United States.

The Foreign Trade Committee was in charge of the business of all the other countries of the earth.

(Rec., pp. 438, 545, 565.)

They also had what were called:

Manufacturing Committee;
Lubricating Oil Committee;
Cooperage Committee.
(Rec., p. 438.)

Also the Marine Oil department, and the Statistical department which compiled comparative statistics of the operation of each subsidiary, based upon reports received from all over the world.
(Rec., pp. 565, 566.)

The so-called Domestic Trades Committee adjusted all disputes over territory and harmonized differences between subsidiary companies arising in their management by field officers.
(Rec., pp. 434, 435, 436, 437, 438.)

But if the Committees mentioned failed to agree, the controversy would then be referred to the Executive Committee, of which John D. Rockefeller was the head, for settlement.
(Rec., p. 438.)

None of the subsidiary companies owned by the Standard Oil Company of New Jersey sell oil in the territory of the Waters-Pierce Oil Company, in competition against it, and vice versa.
(Rec., pp. 1024, 539, 548, 551, 552, 553, 554, 450, 572, 573, 574, 575, 576, 577, 578, 579, 735.)

This division of territory between the Waters-Pierce Oil Co. and the Standard Oil Co. was agreed upon in 1878, and it has been observed down to this time.
(Rec., pp. 442, 443, 448, 449, 450.)

The Waters Pierce Oil Co. has purchased almost all of its

supplies from 1878 to the present from the Standard Oil Co.

(Rec., pp. 443, 444, 449, 450, 476, 477, 479.)

The Waters-Pierce Oil Co. on the other hand established no refineries in Texas or in the United States.

(Rec., pp. 472, 473, 444, 448, 449, 450, 504.)

Neither the Standard Oil Company, nor any of its subsidiaries sold oil in Texas in competition with the Waters-Pierce Oil Co.

(Rec., pp. 736, 737, 1023, 1024, 955.)

The Standard Oil Co. owned refineries in Texas, but these refineries did not engage in the sale of oil to the trade in competition with the Waters-Pierce Oil Co.

(Rec., pp. 737, 477, 472, 473, 892, 893.)

On the 15th day of June, 1897, the Waters-Pierce Oil Co. was convicted of violating the Anti-trust laws of Texas and its permit to do business in Texas cancelled, which judgment was affirmed by the Supreme Court of the United States.

(Rec., pp. 1119, 1082, 1083, 1089.)

At the time of this judgment the Standard Oil Co. owned 2,748 shares out of the 4,000 capital stock of the Waters-Pierce Oil Co,, and H. Clay Pierce owned the balance.

(Rec., p. 458.)

H. Clay Pierce undertook to settle his differences with the State of Texas, so as to permit the Company to continue business in the face of the mandate of the Supreme Court of the United States, when he was informed that no company controlled by the Standard Oil Company would be permitted to do business in Texas. He thereupon decided to organize a new company, in which he would hold all the

stock. Under those conditions it was agreed that he should have a new permit.

(Rec., pp. 490, 491, 492.)

Pierce entered into an arrangement with the Executive Committee of the Standard Oil Co., that a new corporation should be organized, in which the Standard Oil Company would own the same interest as in the old company with the difference that the stock should stand on the books in Pierce's name in order to conceal the true ownership thereof.

(Rec., pp. 490, *et seq.*)

On May 28, 1900, the old Waters-Pierce Oil Co. was dissolved by unanimous consent of the stockholders, that is, the Standard Oil Co. and H. Clay Pierce, which was filed May 29, 1900.

(Rec., pp. 1083, 1084.)

On May 29, 1900, a new charter for a new corporation was granted by the State of Missouri, under the same name as the old Waters-Pierce Oil Co., with the same purposes, and with the same capital stock, reciting on its face that H. C. Pierce had subscribed for 3,996 of the 4,000 shares of the capital stock.

(Rec., p. 1085.)

The charter of the new Waters-Pierce Oil Co., plaintiff in error in this case, was filed with the Secretary of State of the State of Texas, on May 31, 1900 (Rec., p. 1087), and a permit was granted to it authorizing it to transact business in Texas for a period of ten years.

(Rec., p. 1088.)

On May 29, 1900, a letter was prepared by the old Waters-Pierce Oil Co. to all of its employees notifying them of the dissolution of the company and discharging them, on

the afternoon of May 31, 1900, but instructing them to hold all the property subject to the order of H. C. Pierce, and to continue making sales.

(Rec., p. 984.)

On the same day another letter was prepared by H. C. Pierce, President of the new Waters-Pierce Oil Co., notifying all the agents of the old Waters-Pierce Oil Co. that the new company had purchased all of the property of the old company, and that they were thereby employed in the same capacity and at the same salary as theretofore.

(Rec., pp. 985, 582.)

The new company succeeded to the plant and business of the old company.

(Rec., p. 506.)

Some of the employees in Texas were not even notified of any change until sometime after it occurred.

(Rec., p. 997.)

Others received the letter discharging them and the letter hiring them over again in the same mail.

(Rec., p. 582.)

The only change which took place in the business, by virtue of the dissolution and re-organization, was noticed in the fact that sometime after the reorganization the company sent out a rubber stamp with which the sentence "Incorporated under the laws of Missouri in 1900," was used to stamp the stationery.

(Rec., p. 582.)

No change was made in the territory occupied by the old company.

(Rec., pp. 492, 445, 448, 449.)

The new company continued to purchase its supplies from the Standard Oil Company as was the custom of the old company.

(Rec., p. 492.)

Shortly after the 3,996 shares of the capital stock of the new company was issued to H. C. Pierce he transferred 2,748 shares in blank to a representative of the Standard Oil Co. in accordance with an agreement had with the Executive Committee of the Standard Oil Co. before the organization of the new company.

(Rec., pp. 490, 491, 492, 487, 451, 452, 453, *et seq.*)

But the stock books did not show the transfer; the stock continued to stand in H. C. Pierce's name until 1904, when the Standard Oil Co. had it transferred on the books of the company to M. M. Van Bueren.

(Rec., pp. 486 *et seq.*)

The new Waters-Pierce Oil Co. continued to send reports of its business, in almost every detail to 26 Broadway, and received instructions regarding the management of its business from the Standard Oil Company.

(Rec., 561, 562, 563, 568, 593, 594, 596, 597, 482, 466, 467, 468, 469, 470, 471, 472, 1091 to 1117, 605 to 624.)

Instead of sending the reports to the Standard Oil Co. direct as before, the new company addressed R. H. McNall, as "Commercial Agent" at 26 Broadway. McNall was chief clerk of H. M. Tilford, a Standard Oil officer, who was a director of the old Waters-Pierce Company.

(Rec., 447, 466, 467, 468, 561, 588.)

McNall continued to occupy the same office with H. M. Tilford at 26 Broadway after his appointment as Commercial Agent of the Waters-Pierce Oil Co.

(Rec., pp. 468, 560, 561.)

But his mail was addressed to him at 75 New Street, New York, which was the back door entrance of 26 Broadway.

(Rec., pp. 468, 562, 587.)

McNall was supplied with stationery of the Waters-Pierce Oil Co., which was distributed through the various departments of the Standard Oil Co., at 26 Broadway, and when they desired to communicate with the Waters-Pierce Oil Co. as to the conduct of their business, the letter would be written on Waters-Pierce Oil Co. stationery, and sent to McNall to be signed by him and then returned to the other Standard Oil Departments to be mailed out.

(Rec., pp. 567, 568.)

The Standard Oil Co. sent its auditors to check up and audit the books of the Waters-Pierce Oil Co.

(Rec., pp. 1027, 1028, 1029, 1030, 1031, 924.)

In sending an auditor in 1901 to check the accounts of the Waters-Pierce Oil Co., Wade Hampton, General Auditor of the Standard Oil Co., in a letter to the company, used the following language:

> "Our Mr. Conrey will probably arrive at your office on Monday next, the 11th inst., to take up the audit of the books and accounts of your general office. For reasons which you undoubtedly will appreciate, it is best that Mr. Conrey be considered an employe of your company during his examination.
>
> "Therefore kindly enter his name on your pay roll from the date of his arrival at $191.67 per month.

"Also kindly pay what expenses he is under from the time he left New York."

The same practice was indulged with subsequent auditors.

(Rec., pp. 1028 to 1031, 481.)

Among the numerous reports sent to McNall touching the business of the Waters-Pierce Oil Co. may be noticed:

Sales Reports (Rec., pp. 593, 1098).

Cash Reports (Rec., pp. 593, 594).

Monthly, semi-annual and annual reports covering the entire sales of the company.

(Rec., pp. 593, 615, 1094, 1106.)

Reports of construction of buildings and plant equipment.

(Rec., p. 594.)

Reports of salaries paid employees of Waters-Pierce Co.

(Rec., p. 594, 607, 623.)

Comparative statements of sales compared to year before.

(Rec., p. 595, 624.)

Statement showing cost of barreling and marketing of oil.

(Rec., pp. 595, 621, 622, 1104.)

Report of sales increase or decrease.

(Rec., p. 595.)

Report showing Waters-Pierce Oil Co. selling price of oils.

(Rec., pp. 596, 1094.)

Report of dividends declared by the Waters-Pierce Oil Co.

(Rec., pp. 596, 605, 606.)

These reports were shown to parties at 26 Broadway.

(Rec., pp. 597, 561, 562, 563.)

These reports with others were sent to the appropriate departments of the Standard Oil Co.

(Rec., pp. 561, 562, 563.)

The Waters-Pierce Oil Co. sold the trade-mark brands of lubricating oils manufactured by the Standard Oil Co. The Standard Oil Company fixed the minimum selling prices of such oils.

(Rec., pp. 689, 609, 1090, 1091, 1094, 1096.)

The Standard Oil Co. had contracts with vessels for marine and lubricating oils; all such vessels that touched at Galveston, Texas, were supplied with such oils by the Waters-Pierce Oil Co., on requisition from the Standard Oil Co.

(Rec., pp. 668, 634, 963.)

On all other oils outside of contract oil delivered to vessels the Waters-Pierce Oil Co. charged the steamers such a price that would allow the marine oil department of the Standard Oil Co. a commission of 5 per cent on all such sales.

(Rec., p. 608.)

In the year 1907 the Louisiana and Texas Saw Mill Co. made contracts in Kansas City, Mo., with the Standard Oil Co. to supply oil for its plant at Kennard, Texas, the Standard Oil Co. turned the contract over to the Waters-Pierce Oil Company to be filled.

(Rec., pp. 850 to 869, 663, 664.)

In 1894 the Waters-Pierce Oil Co. bought out the Eagle Refining Co., an independent plant in Texas, and continued to operate it as an independent concern, until December 31, 1903, the true owership being concealed.

(Rec., pp. 744, 752, to 780.)

Oil was selling at Dallas, Texas, at 9½ cents per gallon under competition at the time the purchase was made. It was afterwards advanced to 22 cents per gallon.

(Rec., pp. 744.)

In 1894 the Waters-Pierce Oil Co. purchased another competitor at San Antonio, Texas, called The Texas Oil and Gasoline Co., and operated it as an independent concern until 1904.

(Rec., pp. 696 to 735.)

The Texas Oil and Gasoline Co. was used to sell oil to customers who would not patronize the Waters-Pierce Oil Co., and to harass others who undertook to sell oil in competition with the Waters-Pierce Oil Co.

(Rec., 719 *et seq.*)

The Waters-Pierce Oil Co. destroyed competition by many and devious methods; information of competitor's shipments obtained through railway employees and otherwise.

(Rec., 555, 550, 551, 720, 435, 436, 1097, 1099, 1117, 1118.)

Gave secret rebates to customers not disposed to trade with them.

(Rec., 729, 1127 to 1134, 550, 551.)

The old Waters-Pierce Oil Co. did 98 per cent of the oil business in its territory.

(Rec., p. 478.)

The new Waters-Pierce Oil Co. has done from 80 to 85 per cent of the oil business in its territory.

(Rec., p. 478.)

The new company, plaintiff in error, started in 1900 with a capital stock of $400,000.00

(Rec., p. 507.)

After seven years it owned physical properties valued at twelve million dollars, and assets worth from forty to fifty millions.

(Rec., pp. 507, 506.)

All this has been acquired notwithstanding dividends of from 600 to 700 per cent annually have been declared upon its capital stock and paid.

(Rec., p. 472.)

Dividends amounting to 100 per cent were declared so frequently as to make no impression upon the mind of its President.

(Rec., p. 493.)

Assets in Texas one million and half dollars, half of which was put in since 1900.

(Rec., p. 954.)

The testimony of two witnesses alone, that of H. Clay Pierce, the President, and R. H. McNall, Commercial Agent of plaintiff in error, makes out a complete case against plaintiff in error under every issue on which the jury found it guilty.

(Rec., pp. 440, *et seq.*, 585 *et seq.*)

## THE CHARGE OF THE COURT.

After the introduction of the evidence the court submitted the case to the jury upon the following charge:

*"Gentlemen of the Jury:*

"In this case the State of Texas, as plaintiff, has sued

the Waters-Pierce Oil Company, a private corporation chartered under the laws of the State of Missouri and doing business in Texas by virtue of a permit issued to it by the State of Texas, on May 31, 1900, as defendant, to cancel said permit and to recover penalties for violations of the anti-trust laws of Texas which the State alleges the defendant has committed on each and every day from May 31, 1900, to April 29, 1907.

"The State alleges that on or about January 1, 1870, John D. Rockefeller, John P. Archbold, H. H. Rogers, Henry M. Flagler, and a number of other persons conceived the scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas, and that said persons to that end and for that purpose entered into a conspiracy among themselves and with other individuals and corporations, including the defendant corporation, which conspiracy the State alleges continued in force and effect from the date of its formation until the date of the filing of the State's second amended petition in this case, and the State further alleges that in pursuance of said alleged conspiracy the defendant has done various acts and entered into various agreements which constitute violations of the anti-trust laws of Texas.

"The State further alleges that the defendant's predecessor, the Waters-Pierce Oil Company, incorporated in 1878, on or about the 5th day of October, 1894, entered into a contract with the Eagle Refining Company, A. W. Clem and certain other individuals named in its petition, by the terms of which defendant acquired the property of said Eagle Refining Company, situated in the city of Dallas, Texas, and the right to operate its business under the name of the said Eagle Refining Company. It further alleges that the defendant did, subsequent to May 31, 1900, operate said Eagle Refining Company and maintain the plant thereof at Dallas, as an apparently competing concern for various purposes prohibited by the anti-trust laws.

"The State further alleges that, in the year 1896, the defendant's said predecessor bought out the business of

the Texas Oil and Gasoline Company and of one Roy Campbell, who were at that time doing business in the city of San Antonio, Texas, and elsewhere, and entered into contracts and agreements with the said Texas Oil and Gasoline Company and Roy Campbell, whereby said Texas Oil and Gasoline Company was thereafter to be operated under said name by defendant as an apparently competing concern with defendant at San Antonio, in the sale of the products of petroleum. It further alleges that said Texas Oil and Gasoline Company was operated by defendant as a concern apparently competing with it at San Antonio subsequent to May 31, 1900, for various purposes in violation of the anti-trust laws of the State. For full particulars of the State's allegations you are referred to its second amended original petition.

"The defendant denies all and singular the allegations of the State, and in addition to various of her special defenses, pleads specially that, if it has entered into any of the agreements or committed any of the acts alleged by the State, none of same constitute violations of the anti-trust laws of Texas, because said agreements were made and said acts done (if at all) solely with reference to subjects of interstate commerce. For full particulars of defendant's allegations, you are referred to its third amended original answer.

"As the law of the case you are instructed as follows, viz:

"I. The burden of proof rests upon the State to establish the affirmative of the issues which will hereafter be submitted in this charge for your consideration by a preponderance of the evidence, and you will find in favor of the defendant on each issue so submitted for your consideration, except such issue or issues, if any, as you find that the State has established by a preponderance of the evidence, and you will return a general verdict for the defendant, unless you find that the State has established by a preponderance of the evidence, some combination or combinations of facts which will entitle it to recover under the law as it is given you in charge by the court.

"II. The statute known as the Anti-trust Law of 1899 was in force on May 31, 1900, and thereafter remained continuously in force until March 31, 1903.

"For the purposes of this charge you are instructed that this act made it unlawful for any corporation transacting or conducting any kind of business in this State to enter into, or become a party to, any agreement or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

"You are further instructed that said statute also made it unlawful for any corporation transacting or conducting any kind of business in this State to bring about or permit any union or combination of its capital, property, trade or acts with the capital, property, trade or acts of any other person or corporation, whereby the price in Texas of any article of manufacture or merchandise would be fixed or sought to be fixed, regulated or sought to be regulated; or whereby the price in Texas of any article of manufacture or merchandise would be reasonably calculated to be fixed or regulated, or whereby the trade in such article of manufacture or merchandise in Texas would be sought to be controlled or limited, or would be reasonably calculated to be controlled or limited.

"The statute known as the Anti-trust Law of 1903 became effective on March 31, 1903, and has since continued in force. For the purposes of this charge you are instructed that this statute defines a trust to be a combination of capital, skill or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes, viz.:

"1. To create or which may tend to create or carry out restrictions in trade or commerce in Texas, or to create or carry out restrictions in the free pursuit in Texas of any business authorized or permitted by the laws of this State.

"2. To fix, maintain or increase the price of merchandise in Texas.

"3. To prevent or lessen competition in Texas in the sale of merchandise.

"4. To abstain from engaging in business or in the sale of merchandise in Texas, or any portion thereof.

"Said statute of 1903 further defines a monopoly to be a combination or consolidation of two or more corporations when effected in any of the following methods, viz.:

"1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create, a trust as above defined.

"2. When any corporation acquires the shares or certificates of stock, franchise or other rights, or the physical properties or any part thereof of any other corporation for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

"III. Oil, all other products of petroleum, and goods, wares or merchandise of any character which the defendant or its agents may have purchased or acquired in any manner outside of the State of Texas and caused to be transported to its agents or others within the State, are the subjects of interstate commerce when they enter this State, and so remain until such commodities are removed from the original tanks, vessels or other packages in which they are imported into the State and become mixed with the common mass of property of similar character in this State. The anti-trust laws of Texas have no reference to agreements or pools or arrangements of any character concerning subjects of interstate commerce, and no agreement, pool or other arrangement, if any, which the defendant may have entered into with reference to the sale of any subject of interstate commerce can be considered by you as violating any anti-trust law of Texas. But neither oil purchased by the defendant from the Corsi-

cana Refinery or elsewhere in Texas, nor other merchandise purchased by defendant at points in Texas, nor such oil or other merchandise purchased by defendant at points outside the State and transported into the State and removed from the original packages or vessels in which it was brought into the State and mingled with other property of similar character in the State, is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any agreement or pool or arrangement entered into by defendant with reference to such property or the sale thereof, if any such sale there were, would be unlawful, if in violation of the anti-trust laws of this State.

"IV. A corporation such as defendant can only act through its agents and servants, but such a corporation is not liable for all of the acts of its agents or servants. It is liable, however, for the acts done in the scope of their employment and agency, and is also liable for the acts of its agents which it has authorized such agents to perform, and it is also liable for the unauthorized acts of its agents, if any, which have been knowingly acquiesced in or ratified by the governing body of said corporation.

"V. Much evidence has been introduced before you relating to the doings and agreements of the agents of corporations other than defendant, and to the doings and agreements of defendant's predecessor's agents prior to June 1, 1900, and to the doings and agreements of defendant's agents, and the agents of other corporations, outside the State of Texas, and to the doings and agreements of individuals both prior and subsequent to June 1, 1900, and both outside and within the State of Texas. None of this evidence is competent or can be considered by you against the defendant, except within the limitations and for the purposes hereinafter stated, viz.:

"If you find from a preponderance of the other evidence in the case, independent of all declarations or statements made by any person or persons, except their evidence given while testifying by deposition or personally as witnesses on the trial of this case, that on June

1, 1900, there was formed or existed an agreement between the governing officers of defendant and the governing officers of any of the other corporations alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, or between the governing officers of defendant and any of the individuals alleged in the State's petition to be co-conspirators with defendant relating to the management of defendant's business, then you may consider for what, if anything, you think it worth, such acts or declarations of all the parties to said agreement, if any, and such acts and declarations of their authorized agents, if any, as were done or made, as the case may be, during the existence of said agreement, if any, and in furtherance of its execution, for the purpose of determining the character of said agreement, and whether or not it contemplated a violation by defendant of the anti-trust laws of Texas.

"You may further consider for what, if anything, you think it worth as tending to show or explain the course of defendant's dealing in Texas, said evidence, if any, of what it did through its duly appointed and authorized agents, if any, outside the State.

"None of said evidence can be considered by you against the defendant for any other purpose whatsoever, and none of it can be so considered by you against the defendant for said purposes, except such of it, if any, as you think proper to be considered when tested by the rules above stated relating to its competency.

"VI. No agreement made by the defendant outside the State of Texas, to violate the anti-trust laws of Texas, if any such there were, can be made the basis for forfeiting its permit to do business in Texas, or for imposing penalties upon it, unless such agreement was executed or attempted to be executed in Texas by the duly authorized agents of defendant; but inasmuch as the undisputed evidence in the case shows that the defendant has continuously maintained its agents in this State and prosecuted its business therein since May 31, 1900, you will be authorized to convict it of violating the anti-trust laws of Texas, if you find from a pre-

ponderance of the evidence in favor of the State on the issues submitted for your consideration in paragraphs VII, VIII, IX, X or XI of this charge.

"VII. If you find from a preponderance of the evidence that he defendant company, acting through its duly appointed and authorized agents, entered into or became a party to an agreement or understanding with the Standard Oil Company of New Jersey, on June 1, 1900, to fix or regulate the price in Texas of oil refined from petroleum, and if you further find from a preponderance of the evidence that the defendant company remained or continued to be a party to said agreement or understanding, if any, and persisted in carrying same out in Texas, if any, through its duly authorized agents on June 1, 1900, or on any other date or dates subsequent to June 1, 1900, and prior to March 31, 1903, and if you further find from a preponderance of the evidence that the oil with reference to which said agreement or understanding, if any, was so made and carried out, was the subject of local as distinguished from interstate commerce, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph seven of the court's charge. You are instructed in this connection that if you find in favor of the State on the issue above submitted for your consideration in this paragraph of the charge, each day embraced between May 31, 1900, and March 31, 1903, during which the defendant remained a party to the agreement or understanding herein mentioned, if there were any such agreement or understanding, and if it remained a party to same on any of said days, would constitute a separate and distinct violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the defendant was on June 1, 1900, or on some date subsequent thereto and prior to March 31, 1903, through the action of its duly appointed and authorized agents, a party to an agreement or understanding with the Standard Oil Company of New Jersey to fix or regulate the price in Texas of oil refined

from petroleum, and if you do not further find from a preponderance of the evidence that the oil with reference to which defendant entered into said agreement or understanding, if any such there were, was the subject of local, as distinguished from interstate commerce, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph seven of the court's charge.

"VIII. If you find from a preponderance of the evidence that on June 1, 1900, or on any date subsequent thereto, and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents, had brought about or permitted any combination or union of its capital with the capital of the Standard Oil Company of New Jersey, whereby the price in Texas of oil refined from petroleum, other than oil which was the subject of interstate, as distinguished from local commerce, was sought to be fixed or regulated, or whereby the price in Texas of such oil would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eight of the court's charge. In this connection you are instructed that if the defendant became a party to a pool of the character mentioned in this paragraph of the charge, each day between May 31, 1900, and March 31, 1903, that it remained a party to such pool, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas. If you do not find from a preponderance of the evidence that on June 1, 1900, or that on some date subsequent thereto and prior to March 31, 1903, the defendant acting through its duly appointed and authorized agents had brought about or permitted a combination or union of its capital with the capital of the Standard Oil Company of New Jersey, and if you do not further find from a preponderance of the evidence that by said combination or union, if such there were, the price in Texas of oil

refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, was sought to be fixed or regulated, or that thereby the price in Texas of such oil was reasonably calculated to be fixed or regulated, or that thereby the trade in such oil in Texas was sought to be controlled or limited, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph eight of the court's charge.

"IX. If you find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit in this State of the business of selling oil refined from petroleum, other than oil which was the subject of interstate as distinguished from local commerce, or to fix, maintain or increase the price of such oil in Texas, or to prevent or lessen competition in Texas in the sale of such oil, and that the defendant remained or was a party to and acted under such combination, if such there were on March 31, 1903, or any date subsequent theerto and prior to April 29, 1907, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph nine of the court's charge. In this connection you are instructed that if the defendant became a party to a trust of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to and acted under such trust, if there were any such days, would constitute a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the defendant, acting through its duly appointed and authorized agents, entered into a combination of its capital with the capital of the Standard

Oil Company of New Jersey, for the purpose of creating in Texas, or which tended to create or carry out in Texas, restrictions in the free pursuit in this State of the business of selling said character and kind of oil, or to fix, maintain, or increase the price of such oil in Texas, or to prevent or lessen competition in Texas, in the sale of such oil, and that the defendant remained or was a party to, and acted under such combination, if such there were subsequent to March 30, 1903, and prior to April 30, 1907, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph nine of the court's charge.

"X. If you find from a preponderance of the evidence that the direction of the affairs of the defendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, and that they were placed under such common management or control, if any, by their respectively authorized officers, under such circumstances that such common management or control, if such there were created or tended to create or carry out restrictions in the sale in Texas of oil of the kind and character mentioned in the last preceding paragraph of this charge, or to fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph ten of the court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the direction of the affairs of the de-

fendant corporation and the affairs of the Standard Oil Company of New Jersey were under the same management or control on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, and that they were brought under such a common management or control, if any, by their respectively authorized officers under such circumstances that such common management or control, if such there were, created or tended to create or carry out restrictions in the sale in Texas of such oil, or fix, maintain or increase the price in Texas of such oil, or to prevent or lessen in Texas the competition in the sale of such oil, you will say by your verdict, we the jury find for the defendant on the issues submitted for our consideration in paragraph ten of the court's charge.

"XI. If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from a preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eleven of the court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph of the charge, each day between March 30, 1903, and April 29, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas.

"If you do not find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on some date subsequent thereto and prior to April 29, 1907, acquired a majority of the capital stock of the defendant corporation, and if you do not further find from a preponderance of the evidence that said stock was acquired and combination effected, if it were at all, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of said character and kind of oil, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will say by your verdict, we the jury find in defendant's favor on the issues submitted for our consideration in paragraph eleven of the court's charge.

"XII. The evidence introduced before you does not show with sufficient definiteness that the defendant has, since May 31, 1900, acted under or persisted in the performance of either the contract with Clem and the Eagle Refining Company and others, or the contract with Roy Campbell and the Texas Oil and Gasoline Company, in such a manner as to violate the Anti-trust Laws of 1899 or 1903. You are therefore instructed to find in defendant's favor on the issues pleaded by the State with reference to said contracts.

"XIII. Evidence has been introduced before you tending to show that the defendant has given rebates and discounts in the course of its dealings; evidence has also been introduced before you tending to show that defendant has made contracts and entered into understandings other than those which have been submitted for your consideration in paragraphs seven to eleven, inclusive, of this charge. Evidence has also been introduced before you tending to show the general course of dealings of defendant in Texas and elsewhere, including some of its business methods in meeting competition. You are instructed that none of this evidence shows or tends to show any violation of the

anti-trust laws of Texas, unless it tends in some degree to establish some one or more of the issues submitted for your consideration in the last above mentioned paragraph of this charge; and you are therefore instructed to acquit the defendant and return a general verdict for it—notwithstanding any and all of said evidence, unless you find in favor of the State on the issues submitted for your consideration in some one or more of said paragraphs of the charge.

"XIV. If you convict the defendant under the foregoing instruction of any violation or violations of the anti-trust law of 1899, you will specify in your verdict the date or days for which it is convicted of having violated said law, and will further specify in your verdict that for said violation or violations, if any you find, that its permit to do business in Texas shall be forfeited, and the amount of money which shall be adjudged against it as penalties for said violations, if any. In fixing the penalties, if any, which you assess against the defendant for any violation of which you may convict it, of the anti-trust law of 1899, you will fix same at not less than two hundred dollars, or more than five thousand dollars per day for each day you find it has so violated the law. If you convict the defendant of any violations of the anti-trust law of 1903, you will specify in your verdict the date or days for which it is so convicted and further specify therein that as a result of said conviction, its permit to do business in Texas shall be forfeited, and the sum of money that shall be adjudged against it as a penalty for such violation, fixing said sum at fifty dollars per day for each and every day that you convict it of having violated said law.

"XV. In order to aid you in preparing your verdict in proper form, when you have reached same, the following forms of verdicts are submitted for your consideration:

"1. If you find in favor of the State on all of the issues submitted to you and for the entire time for which penalties are claimed by the State against the

defendant in its petition, you will say: 'We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for the penalties at.....dollars; and we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty-eight days and fix the penalties at seventy-four thousand four hundred dollars. We further find that the permit of the defendant to do business in the State of Texas should be canceled. We find for the defendant upon all the issues made by the pleadings and not submitted in the charge of the court.'

"2. If you find in favor of the State on some of the issues submitted for your consideration, relating to the alleged violation of the Anti-trust Law of 1899, and in favor of the State with reference to some of the alleged violations of the Anti-trust Law of 1903, you may use the following form of verdict:

" 'We the jury find in favor of the State on the issues submitted for our consideration in the following paragraphs of the court's charge:

" 'We further find that the defendant violated the anti-trust laws of Texas on the following days embraced between May 31, 1900, and March 31, 1903.

" 'We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of .....dollars. We further find that the defendant violated the Anti-trust Laws of 1903, on the following days embraced between the 30th day of March, 1903, and the 29th day of April, 1907.

" 'We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited, and that penalties should be imposed upon it in the amount of.....dollars. On all other issues raised by the pleadings, we find in favor of the defendant.'

"3. If you find in favor of the State with reference to some or all of the alleged violations of the Anti-trust Law of 1899, submitted for your consideration, and if you find in favor of the defendant on other of said alleged violations, and if you find in favor of the defendant on the issue of all of the alleged violations of the Anti-trust Law of 1903, you may use the following form of verdict:

" 'We the jury find in favor of the State on the issues submitted for our consideration in the following paragraph of the court's charge..... We further find that the defendant has violated the anti-trust laws of Texas on each of the following days embraced between May 31, 1900, and March 31, 1903,.....; we further find that because of said violations the permit of the defendant to do business in Texas should be forfeited and penalties should be imposed upon it in the amount of.....dollars. We further find in defendant's favor on all alleged violations of the Anti-trust Laws of 1903, and on all other issues made by the pleading.'

"4. If you find in defendant's favor on all issues submitted for your consideration relating to its alleged violation of the Anti-trust Laws of 1899, but find in favor of the State on all or some of the issues relating to defendant's alleged violation of the Anti-trust Law of 1903, you may use the following form of verdict: 'We the jury find in defendant's favor on all issues submitted for our consideration relating to its alleged violation of the Anti-trust Laws of 1899, but find in favor of the State under the following paragraphs of the court's charge,....., for alleged violations of the Anti-trust Laws of 1903. We further find that the defendant has violated said anti-trust laws on each of the following days embraced between March 30, 1903, and April 29, 1907,..... We further find that on account of said violations the permit of the defendant to do business in Texas should be forfeited,

and that penalties should be imposed upon it in the sum of.....dollars.'

"5. If you desire to return a general verdict for defendant you may use the following form of verdict: 'We the jury find for the defendant.'

"XVI. You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to their testimony; but you are bound to take the law as it is given you in charge by the court and to be governed thereby in arriving at your verdict." (Rec., pp. 284-294.)

## THE VERDICT.

The verdict of the jury was as follows:

"We the jury find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900, and March 31, 1903, being 1033 days, and for penalties, 1,549,500.00 dollars.

"And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903, and April 29, 1907, being fourteen hundred and eighty-eight days, and fix the penalties at seventy-four thousand four hundred dollars.

"We further find that the permit of the defendant to do business in the State of Texas should be canceled.

"We find for the defendant upon all issues made by the pleadings and not submitted in the charge of the court."

## THE JUDGMENT.

The court rendered judgment for the State in accordance with the verdict for $1,623,900, and a cancellation of the defendant's permit to do business in this State.

Rec., pp. 314-315.

## APPEAL.

From the judgment of the District Court the defendant corporation prosecuted an appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas. The Court of Civil Appeals affirmed the judgment of the District Court in an opinion which after setting forth the charge of the trial court and the verdict of the jury, found:

> "There is evidence in the record which supports the findings of the jury and we find the facts to be as found by the verdict."

## OPINION.

The remainder of the opinion was as follows:

> "1. Assisted by elaborate briefs and arguments submitted by able counsel on both sides, this court has given to this important case earnest and careful consideration. The volume of business on our docket and the great number of questions presented preclude extended consideration in this opinion of many of the questions raised in appellant's brief. We therefore announce, in general terms, our conclusion to the effect, that it is *not* shown that error was committed in overruling appellant's application for a change of venue, in various rulings upon exceptions to pleadings, and as to admissibility of testimony.
>
> "A majority of the court also hold that no positive error has been assigned upon the charge of the court. The writer of this opinion is of a different view concerning the eleventh section of the charge, and concurs with counsel for appellant in their contention that it was calculated to mislead the jury into the belief that they could find against the defendant upon the issues therein submitted, regardless of whether it had any knowledge of, participated with, or aided or abetted the Standard Oil Company in the wrongful conduct therein referred to. The provision of the Anti-trust Statute of March 31, 1903, upon which the charge in question

was evidently founded, seems to be addressed, in the main, against the corporation which acquires stock or other property of another corporation with the intention of using it for the purpose specified in the statute and it can not properly be construed to include the corporation whose stock or property has been acquired, and subject it to the penalties prescribed by the statute, unless that corporation is, in some manner, responsible for the unlawful acts of the acquiring corporation.

"These are my individual views, and the other members of the court do not concur in the construction placed by me upon the charge. However, we are all agreed that, if the charge in question be erroneous, it affords no ground for reversal, because the jury found that appellant had violated other provisions of the Anti-trust Act of 1903, and awarded only one penalty for each day's violation. Having found for the State on these other issues, if the verdict had been in appellant's favor on the issues submitted by the charge under consideration, the judgment should have been the same; and, therfore, if that section of the charge was erroneous, such error is now harmless and immaterial.

"In reference to the assignment of error complaining of the order of the court appointing a receiver, it is sufficient to say that appellant has exercised its right to prosecute a separate appeal from that order, and this court, in considering that appeal, has decided against appellant. It is not entitled to have the order appointing a receiver reviewed by this court twice or in two distinct proceedings.

"2. The constitutionality and validity of the Anti-trust Acts of May 25, 1899, and March 31, 1903, have been vigorously assailed in numerous respects. We overrule these objections and hold that these statutes authorize and sustain this suit. (State vs. Laredo Ice Company, 96 Texas, 467; Waters-Pierce Oil Co. vs. The State, 44 S. W., 936.)

"The contention that these statutes are too indefinite and uncertain in the particulars involved in this case is not regarded as tenable. The Sherman Anti-trust Law enacted by Congress is not more definite and specific

than these statutes, and that law has stood the test against similar objections in the Supreme Court of the United States. (United States vs. Knight Company, 156 U. S., 1; United States vs. Trans-Missouri Freight Association, 166 U. S., 291; United States vs. Joint Traffic Association, 171 U. S., 505; Hopkins vs. United States, 171 U. S., 578; Anderson vs. United States, 171 U. S., 604; Addyston Pipe & Steel Co. vs. United States, 175 U. S., 211; Montague & Co. vs. Lowry, 193 U. S., 38; Northern Securities Company vs. United States, 193 U. S., 196.)

"3. This suit was instituted on September 22, 1906, and the defendant interposed a special exception to the petition in so far as it sought to recover penalties for alleged violation of the anti-trust laws of this State prior to the 22d day of September, 1904, for the reason that it appeared from the face of the plaintiff's petition that the right to recover such penalties accrued more than two years before the suit was filed; and was, therefore, barred by the statute of limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure of this State. That exception was overruled, and the court refused to give the jury a special instruction, requested by appellant, announcing and applying the same proposition of law. These rulings of the trial court are assigned as error, and present one of the most important questions in the case. Chapter 1 of Title 4 of the Code of Criminal Procedure is headed thus: 'The time within which criminal actions may be commenced.' Article 219 reads as follows: 'For all misdemeanors an indictment or information may be presented within two years from the commission of the offense and not afterward.'

"By the Penal Code offenses which are punishable by pecuniary fine only are designated misdemeanors; and appellant's contention seems to be that the things condemned by the Act of May 25, 1899, upon which this suit in part is based, constitute misdemeanors; and that, although civil in form, the suit is criminal in nature and barred by Article 219 of the Code of Criminal Procedure. It is also contended that the pecuniary

penalties imposed by the Act of March 31, 1903, constitute part of the punishment prescribed by that act, and that the suit for the penalties accruing thereunder constitutes a criminal case, and is barred by Article 218 of the Code of Criminal Procedure, which bars prosecutions for felonies.

"The second, third, fourth and sixth sections of the Act of May 25, 1899, declare that all persons, firms, corporations or associations of persons who violate those sections 'shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.' The eleventh section states that all who do the things therein condemned shall be 'adjudged a monopoly and be subject to all the pains and penalties provided in this act.' The seventh section provides for the forfeiture of the charter of any domestic corporation and permit to do business granted to any foreign corporation for violations of the statute. The fifth section reads as follows: 'Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act, shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State at the relation of the Attorney-General or the district or county attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.'

"The pertinent part of the ninth section is expressed in these words: 'It shall be the duty of the Attorney-General and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The Attorney-General and the prosecuting attorney shall institute and conduct all suits begun in the district courts, and upon appeal the Attorney-General shall prosecute said suits in the Courts of Civil Appeals and Supreme Court.'

"The first section of the Anti-trust Act of March 31, 1903, defines a trust. The second section defines a monopoly, and the third section prescribes what act shall constitute a conspiracy in restraint of trade. The fourth section declares all trusts, monopolies and conspiracies in restraint of trade to be illegal. The fifth, sixth and seventh sections make provision for the forfeiture of charters of domestic corporations violating that act, and the eighth section makes a similar provision in reference to the permit of foreign corporations to do business in this State. The seventh and tenth sections use the word 'convicted,' but the seventh relates to the subject of the forfeiture of charter rights, and the tenth to the subject of forfeiture of a foreign corporation's right to do business in the State, which shows that the Legislature did not have in mind a proceeding by indictment or criminal information. The eleventh section reads as follows:

> " 'Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the Attorney-General, or the district or county attorney, under the direction of the Attorney-General, to prosecute for recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this act shall be over and above the fees allowed him under the general fee bill.'

"The thirteenth section of that act reads as follows: 'And in addition to the penalties and forfeitures herein provided for every person violating this act may further be punished by imprisonment in the penitentiary not less than one nor more than ten years.'

"We agree with counsel for appellant that these statutes are penal. They were enacted for the purpose of suppressing and preventing certain things regarded by the Legislature as detrimental to the public interest. The penalties prescribed were intended as punishment, but it does not follow that this is a criminal case within the purview of Article 219 of the Code of Criminal Procedure. After a careful consideration of all their terms, we have reached the conclusion that it was the intention of the Legislature in enacting the two statutes under consideration to create a cause of action in behalf of the State for the pecuniary penalties therein prescribed, to be recovered in a civil suit. We reach this conclusion mainly from the language of the fifth section of the Act of 1899, and the eleventh section of the Act of 1903. These sections declare that those who violate any of the provisions of those acts shall forfeit and pay, in the one instance not less than $200 nor more than $5,000, and in the other instance $50, to be recovered in an action in the name of the State. It is true that in some places in these laws the procedure is designated 'prosecutions,' but in others they are spoken of as 'actions' and 'suits.' In the ninth section of the Act of 1899 it is declared to be the duty of the Attorney-General and district and county attorneys 'to institute and conduct all *suits* begun in the district courts, and upon appeal the Attorney-General shall prosecute said *suits* in the Courts of Civil Appeals and Supreme Court.'

"Section 5 of that act, construed in connection with Section 9, indicates with absolute certainty a legislative purpose to authorize civil suits for the recovery of the pecuniary penalties prescribed. The two sections together indicate that it was not intended that such penalties should be enforced by a criminal proceeding, because if that act creates a criminal offense such offense would be a misdemeanor, of which the district court would have no jurisdiction. The Constitution confers upon that court exclusive jurisdiction of suits by the State for forfeitures and penalties; and it must be presumed that in enacting that statute the Legisla-

ture intended to provide for such suits as were authorized by that provision of the Constitution, and not to create criminal offenses of which the county court alone would have original jurisdiction, otherwise the Legislature would not have used the language, 'shall institute and conduct all suits begun in the district courts.'

"It is true that both of these statutes contain some expressions common to criminal procedure, such as 'offense,' 'guilty,' and 'convicted.' The word 'guilty,' however, is frequently used in civil cases, as 'guilty of fraud,' 'guilty of negligence.' And the word 'offense,' as used in these statutes, has reference to violations of their provisions, and is not equivalent to the words 'felony,' or 'misdemeanor.' However, we do not hold that it is necessary to use either of the latter terms to create a criminal offense; nor, on the other hand, do we think that the words 'offense,' 'guilty' and 'convicted' necessarily determine that these are criminal statutes to be enforced exclusively by indictment or information. The word 'suit' is very generally used to designate a civil case, and seldom, if ever, applies to criminal cases.

"As these statutes do not, in terms, require a resort to criminal procedure for their enforcement, then, even if they do not direct any method of enforcement, we are of the opinion that the State had the right to proceed in a civil action for a recovery of the pecuniary penalties. In such cases it is a well established rule that an action of debt will lie for the recovery of statutory penalties. (5th Ency. Plead. and Prac., 907, and authorities there cited.) It has been so decided in this State in Davidson vs. Missouri Pacific Ry. Co., 3 Texas Court App., 173, where it was held that a suit to recover a statutory penalty was an action of debt, and barred by our statute of limitation, which requires actions for debt, where the indebtedness is not evidenced by a contract in writing, to be commenced within two years. That the State may also bring an action for debt for the recovery of statutory penalties seems to be equally well settled. It was so held by the Supreme Court of the United States in Stockwell vs. United States, 13 Wall., 531. That was an action by the gov-

ernment to recover double the value of certain shingles, alleged to have been illegally imported into the United States. The act of Congress upon which the suit was founded reads as follows: 'That if any person or persons shall receive, conceal or buy any goods, wares or merchandise, knowing them to have been illegally imported into the United States, and liable to seizure by virtue of any act in relation to the revenue, such person or persons shall, on conviction thereof, forfeit and pay a sum double the amount of value of the goods, wares or merchandise so received, concealed or purchased.' In that case, among other things, the court said:

> " 'A verdict and judgment having been recovered against the defendants in the court below, the record has been removed into this court and four errors have been assigned.
>
> " 'The first is that a civil action of debt will not lie, at the suit of the United States, to recover the forfeitures or penalties incured under this act of Congress, and that the court below erred in holding that such an action might be maintained. It is not contended that an action of debt will not lie to recover duties, if the defendant be the owner or importer of the goods imported, for it is conceded that, by the act of importing, an obligation to pay the duties is incurred. The obligation springs out of the statutes which impose duties. Nor is it doubted that when a statute gives a private person a right to recover a penalty for a violation of law he may maintain an action of debt, but it is insisted that when the government proceeds for a penalty based on an offense against law it must be by indictment or by information. No authority has been adduced in support of this position, and it is believed that none exists. It can not be that whether an action of debt is maintainable or not depends upon the question who is the plaintiff. Debt lies whenever a sum certain is due to the plaintiff, or a sum which can readily be reduced to a certainty—a sum requiring no future valua-

tion to settle its amount. It is not necessarily founded upon contract. It is immaterial in what manner the obligation was incurred, or by what it is evidenced, if the sum owing is capable of being definitely ascertained. The Act of 1823 (3 Stat. at L., 781) fixes the amount of the liability at double the value of the goods received, concealed or purchased, and the only party injured by the illegal acts, which subject the perpetrators to the liability, is the United States. It would seem, therefore, that whether the liability incurred is to be regarded as a penalty or as liquidated damages for an injury done to the United States, it is a debt, and as such it must be recoverable in a civil action.

" 'But all doubts respecting the matter are set at rest by the fourth section of the act, which enacted that all penalties and forfeitures incurred by force thereof shall be sued for, recovered, distributed and accounted for in the manner prescribed by the Act of March 2, 1799 (1 Stat. at L. 627), entitled "An Act to regulate the collection of duties on imports and tonnage." By referring to the eighty-ninth section of that act, it will be seen that it directs all penalties accruing by any breach of the act, to be sued for and recovered, with costs of suit, in the name of the United States of America, in any court competent to try the same; and the collector within whose district a forfeiture shall have been incurred is enjoined to cause suits for the same to be commenced without delay. This manifestly contemplates civil actions, as does the proviso to the same section, which declares that no action or prosecution shall be maintained in any case under the act unless the same shall have been commenced within three years after the penalty or forfeiture was incurred. Accordingly, it has been frequently ruled that debt will lie at the suit of the United States to recover the penalties and forfeitures imposed by statutes. U. S. vs. Colt Pet. (C. C.), 145; Jacob vs. U. S., 1 Brock, 520;

U. S. vs. Bougher, 6 McLean, 277; Walsh vs. U. S., 3 Wood. & M., 342; U. S. vs. Lyman, 1 Mass., 482; U. S. vs. Allen, 4 Day, 474. It is true that the statute of 1823 imposes the forfeiture and liability to pay double the value of the goods received, concealed or purchased with knowledge that they had been illegally imported, "on conviction thereof." It may be, therefore, that an indictment or information might be sustained. But the question now is whether a civil action can be brought and, in view of the provision that all penalties and forfeitures incurred by force of the act shall "be sued for and recovered" as prescribed by the Act of 1799, we are of the opinion that debt is maintainable. The expression "sued for and recovered" is primarily applicable to civil actions, and not to those of a criminal nature.'

"As to the point made in reference to the penalties being indefinite under the Act of 1899, in addition to the case just cited, we refer to Rockwell vs. The State, 11 Ohio, 130, where the law fixed the penalty at not less than $5 nor more than $50, and the objection referred to was overruled, and it was held that an action of debt would lie. Other courts have held that statutes somewhat similar to those under consideration confer upon the State a cause of action to be maintained in a civil suit (Burgh vs. The State, 118 Ind., 133; Davis Admr. vs. State, 119 Ind., 555; State vs. Grove, 77 Wis., 448; Territory of New Mexico vs. Baca, 2 New Mex., 183). Interesting discussions of the terms 'fines,' 'forfeitures' and 'penalties' will also be found in People vs. Nedrow, 122 Ill., 363; Gosselink vs. Campbell, 4 Iowa, 300.

"Our conclusion is that the statutes under consideration vest in the State a civil right of action for the pecuniary penalties prescribed for violations of the provisions of those statutes. This being true, and as our statute of limitations applicable to civil cases does not include and bar the State, we hold that limitation is not available as a defense in this case. We do not rest this

ruling upon the ground that the statutes under consideration do not create criminal offenses. If it be conceded that they create such offenses, criminal prosecutions for which would be barred within two years, it does not follow that the penalties which might have been recovered by such prosecutions can not, when authorized, be recovered in a civil action. Our Penal Code and Code of Criminal Procedure deal exclusively with criminal cases, and that portion of the latter which deals with the subject of limitation only purports to fix the time within which criminal actions may be commenced; and Article 219, relied on by appellant, merely forbids prosecutions by indictment or information after two years from the commission of the offense.

"It is argued on behalf of appellant that, even though a statute creating an offense may confer upon the State the right to maintain a civil action to recover a pecuniary penalty for violating the statute, still that right would be barred by Article 219, which would bar the right to enforce the penalty by indictment or information. If Article 219, or any other statute, declared that no right of action should exist or no sort of proceeding be instituted for the collection of a penalty after two years, appellant's contention would be correct; but that article is much narrower in its scope and merely prohibits prosecutions in the manner and by the means prescribed for the prosecution of criminal cases. It may be true that the same general result would be sought in the one case as in the other, viz., recovery of the penalty, and, if that were the only thing to be considered, there would be force in the argument that in prohibiting criminal prosecutions after a specified time the Legislature intended thereby to prevent any other character of procedure which had for its purpose the accomplishment of the same general result. If the two proceedings, civil and criminal, were not so essentially different the contention urged might be sustained; but the statutes under consideration apply to natural persons as well as corporations, and as to such person, civil and criminal proceedings are widely different. In a civil action

against an individual to recover a penalty, he is notified of the suit by delivering to him a citation. When the case is tried, if he loses, the only result is a personal judgment against him for a specified sum of money to be collected by execution and not otherwise. But if he is proceeded against criminally for the enforcement of a penalty he is arrested and required to give bond or stay in jail until after the case is tried. Upon trial, if he is convicted, the judgment not only goes against him for the penalty, but, unless he pays it, he is again incarcerated in jail. Thus it will be seen that in a criminal proceeding to enforce the penalty the defendant would necessarily be subjected to the ignominy of an arrest by a public officer; and, upon contingencies which often occur, would be incarcerated in jail. Now when the Legislature prescribed a time which would prevent a prosecution fraught with these serious consequences, does it necessarily follow that it intended to cut off any right the State might have to obtain a personal judgment for a pecuniary penalty, without resorting to a procedure that would bring about any such harsh results? We think not. In prescribing limitation for criminal proceedings we believe the Legislature had in mind cases criminal, both in substance and form, and had no intention of affecting any right the State might assert in a civil action.

"Chief Justice Marshall, in Adams vs. Woods, 2 Cranch., 337, announced that if a law should merely declare that no indictment or information should be presented after a specified time, such law would be pleadable only in bar of indictments or informations, and would not bar a civil action for a recovery of the penalty prescribed for violating a statute.

"An offense which is punishable by imprisonment in the penitentiary, absolutely or in the alternative, is a felony; and as the Anti-trust Act of 1903 fixes confinement in the penitentiary as an alternative punishment, appellant pleaded Article 218 of the Code of Criminal Procedure in bar of the State's right to recover part of the penalties sued for under that act. Article 218 is framed like Article 219, and would apply to a criminal

prosecution based upon the Act of 1903, and bar such prosecution after three years. As we hold that it was the intention of the Legislature to confer upon the State the right to maintain a civil action for the pecuniary penalties therein prescribed, we hold that such right of action is not barred by Article 218. In other words, while the penalties referred to were intended, in a certain sense, as punishment, they were not imposed as punishment to be inflicted through the onerous instrumentalities of a criminal prosecution.

"Appellant also pleaded the statute of limitation of two and four years embodied in the Revised Statutes and applicable to civil cases. It is contended that the two years' statute has application upon the theory that if the State's suit is an action of debt, and not instituted for the preservation of the public rights, revenues or property, then the State should not be exempt from limitation, but should be treated as any other litigant. It is the rule of the common law of England that, unless so expressly enacted, limitation does not run against the sovereign, and that is the rule in the American States. We are not prepared to place upon that rule the restriction urged, but if we should do so it would not be proper to apply it to this case. In seeking to recover the penalties here involved, the State is endeavoring to enforce statutes enacted for the protection of the public interest. One of the main objects of the suit is to protect and preserve public rights and promote a well established public policy.

"In view of what we have already said, it is hardly necessary to add that we regard the four years' statute of limitation as equally unavailing. In Brown vs. Sneed, 77 Texas, 471, which holds that limitation does not apply to the State unless so expressly provided, the authorities are collated and reviewed. We also hold that no error was committed in refusing a charge to the effect that the State must prove its case beyond reasonable doubt. Being a civil case, that rule does not apply.

"4. It is contended on behalf of appellant that the

Anti-trust Act of May 25, 1899, was rendered unconstitutional by the passage of another statute at the same session of the Legislature entitled 'An Act to protect workingmen in the right of organization and the purposes thereof,' approved May 27, 1899, wherein it was provided that from and after its passage it should be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor and personal service in their respective pursuits and employments. By the third section it is declared that that act shall not apply to combinations or associations of capital or capital and persons, natural or artificial, formed for the purposes of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade, and that nothing therein contained shall be held to interfere with the terms and conditions of private contracts with regard to the time of service or other stipulations between employers and employees, and 'that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies.' In view of these limitations placed upon that act, we are of the opinion that it was not the intention of the Legislature to authorize anything to be done that was prohibited by the Act of May 25, 1899. Hence we hold that this statute engrafts no exemptions upon the anti-trust statute referred to.

"5. The Anti-trust statute of May 25, 1899, having been superseded and repealed by the Act of March 31, 1903, which diminished the pecuniary penalties, appellant sought to have the latter statute applied to the time before as well as after it went into effect. This was refused, and we think properly so on account of this proviso in the latter act: 'Provided nothing in this act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit for-

eign corporations from doing business in this State, for acts committed before this act took effect.' We are of opinion that this proviso preserved whatever rights the State had under the former law, including the right to enforce the penalties prescribed by that act. We are unable to concur in the proposition that it was merely intended to preserve the right to, but not the amount of the penalties. Nor can we sanction the proposition that because of the location of a comma in the proviso quoted it was the intention of the Legislature to protect and preserve the rights of the State to recover penalties from domestic corporations and not preserve such right as against foreign corporations. No reason existing for making such a marked discrimination, we are not willing to hold that it was the intention of the Legislature to do so, merely because a comma was so used as to render that construction plausible. In construing written laws, courts are not bound by rules of grammar, and may disregard them in order to give effect to manifest legislative intention.

"6. It is claimed that the trial court should have granted appellant's motion for a new trial based upon the ground that the judgment imposes excessive fines, and operates as a deprivation of property without due process of law. It is also contended that the Act of 1899 should be declared void, because it authorizes excessive fines and forfeitures. That question has already been decided against appellant's contention in State vs. Laredo Ice Co., 96 Texas, 467. The verdict, while large, is much under the maximum permitted by the law. Its magnitude is mainly attributable to appellant's repeated and long-continued violations of the law, covering a period of six years. Hence we have reached the conclusion that the verdict is not so large as to render it manifest that the jury were actuated by prejudice or other improper motives.

"7. In appellant's motion for a new trial in the court below, and in its presentation of the case here, the verdict of the jury has been challenged, the contention being that the testimony fails to show that appellant has violated any of the anti-trust laws of this State.

The evidence is very voluminous, and it is not necessary that it be set out or epitomized in this opinion. It is sufficient, we think, to show that from the date of its permit to do business in this State, May 31, 1900, appellant has been a party to an agreement or understanding with the Standard Oil Company of New Jersey, one object of which was to create a monopoly and control the price of petroleum oil and prevent competition in its sale in a large and specified territory, including the State of Texas; and that, to a large extent, such object has been accomplished. In so far as that agreement related to this State, appellant, acting by its agents, performed it within this State; and such performance within the limits of the State constitutes violations of Texas laws and renders appellant amenable to such laws, although the agreement between it and the Standard Oil Company may not have been made in this State. To a large extent the case rests upon circumstantial evidence; but we can not say that the jury were not warranted in the conclusions drawn from it. Hence we hold that the verdict is supported by testimony, and no error was committed in overruling the motion for a new trial.

"Upon the whole case our conclusion is that reversible error has not been shown, and, therefore, the judgment will be affirmed.

"Affirmed.

"W. M. KEY,
"*Associate Justice.*

"Filed December 11, 1907."

## FURTHER APPEAL.

The judgment of the District Court being affirmed, and a motion for rehearing having been refused, application was made to the Supreme Court of the State of Texas for a writ of error. This application being refused and a motion for a rehearing upon the application being overruled, the defendant Company brought the case to this court upon

writ of error granted by Mr. Justice White, to the Court of Civil Appeals.

## BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

An effort on the part of defendant in error to systematically and logically answer the contention made by plaintiff in error has been necessarily abandoned. The assignments of error which form the basis for the application of the writ of error are so involved in their phraseology that the meaning of a number of them can not be determined. The principle brief of plaintiff in error outlines fourteen "questions in the case." The relation between these "questions" and the assignments can rarely be seen, and the relation of some of them to the case are as difficult of ascertainment. With the aid of the two additional briefs filed it is believed that counsel for defendant in error has determined the contentions made in behalf of plaintiff in error and counter propositions are made on this assumption.

I. *Whether a Federal Question is involved.*
   First Proposition.
II. *Constitutionality of Texas Anti-Trust Statutes.*
   Second Proposition. Not *ex post facto* or retroactive.
   Third Proposition. Equal Protection of Law.
   Fourth. Due Process of Law.
III. *Stock Ownership by Standard Oil Company.*
   Fifth Proposition. Federal Question.
   Sixth Proposition. Unlawful.
IV. *Vagueness and uncertainty of law.*
   Seventh Proposition.
V. *The Penalty.*
   Eighth Proposition. Legislative Power.
   Ninth Proposition. Laws valid.

Tenth Proposition. Penalty Proper.
VI. *Receivership.*

## I. NO FEDERAL QUESTION INVOLVED.

*First Proposition of Defendant in Error.*

*No substantial Federal Question requiring the exercise of the jurisdiction of this court is involved in this case.*

### STATEMENT.

The statement at the beginning of the brief is referred to and the pertinent facts will be mentioned in the argument.

### AUTHORITIES.

Arkansas Southern R. R. vs. German Bk., 207 U. S., 275.
Leathe vs. Thomas, 207 U. S., 98.
Stickney vs. Kelly, 209 U. S., 422.
Thomas vs. Iowa, 209 U. S., 263.
Bachtel vs. Wilson, 204 U. S., 36.

### ARGUMENT.

The rules which seem to govern this court in determining whether it will exercise jurisdiction, other than by dismissing or affirming in cases of error to State courts are:

The mere assertion that a provision of the laws or constitution has been violated w. not be sufficient; the plaintiff in error must show wherein the constitution or laws have been invoked in a case in which they could have applied and that their protection was refused.

The court must have decided against the claim asserted and if the decision is based upon some other ground the Federal question will not be involved unless there was a palpable evasion of the Federal question.

Where a Federal question was unnecessarily decided, this court will not take jurisdiction.

The following excerpts from opinions of this court will further state the rules.

Thomas vs. Iowa, 209, U. S., 263:

> "Something more than this vague and inferential suggestion of right under the Constitution of the United States must be presented to the State courts to give us the limited authority to review their judgments, which exists under the Constitution and is regulated by section 709 of the Revised Statutes."
>
> See Clarke vs. McDade, 165 U. S., 168.
> Miller vs. Cornwall R. R. Co., 168 U. S., 131.
> Hardy vs. Illinois, 196 U. S., 78.

Bachtel vs. Wilson, 204 U. S., 36.

> "The best that can be said for the plaintiffs in error is that the action of the court was ambiguous. We resolve the ambiguity against the parties complaining, who are bound to clearly show that a Federal right was impaired rather misuse our ingenuity to spell out a Federal question to aid a defense which is merely technical and destitute of substantial merit. It does not appear that the judgment was based upon the decision of any Federal question."

Leathe vs. Thomas, 207 U. S., 98:

> "It is admitted that the general and well settled rule is that in a case coming from a State court this court can consider only Federal questions, and that it can not entertain the case unless the decision was against the plaintiff in error upon those questions. Murdock vs. Memphis, 20 Wall., 590; Sauer vs. New York, 206 U. S., 536. It is further admitted that a

decision upon those questions must have been necessary to the decision of the case, so that if the judgment complained of is supported also upon other and independent grounds, the judgment must be affirmed or the writ of error dismissed as the case may be. Murdock vs. Memphis further establishes that when the record discloses such other and completely adequate grounds this court commonly does not inquire whether the decision upon them was or was not correct, or reach a Federal question by determining that they ought not to have been held to warrant the result. Eustis vs. Bolles, 150 U. S., 361; Costello vs. McConnico, 168 U. S., 674."

Arkansas Southern R. R. vs. German Bank, 207 U. S., 275:

"According to the well settled doctrine of this court with regard to cases coming from State courts, unless a decision upon a Federal question was necessary to the judgment, or in fact was made the ground of it, the writ of error must be dismissed, and even when an erroneous decision upon a Federal question is made a ground, if the judgment is also supported upon another which is adequate by itself and which contains no Federal question the same result must follow as a general rule. Moreover, ordinarily this court will not inquire whether the decision upon the matter not subject to its revision was right or wrong."

Applying these rules to the instant case, it does not appear that a Federal question of substantial character and requiring a review by this court of the case is presented.

Most of the assignments of error by plaintiff in error are involved in their construction and uncertain in their meaning. Since, however, no Federal question not presented in the can be considered by the court they are examined with a view of establishing the proposition being argued.

## The First Assignment.

By this assignment it is asserted that the Waters-Pierce Oil Company was held responsible for the act of the Standard Oil Company in acquiring the stock of the Waters-Pierce Oil Company before the latter company was organized and that thereby defendant's constitutional rights were invaded.

The assignment misstates the facts, but a minute investigation is rendered unnecessary by the circumstance that the charge of the court and verdict of the jury concerning the matter of stock ownership was eliminated from the case by the Court of Civil Appeals.

No complaint can be made of the act itself based upon the idea that it undertakes to punish for some act committed prior to its passage. No such construction of it is possible. All it purports to do that in any sense approaches the proposition made is to undertake to destroy illegal combinations made before the passage of the act and continuing to operate within the State afterward with certain illegal purposes and certain illegal effects. No person has a vested right in an illegal status and its continuance may be prohibited and punished. A combination effected by stock ownership for the purpose of affecting prices and effecting a monopoly was prior to 1903 illegal so far as interstate commerce was concerned by reason of the Sherman Act, and was so far as Texas business was concerned illegal by virtue of the common law and the act of 1899.

But if that part of the act of 1903 were unconstitutional it would not affect the constitutionality of the remainder of the act, and since the remainder of the act was alone that upon which the Court of Civil Appeals predicated its decision, no Federal question can be pulled into this case by denouncing this immaterial part of the act as unconstitutional.

THE SECOND ASSIGNMENT.

See discussion under assignments one, four and five.

THIRD ASSIGNMENT.

The assignment is with reference to penalties on account of acts done before the passage of the acts. No recoveries were sought with reference thereto.

FOURTH ASSIGNMENT.

The fourth assignment is directed to the assumed error of the trial court in refusing to strike out the portion of the petition of plaintiff which alleges acquisition of stock by the Standard Oil Company.

It is assigned as error upon the ground that "when defendant's permit to do business in Texas was granted on May 31, 1900, it was not competent nor within the legal power of the legislature to interfere with such ownership or divest the Standard Oil Company of its said property, or to make it an offense by the defendant, subjecting it to penalties and a forfeiture of its said permit for such vested ownership to continue, and the said statute is violative of the Constitution of the United States for that it is both *ex post facto* and retroactive in its operation."

As heretofore shown the construction and effect of the act of 1903 in so far as it may affect ownership of Waters-Pierce Oil Company stock by the Standard Oil Company is not involved in the case. The statute did not undertake to effect any vested right of the Standard Oil Company or any other company or punish that or any other company for anything done prior to its passage. It therefore did not impair vested rights and the act was neither retroactive or *ex post facto*. But if the part under consideration had had all these demerits that fact could not here be invoked since the decision appealed from did not deny these claims.

For this same reason the balance of this assignment which invokes the constitutional inhibitions against taking property "without due process of law," against statutes impairing the obligations of contracts, and against *ex post facto* laws, is entirely without merit.

### The Fifth Assignment.

The fifth assignment seems to involve the proposition that the plaintiff undertook to hold defendant responsible for the ownership of the stock of the Waters-Pierce prior to the taking effect of the statute of 1899 and that thereby defendant is deprived of property "without due process," that the act "impairs the obligation of contracts," that it is "retroactive," that defendant is denied the "equal protection of the law," and is subjected to all the other constitutional injuries that are suffered by those who have lost because they could find no defense.

It is reiterated that plaintiff's petition did not predicate any violation of its anti-trust statutes of any ownership of stock of the "old" Waters-Pierce Oil Company by the Standard Oil Company or any other corporation. The petition did not predicate any violation of its anti-trust statutes of any act or thing done by the "old" Waters-Pierce Oil Company, or any other corporation prior to May 31, 1900. The proof of acts prior to that date was for the specific limited and lawful purpose of showing a conspiracy and this was following by showing that the conspiracy continued thereafter and that which was done under the conspiracy constituted a violation of the act of 1899. The illegal acts constituting a violation of the act of 1899 was not predicated of stock ownership and was in no sense dependent on it; the charge of the lower court was not predicated thereupon and the judgment of the Court of Civil Appeals was entirely without reference thereto.

Under the act of 1903 an unlawful combination effected by stock ownership was the subject of direct legislation. And it was alleged and proved that contemporaneously with the "readmission" of the defendant into the State and as a part of the plan of "readmission" and for the purpose of effecting an unlawful monopoly the Standard Oil Company acquired a majority of the stock of the "new" company. This affected only a limited and divisible part of the case. The court in its charge submitted this issue and the jury found that upon this issue it was a trust and a monopoly and a member of a conspiracy and combination in restraint of trade and also found that it was also such a trust monopoly, etc., on all the other issues submitted, and assessed the punishment indicated by law for being such monopoly, etc.

The Court of Civil Appeals, as heretofore indicated, sustained its verdict on the other grounds and said that the finding on the stock ownership and the judge's charge thereon were immaterial and predicated its ruling upon other grounds.

Even with the misconception of the petition and the purpose and effect of the evidence appellant has been unable to make an assignment that has the color of a Federal question.

### Sixth Assignment.

See discussion under first and fifth assignments.

### Seventh Assignment.

This assignment claims that the statutes are too indefinite, vague and uncertain. The question has been determined by the case of National Oil Company vs. State of Texas, 197 U. S.

EIGHTH ASSIGNMENT.

Same as seventh.

NINTH ASSIGNMENT.

This assignment involves the correctness of the court's charge upon the statutes and the sufficiency of the evidence. Neither matter will be considered by the court.

TENTH ASSIGNMENT.

This assignment deals with alleged errors in the trial in the State courts, and presents no question that this court will consider.

ELEVENTH ASSIGNMENT.

This assignment does not claim that any Federal right was violated by the action complained of.

TWELFTH ASSIGNMENT.

This assignment does not claim that any Federal right was violated by the action complained of.

THIRTEENTH ASSIGNMENT.

This assignment refers to paragraph XI of the trial court's charge, expressly excluded from consideration by the opinion of the Court of Civil Appeals.

FOURTEENTH ASSIGNMENT.

Same as thirteenth.

FIFTEENTH ASSIGNMENT.

This assignment is based upon alleged errors in the ad-admission of testimony. The questions presented have been passed upon by the Court of Civil Appeals and Supreme

Court of Texas and they held the rulings proper. There was due process of law and this is not changed by appellant's statement, to the contrary. Besides while these rulings were complained of there was no contention in the court below that their admission constituted the taking of property without due process of law.

### Sixteenth, Seventeenth and Eighteenth Assignments.

These assignments are all with reference to the refusal of charges (7th, 8th and 9th) upon the matter of stock ownership by the Standard Oil Co. eliminated from consideration by the Court of Civil Appeals.

Besides there was no claim in any State court that the refusal of these charges constituted a violation of the 14th amendment or any other provision of the constitution of the United States.

### Nineteenth Assignment.

This assignment complains of a charge upon evidence refused by the trial court. It was passed upon by all the Texas courts and the refusal held proper. The ruling was correct, but if erroneous it was in accordance with due process of law. Besides there was no suggestion in the State courts that the refusal of the charge violated the 14th amendment or any provision of the constitution of the United States.

### Twentieth Assignment.

This assignment complains that the penalties assessed by the jury were so excessive as to constitute the taking of property without due process of law. The penalties were within the limits defined by the law. That the subject matter of the legislation is one completely within the jurisdic-

tion of the legislature has been repeatedly held by this court. It can not be against the Federal constitution for a jury to do that which it was required to do under a law that the State legislature had a right to pass.

### Twenty-first Assignment.

This assignment complains of the rulings of the trial court with reference to the application by that court of the Texas laws of limitation. There is a statement that the failure of the Texas courts to depart from the ordinary rule of State exemption from limitation laws and the refusal of the court to apply to cases triable under civil procedure and cases triable under criminal procedure the same rules constitute a denial by the State of "equal protection of the laws." This is another one of those cases indicating how easy it would be to carry all cases to the Federal Courts, if the mere statement that a constitutional right was impaired was equivalent to the existence of a Federal question in the case.

### Twenty-second Assignment.

The twenty-second assignment complains of the refusal of the trial court to sustain an exception to a part of plaintiff's petition in which it was alleged that the Standard Oil Company entered into an agreement with the Waters-Pierce Oil Company not to sell any oil in Texas, upon the ground that to punish defendant for such agreement woud constitute violation of the commerce clause of the constitution. The petition distinctly confined its prayer to relief against the continuance of intrastate business carried on contrary to law, and the charge of the trial judge distinctly confined the consideration of the jury to such business. The courts of Texas according to the rulings made in this case believe that when two persons outside of the State of Texas agree to do something in Texas which constitute a violation of

the laws of Texas the fact that the agreement was made out of the State will not prevent the carrying out of the agreement within the State from constituting a violation of the law. Nor does the fact that there is an interstate agreement to violate a State law constitute interstate commerce. The commerce clause of the constitution was not designed to make easy and safe the violation of State laws.

No Federal question is presented by their misstatement by plaintiff in error of the effect of the ruling complained of.

### Twenty-third Assignment.

The observations made under twenty-second assignment are applicable.

### Twenty-fourth Assignment.

This assignment deals with alleged errors of the trial court. These rulings were made in the trial of the case with defendant objecting or having an opportunity of objecting. They were reviewed by two appellate courts of Texas in the due and orderly manner. The rulings cannot constitute taking property without due process of law.

And if these rulings do constitute the "taking a property without due process of law" appellant has doubtless just discovered that fact, for it was not called to the attention of the court below.

### Twenty-fifth, Twenty-sixth, Twenty-seventh and Twenty-eighth Assignments.

These assignments deal with the matter of the appointment of a receiver, a matter which the State court in this case declined to consider upon the ground that it had by the action of appellant been taken up in another appeal. It is manifest in any event that action by a trial court in a re-

ceivership case taken for the conservation of property can not be the basis of a complaint that the property was taken without due process of law.

A review of all the assignments of error have failed to indicate any Federal question of more than a mere shadowy character.

## II. CONSTITUTIONALITY OF TEXAS ANTI-TRUST STATUTES.

Of course all of the propositions involve consideration of the constitutionality of these acts, but a number of the propositions may be more conveniently considered under other subjects.

The propositions now considered are:

1st. The acts are not *ex post facto* laws or retroactive.

2d. The acts do not deny the equal protection of the law.

3d. The acts provide due process of law.

In connection with these general propositions the constitutionality of the acts as construed and applied in this case is considered.

## SECOND PROPOSITION OF THE DEFENDANT IN ERROR.

*Neither the Act of* 1899 *nor the Act of* 1903 *is an ex post facto law, nor is either retroactive, nor was either given a retroactive effect in this case.*

### STATEMENT.

The trial court submitted to the jury the question only of whether or not under the Act of 1899 the plaintiff in error

had made, entered into or become a party to any illegal agreement or combination on June 1, 1900, or any subsequent date, and whether or not if it did become a party to any such agreement or combination it remained a party to same after the 1st day of June, 1900, and prior to March 31, 1903. (Rec., pp. 288, 289, Sections VII and VIII of charge.)

The trial court submitted to the jury the question only of whether or not under the Act of 1903, the plaintiff in error had made, entered into or become a party to any illegal agreement or combination on March 31, 1903, or any subsequent date, and whether or not it had remained a party to any such illegal agreement or combination after the 31st day of March, 1903, and prior to April 29, 1907. (Rec., pp. 289-291.)

The trial court expressly charged the jury that it could not convict the plaintiff in error for anything done prior to June 1, 1900, under the Act of 1899; and could not convict it for anything done prior to March 31, 1903, under the Act of 1903, and limited and restricted evidence introduced to show anything done prior to those dates.

AUTHORITIES.

Glue Co. vs. Glue Co., 187 U. S., 611.
United States vs. Trans-Missouri Traffic Association, 166 U. S., 290.
United States vs. Joint Traffic Assn., 171 U. S., 505.
Pearsall vs. Great Northern R. R. Co., 161 U. S., 646.
L. & N. Ry. Co. vs. Kentucky, 161 U. S., 677.
State vs. Ins. Co., 94 U. S., 535.
Mugler vs. Kansas, 123 U. S., 668.
Waters-Pierce Oil Co. vs. State, 44 S. W. Rep., 941.
State vs. M. K. & T. Ry. Co., 91 S. W. Rep., 214.
Ford vs. Milk Shippers' Assn., 27 L. R. A., 298.

## ARGUMENT.

The acts under consideration prescribe the same penalties for carrying out and maintaining illegal combinations and agreements as for their execution. The effect of the continuance of such a combination or agreement is discussed in the Trans-Missouri Traffic Association case (166 U. S., 290) as follows:

> "It is said that to grant the injunction prayed for in this case is to give the statute a retroactive effect. That the contract at the time it was entered into was not prohibited or declared illegal by the statute, as it had not then been passed; and to now enjoin the doing of an act which was legal at the time it was done would be improper. We give to the law no retroactive effect. The agreement in question is a continuing one. The parties to it adopt certain machinery, and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement, after it has been declared to be illegal, becomes a violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued it then becomes a violation of the act."

Supporting this view is the case of Ford vs. Chicago Milk Shippers' Association, (27 Law. Rep. Ann., page 298) in which it was sought to control the milk output of Chicago by an agreement. It embraced a number of people who furnished milk to the inhabitants of Chicago, and they agreed to form a corporation to which each should sell his milk and that the corporation should then distribute the milk to the customers. After discussing the question of whether or not the acts of the incorporators and shareholders constituted such a violation of law as would subject the corpora-

tion to its penalties and after holding that they were the court proceeded to lay down these propositions:

> "This corporation was organized February 24, 1891, and engaged in business, and the statute invoked by the pleas as a defense became a law July 1, 1891, and the appellee urges that, even if it be admitted that a combination between a corporation and its stockholders exists, such combination, occurring before the passage of the act, can not be held contrary to its provisions, and that the circuit court erred in refusing to uphold propositions presented by appellees which presented this question. The rule is settled that corporations created within this State are amenable to the police power, and such bodies are not beyond legislative control. The corporation is subject to the statute, and, although the contract of guaranty was entered into before the passage of the act, yet, by its terms, the furnishing of the commodity named from month to month was contemplated, and, by the facts as found by the appellate court, that for which the price is sought to be recovered in this case was furnished, after the passage of the act. The acts of the corporation and its stockholders with reference to this sale were within the meaning of the act."

The court applied the law to the contract notwithstanding it was made before the passage of the law.

The police powers of the State can not be in any way affected by the contracts of corporations or individuals. Judge Fisher, in delivering the opinion of the court in the case of Waters-Pierce Oil Co. vs. The State, in 44 S. W. Rep., p. 941, said:

> "In enumerating subjects which may be acted upon by the State in the exercise of its police powers, Mr. Tiedeman, in his valuable work on limitation of police powers (Sec. 96) names combinations in restraint of

trade; and, as said in United States vs. Freight Association, 166 U. S., 'manufacturing or trading companies may also affect prices by joining together, in forming a trust or other combination and by making agreements in restraint of trade or commerce, which, when carried out, affect the interest of the public.' This is certainly a just acknowledgment of the power, for there are few acts which individuals may engage in that are more harmful in their effects upon the interests of the people generally than trusts and combinations concerning the commodities useful to mankind. The rights of the individual must yield to the public wants, and his conduct, and all property held by him, is subject to the control of the State, to the end that he shall so demean himself and use his property with as little hurt and injury to the public as possible. As said in Munn vs. Illinois, 94 U. S., 113: 'While the power does not exist with the whole people to control rights that are purely and exclusively private, the government may require each citizen to so conduct himself and so use his own property as not unnecessarily to injure another.' Mugler vs. Kansas, 123 U. S. This is one of the inherent rights of sovereignty, and it is as much in place that it shall be exercised when the public interest requires as it is the duty of the State, by stringent laws, to protect society from the depredations of the thief and the ravages of the murderer. When it is once admitted that a matter is a subject of police supervision, the expediency and wisdom of the means resorted to are subjects solely confined to the legislative department of the State, subject, however, to limitations imposed by the organic law of the nation in excluding from their jurisdiction, for many purposes, certain matters of control solely reserved to the national government; such, for instance, as many of the matters relating to interstate commerce. It is not meant by this that a Legislature may conclusively declare a matter subject to its police authority, when, in fact, such is not the case, for that is a question which the courts may determine, and, under the guise of that power, by a system of confiscation and spolia-

tion, which has no place in our government, deprive a citizen of his rights; but, as said before, when it is once determined that the subject dealt with really concerns the public welfare, it lies wholly within the police authority of the State, through its lawmakers, to determine how it shall be handled and dealt with. Railway Co. vs. Matthews, 165 U. S. By adequate laws, looking to the suppression of evil, the State, through the exercise of its police power, must necessarily restrain the unbridled license of the citizen in his conduct and use of property; and restraints imposed in this way have never been held to illegally impair his liberty, as is attested from many of the provisions of the Code of this State and others, and the construction that has been given to them. The freedom of speech, the liberty of person and life itself, must be surrendered, when the public interests and the order of good government so requires. The liberty of the citizen, which embraces the legal right to his property and to lawfully contract concerning it, stands upon no higher ground."

The following excerpts from the case of State vs. M. K. & T. Ry. Co., 99 Tex., 527, can be profitably applied to this case.

State vs. M. K. & T. Ry. Co., et al., 99 Tex., at pp. 527 and 528:

"The contract through which this combination was formed was made before the Act of 1903 was passed and the question whether or not there has been a violation of that Act must be determined by inquiring whether or not it applies to such combinations formed before, but carried out after it took effect. The language in which the offense is defined and described requires an affirmative answer. A trust is defined as a combination for certain purposes. Whenever, after the Act begins to operate, such a combination is found to exist it falls within the terms employed. All such combinations are declared by Section 4 to be illegal and are prohibited. This language makes their existence a vio-

lation. The fact that a combination may have been formed before the statute took effect is immaterial if it is in active existence thereafter. The statute has no retroactive or *ex post facto* operation, and applies only to offenses occurring after its enactment; the offense does not consist in the formation and existence of the combination before the law went into operation, but in the persistence of the parties in it after it has become unlawful. This the terms of the Act make reasonably clear when they define the existence of certain elements to constitute a trust, and provide that one of the elements may be the purpose to carry out 'restrictions and the like, and make the penalties provided (Section 11) apply for each day the offense is 'continued.' That such is the correct interpretation of such statutes is held by the Supreme Court of the United States in U. S. vs. Trans-Miss. F. Assn., 166 U. S., 342. But it is said that this interpretation of the statute would render it unconstitutional as impairing the obligation of a valid contract. The answer is that the State may, in the exercise of its police power prohibit the continuance in the future of those things already in existence which are so injurious to the rights and interests of its citizens generally as to justify such an exercise of the power whether the continuance of the things is provided for by contract or not. The same power which may upon sufficient occasion destroy other property of the citizen to secure the general welfare, may, to the same end, destroy the binding obligation of contracts. The constitutional inhibition against the impairment of the obligation of contracts is not a limitation upon the police power when exercised within its legitimate sphere, and therefore the mere objection that an exercise of that power impairs the obligation of a contract does not reach the true question which is whether or not the attempted exercise is within the scope of the power exercised. It is unnecessary in this case to go into any extended examination of the question as to the extent of this power. If we had before us a contract which was originally lawful and reasonable in itself and which, although falling within the literal lan-

guage of the statute, could not justly be regarded as so injurious to the State or its citizens as to afford reasonable grounds for its destruction, a different question would be presented. It is true that there are limitations upon the power of the Legislature to either strike down contracts already made, or unreasonably and arbitrarily to restrict the liberty of citizens in contracting in future, but there is no occasion for applying them here. This contract was, as we have seen, made in the face of a statute then existing, and was not a reasonable, and can hardly be said to have been a lawful one; and it is wholly unnecessary to pursue an inquiry which might arise with reference to contracts of a different character."

The laws were not retroactive, no effort was made to give them a retroactive effect, and no such effect was given them.

Plaintiff charged that many years ago a conspiracy was formed to monopolize the oil business; that this conspiracy continually existed up to the time of the filing of its petition; that from time to time new parties came into the conspiracy, thereby making themselves liable for what had theretofore been done in its accomplishment, and that which was to be done during their continuance. It charged that the Standard Oil Company had been a party to it, and that the old Waters-Pierce Oil Company (called the "Old Waters-Pierce Oil Co." for convenience) had been a party to it and that their agents and officers had been parties to it. The State charged that when the Waters-Pierce Oil Co., after having its permit to do business in Texas cancelled by a judgment of the Texas courts and having that judgment affirmed in this court, in 1900 went through the form of a dissolution and a reorganization, that the Waters-Pierce Oil Company that existed thereafter whether it were the old concern or a new one, was a party to this conspiracy from the date of the new charter to the date of the filing

of the petition. Under the evidence adduced at the trial it is perfectly clear that new company (the expression is used for convenience) could have been held responsible for that which had been done by the old. The putative dissolution and reorganization was merely a device to escape the consequences of a decision of this court so crudely conceived or so insolently executed that it changed neither the name nor the management, nor the capital stock, nor the employers nor the illegal character of its business. But the State did not undertake to hold this defendant responsible for what had been done prior to the date of its present charter, either upon the theory of the joint liability of conspirators or the identity of the Waters-Pierce Oil Company under the original charter and the Waters-Pierce Oil Company under the charter of 1900. No penalties were asked against the defendant for anything that ante-dated its readmission (another word used for convenience) into the State under the charter of 1900. Evidence of what was done before and at the time of the alleged reorganization was admitted to establish the fact of the conspiracy and its character, and evidence was admitted to show that the "new" company took up and carried out the illegal contracts, agreements and understandings of the "old," and that after the reorganization as before there was a complete and perfect conspiracy calculated to produce and producing a practically complete monopoly to which the "new" company was a party. The evidence with reference to what was done before the date of the charter in 1900 was admitted under the strict rules of the criminal laws of Texas, and its purpose and effect was strictly limited by the charge to the legitimate purpose for which it admitted. No effort was made to hold this defendant responsible for what had been done prior to the date of the charter under which it was operating. While it is perfectly true that the Standard Oil Company had a majority of the stock of the "Old" Waters-Pierce Oil Com-

pany and that otherwise there was a combination between them that made them both liable to the laws of Texas, no effort was made in this case to hold them responsible for these violations of law.

In the brief of plaintiff in error this statement is made:

> "The only substantial distinction between the new company and the old one was, that the new company was a different corporation from the old one, and was not affected by the judgment including the latter from Texas, and was not bound by any of the agreements that made the latter obnoxious to the laws of Texas."

The admiration and astonishment occasioned by this charmingly frank avowal should not obscure the proposition that when the new company adopted and acted upon the agreements it became not less obnoxious in its new being than it had been in its former self.

The statement on page 83 of the principal brief of defendant in error that

> "The only agreement upon which the defendant was charged was the agreement made by the Old Waters-Pierce Oil Company in 1878 for a division of territory between it and the Standard Oil Company and there was no evidence of any other,"

shows a lack of knowledge of the case.

While it is apparent from the facts as finally developed in the case that the defendant might have been held for all the acts of the Old Waters-Pierce Oil Co. as well as of all the other conspirators, yet no effort was made to punish it for anything done prior to June 1, 1900. The petition excludes any other idea. The charge of the court specifically defines the purpose and limits the effect of the evidence introduced appertaining to acts prior to May 31, 1900. For

maintaining and carrying out the agreement referred to and making the agreements its own and thereby making a new agreement the State did undertake to hold the defendant. That it was acted upon by both parties after May 31, 1900, is amply indicated by the testimony.

## THIRD PROPOSITION OF DEFENDANT IN ERROR.

*Neither the Act of 1899 nor the Act of 1903, as construed by the highest State courts of Texas denies to plaintiff in error the equal protection of the law.*

### STATEMENT.

The Acts of 1899 and 1903, in so far as they affect this case, are set out at the beginning of this brief, and are not here repeated. The opinion of the court construing those Acts is also there set out.

### AUTHORITIES.

National Cotton Oil Co. vs. Texas, 197 U. S., 115;
Smiley vs. Kansas, 196 U. S., 447;
Mugler vs. Kansas, 123 U. S., 665;
Gundling vs. Chicago, 177 U. S., 188;
Soon Hing vs. Crowley, 113 U. S., 708;
Nutting vs. Massachusetts, 183 U. S., 553;
Wurts vs. Hoagland, 114 U. S., 615;
Duncan vs. Missouri, 152 U. S., 382;
Eldridge vs. Trezevant, 160 U. S., 469;
Lowe vs. Kansas, 163 U. S., 88;
Missouri Railway Co. vs. Mackey, 127 U. S., 209;
Pacific Express Co. vs. Seibert, 142 U. S., 352;
Powell vs. Pa., 127 U. S., 687;
American Sugar Co. vs. Louisiana, 179 U. S., 95;
Booth vs. Illinois, 184 U. S., 429;
Capital City Drug Co. vs. Ohio, 183 U. S., 246.

## ARGUMENT.

As has already been decided by this court in National Cotton Oil Company vs. Texas, *supra*, the Act of 1899, which is involved in this case, is valid and not repugnant to any of the provisions of the Federal Constitution, or any amendment thereto. This court in that case, speaking through Mr. Justice McKenna, says:

> "In Smiley vs. Kansas, decided at this term, 196 U. S., 447, a statute of Kansas is passed on which is identical in effect, and even in words, in all that concerns the present controversy, with the Texas statutes. The statute was assailed as an unwarranted attempt upon the part of the legislature to limit the rights of the individual in the matter of contracting and dealing with his fellow men. The right which Smiley claimed was to combine with certain grain dealers, persons, companies and corporations, who were competitors, to pool and fix the price of grain in the town of Bison, and to prevent competition in the purchase and sale of grain at that place. We followed the ruling of the Supreme Court of the State in holding that the combination was within the prohibition of the statute; we concurred with that court in deciding that the prohibition was a valid exercise of the police power of the State.
>
> "It follows that the statutes of Texas do not deprive the oil company of its property without due process of law.
>
> "We need not consider the statutes referred to" (Act of 1899 and other laws of Texas)" or consider how far this discrimination can exist in view of the decision of the Supreme Court of the State in State of Texas vs. Laredo Ice Company. Granting it can exist, the case at bar is not a criminal prosecution. It involves only the anti-trust laws and their prohibitions and penalties. And in them we have seen by the effect of the Act of 1899 there is no inequality of operation."

It is well settled by this court that the regulation of business or trade is within the police powers of the State, and such regulation may extend to both the exercise and mode of exercise of the business or trade, and although such regulation may more or less restrict liberty or impair the value of property, if it is reasonably calculated to produce the end contemplated, it is constitutional. The only limitation upon such legislation, in so far as it concerns this court, is, that such laws must, in all their requirements operate equally upon all persons affected thereby.

As was said in Lawton vs. Steele, 152 U. S., 143:

> "The power of the legislature to declare that which is perfectly innocent in itself to be unlawful is beyond question. (People vs. West, 106 New York, 293), and in such case the legislature may annex to the prohibited act, all the incidents of a criminal offence, including the destruction of property denounced by it as a public nuisance.
>
> "* * * The State may interfere wherever the public interests may demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."

Like strong expressions are found in Railroad Company vs. Richmond, 96 U. S., 528, and Fatterson vs. Kentucky, 97 U. S., 504.

The case of Wurts vs. Hoagland, *supra*, is authority for the proposition that when laws operate alike upon all persons and property similarly situated, equal protection cannot be said to be denied, and even special legislation is not obnoxious to the Federal Constitution, if all persons subject to it are treated alike under the same circumstances. There are many other cases to the same effect.

As stated, this court has already sustained the Act of 1899 in all of its provisions, and held that it was not repugnant to the Federal Constitution, nor any amendment thereto. The Act of 1903 is not essentially different from that of 1899, except the punishment prescribed in the former was a pecuniary fine of not less than two hundred dollars nor more than five thousand dollars, and forfeiture of charter or permit in case the offender was a corporation, with no imprisonment feature; while the latter prescribes a pecuniary fine of fifty dollars for each offense, forfeiture of charter or permit in case the offender is a corporation, and in addition provides that any person (which would, of course, include any officer or agent of a corporation) violating any of its provisions shall be confined in the penitentiary for a period of not less than one year nor more than ten years. This makes the doing of anything prohibited by the Act a felony punishable as such, with consequent loss of certain rights of citizenship, including the right to vote, to hold office and to testify in court.

It is suggested in some of the briefs on file that the Act of 1899 because of the large penalties that might be assessed under it denies to the plaintiff the equal protection of the law. A sufficient answer to this is that no assignment of error to that effect was filed in this court as the basis for proceedings in error.

But under another proposition defendant in error has shown that the penalties of the Act are lawful and that the penalties assessed against plaintiff in error are proper.

## FOURTH PROPOSITION OF DEFENDANT IN ERROR.

*Neither the Act of 1899 nor the Act of 1903 deprived plaintiff in error of its property without due process of law.*

## STATEMENT.

A petition was filed in a court of competent jurisdiction setting out with great particularity the things done by the plaintiff in error, and the laws that it had violated (Rec., pp. 2-43).

An answer was filed by plaintiff in error setting up in great detail its defenses to the State's cause of action (Rec., pp. 43-95).

There was a trial before the court and a jury lasting ten days and a great mass of testimony introduced by both sides, and the jury found the plaintiff in error guilty, and the court entered a judgment in accordance therewith (Rec., pp. 314-315). The case was thereupon carried to the Court of Civil Appeals in the regular way, and after a full hearing and careful consideration by that court, it affirmed the judgment of the trial court (Rec., pp. 1141-1162).

AUTHORITIES:

Simon vs. Craft., 182 U. S., 427;
Remington Paper Company vs. Watson, 173 U. S., 443;
New Orleans Water Works vs. Louisiana, 185 U. S., 336;
Ry. vs. Missouri, 156 U. S., 478;
Iowa Central Ry. Co. vs. Iowa, 160 U. S., 389;
Murray vs. Hoboken Land Co., 18 Howard, 272;
New Orleans Debenture Redemption Co. vs. Louisiana, 180 U. S., 320;
Rothschild vs. Knight, 184 U. S., 334;
Consolidated Rendering Co. vs. Vermont, No. 5, October Term, 1907, Sup. Ct. Rep., p. 178;
Cosmopolitan Club vs. Virginia, 208 U. S., 384;
Caldwell vs. Texas, 137 U. S., 697;
Miller vs. Texas, 153 U. S., 539;
Minder vs. Georgia, 183 U. S., 559.

In the comparatively recent case of Simon vs. Craft, *supra*, this court said:

> "But the due process clause of the Fourteenth Amendment does not necessitate that the proceedings in a State court should be by a particular mode, but only that there shall be a regular course of proceedings in which notice is given of the claim asserted, and an opportunity afforded to defend against it. If the essential requisites of full notice and opportunity to defend were present, this court will accept the interpretation given by the State court as to the regularity, under the State statute, of the practice pursued in the particular case."

Whatever may be said about the case it can not properly be insisted that the trial has not proceeded upon regular and customary and orderly lines. If errors have been committed, that also is not unusual. And all the courts of Texas have been open for their correction. If these courts have not agreed with appellants as to the existence of the errors, that again is not unusual. But in any event, appellant has had its day in court. It presented its defense in the district court. Dissatisfied with the result it asked for a new trial. It appealed to the Court of Civil Appeals; dissatisfied with the result, it asked for a rehearing. It applied for a writ of error to the Supreme Court of Texas; dissatisfied with the refusal it moved for a rehearing. All the avenues of the law have been open to it and have been used by it. It has never been in position to claim that it has not had the advantage of due process of law.

It is true that a claim to that effect is now being asserted or that a pretense to that effect is being made for the purpose of abusing the judiciary of Texas and the people of that State. The tenth "question" suggested by brief for plaintiff in error, signed by Moorfield Storey and J. L. Thorndike, is whether the trial was "so conducted according to the

regular course of judicial proceedings that the judgment can be said to have been obtained by due process of law." In the discussion these several statements appear:

> "It is submitted that the judge wilfully and uniformly disregarded the rules of evidence" (p. 156).
>
> "That the judge arbitrarily and without regard to the rules of law left the case to them with directions intended to mislead them into a conviction of the defendant without evidence."
>
> "It is a matter of common knowledge that the Standard Oil Company is an object of odium in some parts of the country, and it is evident that is the general state of feeling in Texas. The only purpose of all the evidence about the Standard Oil Trust and the Standard Oil Companies and the *old* Waters-Pierce Oil Co. was to establish in the minds of the jury some connection between the Standard Oil Company and the defendant that might have the effect of turning this feeling against defendant. The judge did all he could to assist this purpose, and with complete success."
>
> "It appears by the evidence that was admitted, and by the judge's rulings at the trial, and his directions to the jury, that this was in reckless disregard of the defendant's rights. * * * No consideration was given to the merits of defendant's evidence. The presence of the 'evil eye and unequal hand' is evident throughout the trial."

To say that this language is indecorous is to be mild when severity would be justified. To say that it is untrue is to be weak when strong language is warranted.

So gross an insult has not before been offered the judiciary of Texas. Every ruling of the district judge adverse to plaintiff in error was made the subject of a bill of exceptions and was passed upon and approved by the Court of Civil Appeals, composed of three excellent lawyers, and by the Supreme Court, consisting of three eminent jurists. Every ruling upon the admission or rejection of evidence

adverse to plaintiff in error was the subject of a bill of exception, and was passed upon and approved by both of these courts. The necessarily lengthy charge of the court was dissected and an exception based upon nearly every sentence; the charge was sustained in every respect by all the members of both these courts except that one paragraph held immaterial was not unanimously approved. It is apparent that the members of the highest court in the State and the members of the Court of Civil Appeals for the Third District must share in the criminality of which the trial judge is charged. The trial judge has retired from the bench with spotless reputation; while filling the important judgeship at the State capital, his learning was so universally recognized, his probity so well established, his impartiality so apparent, that in the important litigation between the State and the great corporate interests within the State his court was sought by both parties. All this does not save him from the reckless attacks of an attorney who apparently knows as little about the rules of propriety as about the case he has undertaken to brief.

Upon the merits of the proposition that the manner in which the trial was conducted did not constitute "due process of law," it is enough to say that if that be true the Federal question thus stated was not presented to the Court of Civil Appeals or the Supreme Court, and could not have been passed upon by those courts and can not be passed upon by this court.

## STOCK OWNERSHIP BY THE STANDARD OIL CO.

Large parts of the several briefs of defendant in error are devoted to the matter of the ownership of the stock of the Waters-Pierce Oil Co. by the Standard Oil Company. Concerning this matter the following propositions are made:

(1) *If there* was any error in the charge of the trial

court with reference to the matter of stock ownership the error is immaterial, and any Federal question that might have been predicated of it has been eliminated from the case by the action of the Court of Civil Appeals in basing a judgment of affirmance upon other grounds.

(2) The combination effected between the Standard Oil Company and the Waters-Pierce Oil Company by the acquisition of the stock of the latter by the former for the purposes for which the acquisition was made *and with the effect intended,* violated the laws of Texas, and the infliction of penalties therefor would not have given the laws either an extraterritorial effect, or a retroactive effect, or otherwise have violated the Constitution of the United States.

## FIFTH PROPOSITION OF DEFENDANT IN ERROR.

*If there was any error in the charge of the trial court upon the matter of stock-ownership the error is immaterial, and any Federal question that might have been predicated of it has been eliminated from the case by the action of the Court of Civil Appeals in basing a judgment of affirmance upon other grounds.*

## STATEMENT.

The charge referred to is paragraph XI of the charge of the trial court, set forth in full at the beginning of this brief. The opinion and judgment of the Court of Civil Appeals may also be there found.

AUTHORITIES:

M. K. & T. Ry. Co. vs. Ferris, 179 U. S., 602;
Hammond vs. Johnson, 142 U. S., 73;
Harrison vs. Morton, 171 U S., 38;
Klinger vs. Missouri, 13 Wall., 257;

Kennard vs. Louisiana, 92 U. S., 480;
Lent vs. Tillson, 140 U. S., 316;
C. B. & Q. R. R. Co. vs. Chicago, 166 U. S., 226;
Glue Co vs. Glue Co., 187 U. S, 611;
United States vs. Trans-Missouri Traffic Assn., 166 U. S., 290;
State vs. M. K. & T. Ry. Co., 91 S. W. Rep., 214;
Baldwin vs. Kansas, 129 U. S., 52.

Herein the action of the Court of Civil Appeals of Texas is alone under review. Plaintiff in error has a standing in this court only as the result of some ruling in that court denying a constitutional right claimed by him.

The judgment of the Court of Civil Appeals was not based upon a holding to the effect that the Waters-Pierce Oil Co. could be held responsible for the ownership of its stock by the Standard Oil Company.

On the contrary, the judgment of the Court of Civil Appeals was distinctly and in so many words based upon other grounds. The petition of plaintiff in this case charges, among other things, that an unlawful combination was effected between the Waters-Pierce Oil Co. and the Standard Oil Co. by the acquisition by the latter company with the consent of the former of the majority of the capital stock of the former, and that this combination (invalid when made) continued after the Act of 1903 went into effect under such circumstances as to make the continuance a violation of that act. The issue there presented by the pleadings was submitted by the trial court to the jury. The jury found that in this respect and in the several other respects in which the Waters-Pierce Oil Company had been charged with becoming a trust and monopoly, and a member of an unlawful combination, that it had become a trust and monopoly and a member of an unlawful combination, and for being such a trust, monopoly and member of an unlawful combination during a certain number of days it

assessed the penalty prescribed by the law. If the jury had found that the Standard Oil Co. did not acquire a majority of the capital stock of the defendant company and thereby form a combination, the continuance of which was a violation of the law of 1903, the judgment would necessarily have been the same, since under the other issues submitted the defendant was found guilty during the period that the Standard Oil Company continued to own a majority of its stock after the law went into effect. For the offense of which the company was convicted the law absolutely fixed a penalty—a penalty that was in no way mitigated or enlarged by the circumstance that the condition which the law prohibited, of being a trust, or monopoly or in an unlawful combination—had been effected in one or many ways. When in the Court of Civil Appeals complaint was made to the effect that with reference to this matter of stock-ownership the charge of the trial court was erroneous, that court held that if there was error it was harmless error, maintained the judgment upon the ground that it was the only judgment that could have been rendered, even with the verdict of the jury upon that issue eliminated, and distinctly announced that its own judgment was without reference to this contention of appellant.

This court will not, of course, go into a consideration of whether or not the Court of Civil Appeals was warranted in its finding that leaving this matter entirely out of consideration there were ample facts to sustain the verdict (Baldwin vs. Kansas, 129 U. S., 52).

## SIXTH PROPOSITION OF DEFENDANT IN ERROR.

*The combination effected between the Standard Oil Company and the Waters-Pierce Oil Company by the acquisition of the stock of the latter by the former for the purposes for which the acquisition was made and with the effect in-*

*tended violated the laws of Texas and the infliction of penalties therefor would not have given the laws either an extra-territorial effect, or a retroactive effect, or otherwise have violated the Constitution of the United States.*

## STATEMENT.

As under last proposition.

### AUTHORITIES:

As under last proposition.

## ARGUMENT.

The charge made in the petition of plaintiff is that the Standard Oil Company acquired the stock of defendant company in furtherance of a conspiracy set out in detail in the petition. It alleged that the acquisition of this stock was with the knowledge and consent of the defendant. It was alleged that the resulting combination continued with the effect intended of monopolizing the oil business in Texas. The evidence shows that the fixing of stock-ownership by an arrangement in which all the stockholders participated was contemporaneous with the permit of defendant company to do business in Texas, and that it had been made with reference to acquisition of that permit; that by reason of the combination thus accomplished through stock ownership the monopoly in Texas business was maintained, and that thereby prices were fixed. No effort was made to hold defendant responsible for any thing that it did not participate in, though as a conspirator it might have been held for more. No effort was made to hold defendant for the mere acquisition of stock by the Standard Oil Company, though that act was the act of itself and of each of its stockholders. No effort was made to give the law an extra territorial effect, but only for what was done in Texas in consequence of a

conspiracy outside the State. No effort was made to give the law a retroactive effect, but merely to punish the continuance of acts denounced as unlawful.

In one brief filed by plaintiff in error it is said: "Not one shred of evidence can be found in the voluminous record herein to indicate even remotely that of said stock by the Standard Oil Company was with the knowledge or consent of the Waters-Pierce Oil Company, or that such acquisition could in any manner have been prevented by it." The other brief says (p. 105): "There was no evidence that the defendant had any connection with the transaction except in performing the ministerial act of registering the transfer." We are not unfamiliar with the rules of law which maintain the distinction between the corporation and the persons by whom it was formed and who own its stock and control it. The distinction is the basis of many a legal subterfuge and it may be that it saves the quoted statements from being verbally untrue. H. C. Pierce and the Standard Oil Company agreed to incorporate the Waters-Pierce Oil Co. under the charter of May 29, 1900; under the agreement the charter was taken out; thereafter they were the exclusive owners of the stock and the exclusive managers of the company. Not to hold the Waters-Pierce Oil Company responsible for what they did in its name would be to ascribe to the fictions of the law an effect more absurd than is warranted by any adjudicated case. "Waters-Pierce Oil Company" was one of the names under which the oil monopoly conspirators were operating, and under that name, chosen by themselves, and used by them in illegal enterprises, they may be punished.

Plaintiff in error contends:

> "If the holding of stock by the Standard Oil Company of New Jersey in the Waters-Pierce Oil Company of Missouri was unlawful, it was an offense on the

part of the holding company, and not of the company whose stock was so held, the acquisition of which it could neither forbid nor prevent."

As has already been shown neither the holding company nor the company whose stock was held has been injured by the law upon the subject or the application of the law.

The State alleged and proved that the acquisition of the stock and the resulting control was with the knowledge and consent of the defendant. What was done with the knowledge and consent of every stockholder of a corporation is done with the knowledge and consent of the corporation. The only answer to the charge that the company and every stockholder had in view an illegal purpose is the statement that Mr. Pierce expected to absolutely control the concern. This is borne out only by his statement. The evidence shows that there was absolutely no change in the conduct of affairs after the reorganization. Mr. Pierce was merely nominally President. The policy of the company was directed from 26 Broadway. Some of the directors were direct representatives of the Standard Oil people. Later there was not even a pretense that Mr. Pierce had anything to do with the management. Even then, from a legal standpoint, he consented to all that was done. He knew perfectly well that the concern of which he was one of the two stockholders was daily violating the law of the United States and of many States, but chose rather to take his share of the enormous dividends than to appeal to the courts to protect his interest in the corporation from the possible infliction of penalties. A stockholder knowing of the illegal acts of a corporation and accepting the profits of the illegal acts instead of taking steps to prevent will be held to have consented to what was done. At all events the corporation will not be excused from the consequences of these illegal acts because his consent was given merely by acquiescence. The evidence indi-

cates that Mr. Pierce did not consent to his own removal, but that he heartily concurred in the maintenance of the monopoly.

## VAGUENESS AND UNCERTAINTY OF THE LAWS.

### Seventh Proposition.

*Neither the act of 1899 nor that of 1903 is vague, uncertain or indefinite.*

### STATEMENT.

The acts in question are set out in the statement with which this brief begins.

### Authorities.

Swift & Co. vs. United States, 196 U. S., 375.
United States vs. Freight Ass'n., 166 U. S., 325.
Northern Securities Case, 197 U. S., 244.
National Cotton Oil Co. vs. Texas, 197 U. S., 115.
Smiley vs. Kansas, 196 U. S., 474.
State of Texas vs. Laredo Ice Co., 73 S. W. Rep., 952.
M. K. & T. Ry. Co. vs. State, 91 S. W. Rep., 214.
San Antonio Gas Co. vs. State, 54 S. W. Rep., 289.
People vs. Sheldon, 139 New York, 251.
Drake vs. Seibold, 81 Hun., 178.
People vs. North River Refining Company, 121 N. Y., 582.

### ARGUMENT.

If the mere assertion to the effect that a statute is "so indefinite, vague and uncertain in its terms that it could not be ascertained by the language used that particular acts constituted an offense," and thereby deprive one of property "without due process of law," can give rise to a Federal

question, then there is no case based upon a statute that can not be brought to the Supreme Court of the United States. And if the uncertainty that may be alleged of a statute can be the basis of Federal jurisdiction, the uncertainty that may be more definitely predicated of the unwritten law will furnish the ground upon which all other cases may come to this court.

If these acts are so definite, so easily construed and applied that it may be said of every conceivable combination of facts that it certainly violates the law or that it certainly does not, then these statutes are better framed than any others that have been promulgated since writing began. Both statutes are about as definite as language may be. The words are of common use and of well established meaning. They are put together with a fair regard for the rules of grammatical construction. The district court, the Court of Civil Appeals and the Supreme Court apparently had no difficulty in understanding them. One of these acts has been before this court; the court evidently had no difficulty in determining its meaning.

The acts under consideration are typical anti-trust statutes. Similar statutes have been in the books of many States. Many cases have been adjudicated. Perhaps in every case questions have arisen as to the meaning and application of the law. Probably it has been insisted in behalf of every combination that it did not come under the terms of the law. There has been a pretty universal difference between the opinion expressed by the law-breakers and the opinion entertained by the courts as to the meaning of these acts. But none of these statutes has been held unconstitutional because of these differences.

The law is a practical thing, and of law makers is not expected a linguistic excellence that can not be attained by others. When an act shall have been passed that conveys definite ideas to ordinary minds and constitutes for them

a sufficient rule of conduct, it is not to be held invalid because some one dissatisfied with its terms can not definitely determine if a scheme he may have for its evasion will fall under its penalties.

Much less is a law to be condemned because a lawyer, trained in the science of quibbling, can demonstrate the vagueness and uncertainty of a law that had so definite a meaning to his client that it had for years been the basis of his conduct. Pierce and the Standard Oil Company and the Waters-Pierce Oil Company may not have understood the laws of Texas, but the careful concealment of their conduct for more than six years indicates that they thought they did.

The Court of Civil Appeals suggests that the Texas statutes against trusts are certainly as definite in their terms as the Sherman Act. That act has not been construed alike by all the members of this court, but this difference of opinion as to its meaning has not been deemed a sufficient reason for holding that judgments under it do not constitute "due process of law." The act has different meanings to the several members of the court, but to each of the members it is the law. And the law is applied even in those cases wherein some of the members of the court agree with the contentions of those to whom the penalties of the law are applied.

This court has not only once but repeatedly placed the stamp of approval upon the Sherman Act, an act much more subject to criticism than either of the Texas statutes. In these decisions the court has recognized the doctrine: "All the authorities agree that in order to vitiate a contract or combination, it is not essential that its result should be a complete monopoly; it is sufficient if it really *tends* to that end and to deprive the public of the advantages which flow from free competition." 85 Federal, 271.

In the Northern Securities Case, 197 U. S., at page 332, this court, speaking through Mr. Justice Harlan, uses this language:

> "That to vitiate a combination, such as the act of Congress condemns, it need not be shown that the combination in fact results, or will result, in a total suppression of trade, or in a complete monopoly, but it is only essential to show that by its necessary operation it *tends* to restrain interstate or international trade or commerce, or *tends* to creat a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition."

And again, at page 340, the court quotes from and approves the holding of the Supreme Court of Ohio in the case of Central Ohio Salt Company vs. Guthrie, 35 Ohio St., 666, in which the latter court says:

> "It is no answer to say that competition in the salt trade was not in fact destroyed, or that the price of the commodity was not unreasonably advanced. *Courts will not stop to inquire as to the degree of injury inflicted upon the public; it is enough to know that the inevitable tendency of such contracts is injurious to the public.*"

In Swift & Co. vs. United States, *supra,* this court, speaking through Mr. Justice Holmes, in considering the Sherman Anti-Trust Act, and a bill filed by the United States against a great many persons and corporations under that law, says, at page 395:

> "The general objection is ged that the bill does not set forth sufficient defini specific facts. This objection is serious, but it seems to us inherent in the nature of the cases. The scheme alleged is so vast

that it presents a new problem in pleading. If, as we must assume, the scheme is entertained, it is, of course, contrary to the very words of the statute. Its size makes the violation of the law more conspicuous, and yet the same thing makes it impossible to fasten the principal fact to a certain time and place. The elements, too, are so numerous and shifting, even the constituent parts alleged are and from their nature must be so extensive in time and space, that something of the same impossibility applies to them. The law has been upheld, and therefore we are bound to enforce it, notwithstanding these difficulties. * * * * *

"The statute gives this proceeding against combinations in restraint of commerce among the States and against attempts to monopolize the same. Intent is almost essential to such a combination and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent, for instance, the monopoly, but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. Commonwealth vs. Peasler, 177 Massachusetts, 267, 272. But when that intent *and the consequent dangerous probability* exists, this statute, like many others, and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result."

In United States vs. Freight Ass'n., 166 U. S., at page 325, this court, speaking through Mr. Justice Peckham, in referring to the Sherman Act, says:

"Neither is the statute, in our judgment, so uncertain in its meaning, or its language so vague, that it ought not to be held applicable to railroads."

In each of the opinions from which the above quotations were taken, this court uses the very language of the acts of Texas, when they provide that if a contract or combina-

tion or agreement *"tends"* to restrain trade, it is a violation of the law. It is easier to determine when a thing *"tends"* to a monopoly, than to say whether it will produce that result; it is easier to determine what is *"reasonably* calculated" to produce a result, than to foretell a result.

The cases discussed by counsel and relied upon as sustaining their contentions are not authority for the propositions made. In each of the cases cited the defect was that no standard was fixed to determine what were *reasonable rates.* In the case of the Texas statutes we have the standard clearly defined. Agreements, contracts, understandings and combinations are declared illegal when they "fix or regulate the price of any article"; and when this provision is followed in the next paragraph by the prohibition against combinations whereby it is sought to fix or regulate the price of any article, or where the effect of such combination is *reasonably calculated* to fix or regulate the price of any article, we have no uncertainty or vagueness.

The portion of the act of 1903, criticised is sub-division 1, of section 2, which prohibits common management or control of two or more corporations, where such common management or control is brought about for the purpose of producing or where such common management or control *tends* to create a trust as defined in another section of the act. We submit it is much easier to determine when common management and control of two or more corporations *tends* to create a trust, than to determine whether or not they *will* create a trust, or even to determine in ordinary cases the *purpose* of the combination.

There are no such rules of construction as are contended for by counsel for plaintiff in error. If there were such rules no penal statute could be upheld or enforced. When it is provided that if a person "wilfully," "wantonly," "maliciously" or "knowingly" does a thing, he is guilty of

an offense, it leaves to the court or jury to say what these terms mean. Two courts or juries might under the same set of facts arrive at different conclusions as to whether or not an act was wilfully, wantonly, maliciously or knowingly done. Yet it would not be contended that the use of these terms rendered a law doubtful or made it indefinite, vague and uncertain. It is supposed that juries and courts will understand words of ordinary meaning and apply them in the ordinary way, and juries have not had and will not have difficulty in applying to facts the meaning of these laws. As heretofore suggested it is easier to determine whether a thing *"tends"* to restraint of trade or monopoly, than it is to say in advance whether it will produce that result; that it is easier to determine and much more certain of demonstration to say that the making of an agreement or the forming of a combination or the entering into a pool or becoming a party thereto is *"reasonably calculated"* to fix or regulate the price of an article, than it is to say, in advance, that the doing of either of these things will produce this result.

The recognition by this court of the difficulty of determining whether or not a rate is "reasonable" does not carry with it the idea that the word has an occult meaning that places it beyond the comprehension of either the lawbreaker or the jury. The rule of the common law that contracts must not be in "unreasonable" restraint of trade was not practically found difficult of enforcement, and the Sherman Act will not become either unconstitutional or inefficient if it should be finally held that it inhibits only contracts in "unreasonable" restraint of trade.

But if the contention of plaintiff in error that the statutes were vague and uncertain were sound, that fact would not affect this case so far as this court is concerned. As is well settled by this court there must be a Federal question, and that must have been the controlling question. Not only

must the case have been decided in the State court on the Federal question alone, but it must not have been possible to decide it without deciding the Federal question. Applying these rules we find that in so far as the 1903 act is concerned, the Court of Civil Appeals directly and correctly decided that the plaintiff in error had been guilty of other offenses, that did not involve this section of the statute at all, and only one penalty was assessed. In so far as the 1899 act is concerned, the jury found the plaintiff in error guilty of violating another section of the statute, not subject to the criticism made, and assessed a fine of less than one-third the maximum. The verdict of guilty would necessarily have followed from the jury's finding upon the other section and this court is not in position to say that the amount of the penalty was in any way affected by the finding that it was also guilty upon the section criticised.

## V. THE PENALTIES.

The ninth "question" presented by the principal brief of plaintiff in error is as follows:

> "The penalties that have been imposed upon the defendant are so excessive as to constitute a deprivation of its property without due process of law."

This and like propositions have been made and lengthily argued in each of the three briefs filed in this case. In order that the contentions thus diffusively presented by plaintiff in error may be somewhat logically met, defendant in error presents in reply the following distinct propositions:

First. The jurisdiction of the Legislature of Texas to pass laws prohibiting the making of agreements or the forming of combinations in restraint of trade in Texas, or the carrying out in Texas of such agreements or combinations, is absolute and complete.

Second. The jurisdiction of the legislature being complete it may fix such punishment for the violation of a law prohibiting unlawful combinations as it may deem adequate and proper.

Third. The penalties assessed in this case are not excessive.

## EIGHTH PROPOSITION OF DEFENDANT IN ERROR.

*The jurisdiction of the Legislature of Texas to pass laws prohibiting the making of agreements or the forming of combinations in restraint of trade in Texas, or the carrying out in Texas of such agreements or combinations, is absolute and complete.*

### STATEMENT.

For convenience the statement that might properly be made under this proposition is placed at the beginning of this brief.

### AUTHORITIES.

Waters-Pierce Oil Co. vs. Texas, 177 U. S., 28.
National Cotton Oil Co. vs. Texas, 197 U. S., 115.
Smiley vs. Kansas, 196 U. S., 447.
Addyston Pipe Co. vs. United States, 175 U. S., 211.
Mugler vs. Kansas, 123 U. S., 665.
Slaughter House Cases, 16 Wall., 63.
Barbier vs. Connolly, 113 U. S., 31.
Carroll vs. Greenwich Insurance Co., 199 U. S., 410.
United States vs. E. C. Knight Co., 156 U. S. 1.
Waters-Pierce Oil Co., vs. State, 44 S. W. Rep., 936.
Anheuser-Busch Brewing Ass'n. vs. Houck, 27 S. W. Rep., 692.
State vs. Laredo Ice Co., 73 S. W. Rep., 952.
Coal Co. vs. Lawson, 34 S. W. Rep., 919.
State vs. M. K. & T. Ry. Co., 91 S. W. Rep., 214.

People vs. Sugar Trust, 121 N. Y., 582.
State vs. Standard Oil Co., 49 Ohio St., 137.
Harding vs. American Glucose Co., 182 Ill., 551.
Arnot vs. Pittson Coal Co., 68 N. Y., 558.

The above decisions, both Federal and State, hold unequivocally that a State has the right, through its legislature, to pass laws prohibiting the making of or carrying out, within the State, agreements or combinations in restraint of trade; that this power was reserved by the several States when the original Constitution of the United States was adopted, and that the only limitation upon the legislature in the exercise of that power and right in so far as the Federal courts are concerned, is that the laws passed in pursuance thereto must not contravene the provisions of the Federal Constitution.

To say that the acts charged to have been committed by the plaintiff in error and for which it was convicted, were matters that a State Legislature had the right to prohibit, is simply saying what this court and many State courts have often said before. Two corporations are combined, it matters not whether by agreement, by common management or by common control, whether by union of their capital or by agreement of their managing officers, or common ownership. The question is, and the Texas statutes make that the test, what is the purpose of the arrangement? Abatement or destruction of competition, limitation of production, if demand declines and prices go down, maintenance or enhancement of prices for articles necessary for public consumption; in short, control of production and prices, control of the market in given lines, and either the destruction of outstanding concerns or their compulsory amalgamation with the combination. The courts have declared such combinations illegal, without reference to anti-trust statutes, so-called. They have widened the basis of

their condemnation by declaring such combinations to be contrary to public policy, because tending to the restraint of trade and competition and encouragement of monopoly, and undue control of production and prices. The courts have said that no matter what the form adopted may be, if the end is to curtail production, enhance prices, restrain trade and competition, control the market in any commodity, it is condemned by the common law, as well as statutes in the different States. The common law, for the avowed purpose of encouraging freedom of trade and production, disabled any corporation from buying out or leasing for long terms the franchises and properties of other corporations. Its design was to keep them all going for the public good.

In the case of Harding vs. American Glucose Company, *supra,* it is held that "any combination of competing corporations, the necessary consequence of which is the controlling of prices, or limiting of production, or suppressing competition, in such a way as to create a monopoly, is contrary to public policy and void. An agreement tending to prevent competition and create a monopoly is void by the principles of the common law, because it is against public policy." The Supreme Court of Texas, in the case of Coal Co. vs. Lawson, *supra,* announced the same doctrine, and held that combinations in restraint of trade were prohibited by the common law. As Texas is a common law State, having adopted the common law by express legislative enactment, long before the first Waters-Pierce Oil Company was ever incorporated or permitted to do business in Texas, the permit was accepted, business done and action taken by the plaintiff in error within the State of Texas, with knowledge of the fact that if it did the things in Texas it was convicted of doing in this case, that it was doing something that was illegal, without reference to the anti-trust statutes. This but emphasizes the point that we are undertaking to make, namely, that there can be no question

but that the Legislature of Texas had complete jurisdiction and authority to say that illegal combinations constituted an offense and crime and provide for their punishment as such, because the common law denounced them as offenses and crimes before any statute was passed doing so.

In the case of Addyston Pipe Co. vs. United States, *supra,* this court lays down a very wholesome rule as to what would constitute restraint of trade and say that when "the direct and immediate effect of a contract or combination among particular dealers in a commodity is to destroy competition betwen them and others, so that the parties to the contract or combination may obtain increased prices for themselves, such contract or combination amounts to a restraint of trade in the commodity. Total suppression of trade in the commodity is not necessary to render the combination one in restraint of trade. It is the effect of the combination in limiting and restricting the right of each of the members to transact business in the ordinary way, as well as its effect upon the volume of dealing, that is regarded. All the facts and circumstances are to be considered in order to determine the fundamental question, whether the necessary effect is to restrain interstate commerce." This court further holds in that case that in so far as these contracts or combinations affected local or intra-state commerce, only that they were proper subjects of prohibition by State legislatures, and concedes full power of the States over them.

But fortunately it is not necessary for us to argue out all the intricate questions as to how far the State legislature may go in enacting laws upon this subject, because this court in the case of National Cotton Oil Company vs. State, *supra,* had the statutes under discussion that are involved in this case, and held, as they had previously held in Smiley vs. Kansas, *supra,* upon the same character of statute, that not only were contracts, combinations and agreements affecting

commerce or trade within the State a proper subject for State legislation, but that the power had been properly exercised and that the statutes did not contravene any provision of the Federal Constitution.

In the case of National Cotton Oil Co. vs. Texas, *supra*, this court said:

> "It is the power to control prices which makes the inducement of combinations and their profit. It is such power that makes it the concern of the law to prohibit or limit them. And this concern and the policy based upon it, has not only expression in the Texas statutes, it has expression in the statutes of other States and in a well known national enactment. According to them, competition, not combination, should be the law of trade. If there is evil in this it is accepted as less than that which may result from the unification of interest and the power such unification gives. And that the legislature may so ordain this court has decided." Citing a number of cases.

The completeness with which the principle upheld in that case is established is further indicated by the following excerpts from opinions of this court.

Mr. Justice Holmes, speaking for the court, in the case of Carroll vs. Greenwich Ins. Co., 199 U. S., 410, says:

> "Many State laws which limit the freedom of contract have been sustained by this court, and therefore an objection to this law on the general ground that it limits that freedom cannot be upheld. There is no greater sanctity in the right to combine than in the right to make other contracts. Inded Mr. Dicey, in his recent work on Law and Public Opinion in England during the nineteenth century, indicates that it is out of the very right to make what contracts one chooses, so strenuously advocated by Bentham, that combinations have arisen which restrict the very freedom that Bentham sought to attain, and which even might menace the authority of the State."

And again, in the same case, at page 409, it is said:

> "Whatever may be thought of the policy of such attempts, it cannot be denied in this court, unless some of its decisions are overruled, that statutes prohibiting combinations between possible rivals in trade may be constitutional. The decisions concern not only statutes of the United States, Northern Securities Co. vs. United States, 193 U. S., 197; Swift & Company vs. United States, 196 U. S., 375, but also State laws of similar import. Smiley vs. Kansas, 196 U. S., 447; National Cotton Oil Co. vs. Texas, 197 U. S., 115."

In the case of United States vs. E. C. Knight Co., 156 U. S., at page 11, this court, speaking through the Chief Justice, says:

> "It cannot be denied that the power of a State to protect the lives, health, and property of its citizens, and to preserve good order and the public morals, 'the power to govern men and things within the limits of its dominion,' is a power originally and always belonging to the States, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive. The relief of the citizens of each State from the burden of monopoly and the evils resulting from the restraint of trade among such citizens was left with the States to deal with, and this court has recognized their possession of that power even to the extent of holding that an employment or business carried on by private individuals, when it becomes a matter of such public interest and importance as to create a common charge or burden upon the citizen; in other words, when it becomes a practical monopoly, to which the citizen is compelled to resort and by means of which a tribute can be exacted from the community, is subject to regulation by State legislative power."

In the case of Addyston Pipe & Steel Co. vs. United

States, 175 U. S., at page 241, this court, speaking through Mr. Justice Peckham, says:

> "If dealers in any commodity agreed among themselves that any particular territory bounded by State lines should be furnished with such commodity by certain members only of the combination, and the others would abstain from business in that territory, would not such agreement be regarded as one in restraint of interstate trade? If the price of the commodity were thereby enhanced (as it naturally would be), the character of the agreement would be still more clearly one in restraint of trade."

And again, at page 247, it is said:

> "Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State, by reason of the fact that the combination also covers and regulates commerce which is interstate. The latter it can regulate, while the former is subject alone to the jurisdiction of the State. The combination herein described covers both commerce which is wholly within a State and also that which is interstate."

All of the briefs of plaintiff in error seem to rely upon the recently decided case of *ex parte* Young, 209 U. S., to secure a reversal of the proposition so definitely laid down in the excerpts just copied. Counsel for defendant in error have no inclination to question the correctness of the main proposition in that case—that is that the Minnesota statutes under consideration therein were in conflict with the Fourteenth Amendment. Whatever might be said gener-

ally of the impropriety of courts undertaking to pass upon any question concerning legislation other than to ascertain the meaning of the laws and determine their constitutionality, yet undeniably when the legislature enters the field of business administration and conducts public business or quasi-public business with property that does not belong to the State the owners of the property have a right to appeal to the courts to prevent such administration as will amount to confiscation. Public policy is not involved except so far as it is always involved in the preservation of private rights.

The proposition is frequently made that the Fourteenth Amendment does not interfere with the exercise of the police powers. The only objection to the statement is that it means nothing. As correct a statement would be that the police power authorized such encroachments upon private rights as are not in conflict with the Fourteenth Amendment. If the police power is sufficiently limited by a definition it is not limited at all by the Constitution of the United States. Sometimes it is said that the police power extends to such regulations affecting private rights as are reasonable and necessary. The courts can not determine the desirability or expediency of an act, the good sense or lack of judgment displayed in its passage. It may merely determine whether by reason of conflict with paramount law it is law at all. Very manifestly in those cases where constitutionality is based upon considerations of what is reasonable, the courts exercise a highly important power, and the courts have been more successful in reaching conclusions that are commendable than in stating principles that are satisfactory.

In the relations of the courts to the exercise of the police power by the legislature as to laws and regulations requiring penalties for their enforcement at least three classes have been practically recognized by the courts, viz.:

1st. The laws that deal with the more serious offenses against property and the person.

2d. Those regulations that involve the prohibition of things not abstractly wrong, but which upon account of the general good, can not be permitted.

3d. The laws made to enable the State to control private property devoted to public or quasi-public uses.

With reference to the first of these subjects of legislation no difficulties as to application of constitutional principles arise. As to matters that are the ordinary subjects of criminal codes the Fourteenth Amendment has little opportunity for application. This class includes offenses involving violence to the person, fraudulent or violent infraction of property rights, conduct affecting the public morals. There are no property rights that can stand in the way of complete control of these matters, and assuming an impartial application no question involving the Constitution of the United States can arise with reference to laws concerning them. The cultivated progress of the public conscience may from time to time add to this class something not always assumed to be within it. Lotteries, the liquor traffic, gambling of all kinds, are subjects with reference to which property rights are entirely subordinate, though each of these evils have until recently been able to make claims to legality and each has now defenders denying their moral obliquity. As to this class of cases there can be no claims that prohibitory legislation constitutes the taking of property without due process of law. The second class mentioned deals with the governmental regulation of the conduct of men with the view of compelling such use of every man's property as to make effective the limitation upon which he holds it, that he shall not use it to injury of others.

This class of regulations is peculiarly within the protection of the Constitution. There is much temptation to go

beyond the enforcement of the limitation that there shall be no harmful use of property, and to take without compensation that which, if necessary to the public, should be acquired under the eminent domain. It is with reference to this class of cases that questions of the reasonableness of the exercise of the governmental power has arisen.

The third class of laws involves entirely different principles. Just what will be determined as the limit of the power to declare a business affected with a public use and subject to the power to fix the charges for its service can not be foreseen.

The power has already been exercised with reference to a number of businesses that were not subjected to regulation at the common law. But without reference to the subjects upon which such legislation will operate it is apparent that from the very nature of the legislation somewhat different rules as to the judicial function will have to apply. There are some principles that have been so frequently announced that they may be stated with a fair probability of being correct. The rates of a public service corporation (the rulings have usually been with reference to corporations) may be fixed by the legislature, either directly or by a body substituted for itself. To be valid the rate must be reasonable, by which is meant that it must not be such as to confiscate the property of the corporation.

The rate must not only be reasonable, but the scheme for regulation by the government must provide some plan by which the interested parties (at all events the interested public service corporation) may have that fact judicially determined before subjecting itself to the penalties that might be prescribed for a failure to obey the regulations. The cases discussing the conclusions stated speak of the making of rates as a legislative function, and a determination of whether or not the rate is reasonable as a judicial func-

tion. It may be that these propositions are much more easy to sustain upon precedent than upon principle, but it is certainly quite fortunate that the court has been able to find a way satisfactory to itself to prevent the absurd and frequently disastrous consequences that must necessarily have followed the absolute fixing of rates by the legislature.

Whether or not a rate is reasonable and lawful or unreasonable and confiscatory can be determined only by a consideration of a large number of facts. In the absence of their ascertainment neither the legislature, nor the courts, nor the interested parties can determine if the rates are reasonable. Whether the rate making act is effective or not nobody can know. The property involved belongs neither to the government, nor to the shipper. The government has not chosen to exercise its right to acquire the property under the eminent domain and charge as little as it may please. It has chosen to regulate the property of another and its limited power may or may not have been exceeded. If the public service corporation should perform the service at a rate which proves to be confiscatory it will have had its property taken without due process of law. If it refuses to observe the rate it subjects itself to the possibilities of the penalties. Whenever the legislature passes an act which exposes a person to such possibilities it thereby subjects his property to a burden it ought not to have to bear—takes the property without due process of law. Without this due process of law property may not be taken temporarily or permanently, partially or completely. Upon this ground any rate making act that prescribes any penalties without prescribing a method of testing the reasonableness of the rate prior to their infliction would be unconstitutional.

In the case of a railroad there is absolutely nothing to choose except to submit to the rates made by the government or incur the penalties imposed by the government. The company would not be permitted to take up its railroad

and discontinue its business entirely. It could not refuse to accept and ship freight or transport passengers. An effort to do these things would bring about a forfeiture of its charter and the entire destruction of its property. A law that places a railroad in these predicaments must necessarily be held unconstitutional. But if the case of *ex parte* Young can without difficulty be sustained and probably sustained without reference to the amount of the penalties denounced by the law therein under consideration the effort to use it for authority to overturn the previous decisions of this court as to the laws now before the court must fail. As has heretofore been shown, in the case of *ex parte* Young the court foresaw the very contentions that are now being made and carefully excluded the idea that the penalties of State statutes are ordinarily subject to Federal supervision, or that one may experiment with a statute to see if he may defeat its operation.

> "It is urged that there is no principle upon which to base the claim that a person is entitled to disobey a statute, at least once for the purpose of testing its validity, without subjecting himself to the penalties for disobedience provided by the statute in case it is valid. This is not an accurate statement of the case. Ordinarily a law creating offenses in the nature of misdemeanors or felonies relates to a subject over which the jurisdiction of the legislature is complete in any event. In the case, however, of the establishment of certain rates without any hearing, the validity of such rates necessarily depends upon whether they are high enough to permit at least some return upon the investment, and an inquiry as to that fact is a proper subject of judicial investigation. If it turns out that the rates are too low for that purpose, then they are illegal. Now to impose upon a party interested the burden of obtaining a judicial decision of such a question (no prior hearing having been given) only upon condition that if unsuccessful he must suffer imprisonment and pay fines as

provided in these acts, is in effect to close up all approaches to the courts and thus prevent any hearing upon the question whether the rates as provided by the acts are too low and therefore invalid.

"The distinction is obvious between a case where the validity of the act depends upon the existence of a fact which can be determined only after investigation of a very complicated and technical character and the ordinary case of a statute upon a subject requiring no such investigation and over which the jurisdiction of the legislature is complete in any event."

The validity of the statutes which have been violated by the plaintiff in error does not depend upon the existence of a fact which can be determined only after investigation of a very complicated and technical character. It is the ordinary case of a statute upon a subject requiring no such investigation and over which the jurisdiction of the legislature has been shown to be complete in any event.

The conspirators against the laws of trade through illegal restraint and unlawful combinations have no more standing to conduct experiments with the penal statutes than has the conspirator against the laws of trade through swindling. The legislature has the same complete right to denounce the one and the other.

But plaintiff in error is not even in position to claim that the validity of the law has not been determined and that it has a right to violate the law until he has ascertained definitely that he can be punished for its violation. When it entered the State the anti-trust acts of Texas of 1895 and 1889 had been held constitutional in so far as the cancellation of permits was concerned and the Act of 1903 eliminated the only provision in these acts subject to constitutional attack. And the defendant continued to violate the law of 1899 after it was declared constitutional by the Supreme Court of the United States in the case of National Cotton Oil Co. vs. Texas, 197 U. S., 115. The offense of which

plaintiff in error has been found guilty was committed after the State and Federal courts had declared the rights of Congress and of the States to absolutely prohibit conspiracies in restraint of trade, and the efforts made by it to conceal its conduct and status shows that it was not without an actual knowledge of the applications that had been made of the laws in an effort to suppress a conspiracy of which it had become a part.

Plaintiff is not and never has been under any character of obligation to do business in Texas. It is not a Texas corporation, and it has never owed the State but the one obligation of obeying its law, and this obligation arose only by virtue of its entry into the State to do business. It was under no obligation to enter. If the laws of the State were unsatisfactory it had the complete right to remain out of the State. At the time it entered the State the Act of 1899 was in force. The provisions of that act setting forth the penalties were in no sense ambiguous. It had the right to decline to subject itself to the possibilities of incurring these penalties. The State has not undertaken to administer its property. It has not undertaken to fix any rates. If the State had so undertaken it could have made effective any objection it might have had against the law by simply declining to enter the State. The State has the practically unlimited right to determine the conditions upon which it will permit foreign corporations to do business within her borders. It imposed upon plaintiff in error substantially only one condition: that it should obey her statutes. The only protest the Waters-Pierce Oil Company had any standing to make was by staying out of the State. When it entered it came in with the further understanding that if the State found it advisable in any way to change her law the company would again have the alternatives of obeying, or of getting out.

## NINTH PROPOSITION OF DEFENDANT IN ERROR.

*Having complete jurisdiction to pass laws prohibiting the making of agreements or the forming of combinations in restraint of trade in Texas, or the carrying out in Texas of such agreements or combinations, the legislature has the absolute right to prescribe the punishment for a violation of such laws, and the laws under consideration are open to no constitutional objections on account of the penalties.*

### STATEMENT.

The acts under consideration are set forth in the statement at the beginning of this brief.

AUTHORITIES:

National Cotton Oil Co. vs. Texas, 197 U. S., 115.
Ripley vs. Texas, 193 U. S., 504.
Ohio vs. Lloyd, 194 U. S., 445.
Marion vs. Trout, 199 U. S., 212.
McCray vs. U. S., 195 U. S., 27.
Devine vs. Los Angeles, 202 U. S., 302.
Ry. Co. vs. Hume, 115 U. S., 512.
Tel. Co. vs. Indiana, 165 U. S., 304.
Coffey vs. Haviland Co., 204 U. S., 659.
Ry. Co. vs. Seegers, 207 U. S., 73.
N. W. L. I. Co. vs. Riggs, 203 U. S., 251.
O'Neil vs. Vermont, 144 U. S., 323.

### ARGUMENT.

There is no assignment of error by plaintiff in error to the effect that the laws under which the verdict in this case was rendered is unconstitutional upon the ground that it permits excessive penalties and thereby deprives a person of property without due process of law. But the briefs argue the proposition just as if it had been assigned.

There is as has heretofore been shown an absolute right in the legislature to prohibit the things denounced by the anti-trust laws of Texas. This right existing there is absolutely no limit upon its power to fix the punishment except the limitation in the Texas State Constitution that no cruel and unusual punishment shall be inflicted. In the making and the amendment of the Constitution of the United States it was conceived that each State would properly guard against any abuse of power by its own legislatures in this respect, and amendatory action was confined to taking from Congress the power of inflicting such punishments. Limited by this State constitutional provision alone the States have a right to determine the punishment which it shall impose to prevent the doing of those things which it has a right to prohibit.

That conspiracies resulting in monopolies and combinations and contracts in restraint of trade may be prohibited by law has been shown under the next preceding proposition. The effort to use apparently legal methods of procedure to secure unfair advantages in trade and thereby take the property of others without incurring the dangers that inhere in robbery by force, has characterized commerce during the entire time of which we have knowledge. And the resultant evil has been the subject of governmental regulation and punishment. Pretermitting a discussion of earlier efforts to give everybody a chance, a consideration of the laws upon which our laws are principally based will indicate that the efforts now being made to restrain the unlawful use of wealth and the unlawful use of the power to contract and the unlawful use of opportunities to take advantage have prototypes in the crystalized conceptions of justice which constitute the common law, and in the statutes which converted some of these conceptions into written law.

These English common law principles and statutory provisions indicate that at the time these States became free,

at the time the American effort was made to divide the functions of government into legislative, executive and judicial action, the prevention of monopoly was conceived to be one of the proper subjects of legislation. The right to prohibit was then recognized. It was then as clearly and definitely a right of the legislature to prohibit monopoly, to prohibit conspiracies in restraint of trade as it was to prohibit embezzlement, or swindling, or fraud, or highway robbery—all going to the preservation of the property rights of the unsuspecting against the depredations of the unscrupulous.

From the time of the separation of the States from the mother country to a period within the memory of all the members of this court there was little occasion for the exercise of this undoubted right though it is probable that every State had some statute that recognized its existence.

Nearly forty years ago the first effort to completely monopolize the business in a product was begun. Proceeding along the lines of transactions that considered by themselves and without reference to a general plan or conspiracy might not have been unlawful, and along the lines of transactions unpunished because unproved, the Standard Oil Company accomplished a substantially complete monopoly of the oil business and began to draw unto itself much of the most profitable of the other business of the country before there was a realization of the fact that the existing laws were inadequate to deal with so dangerous a situation, When the predatory possibilities of complete monopoly had thus been demonstrated and the inefficiency of the law had thus been shown, the combination and monopolization of the other important businesses of the country began. Taking advantage of the liberal laws of incorporation each set of conspirators could carve themselves into a score of corporations, could place the responsibility where it could be most easily evaded and concentrate the profits where they

were most easily appropriated. Recognizing the fidelity with which conspirators treat each other while each secures from the common fund more than he could obtain by individual action (a principle ordinarily expressed in coarse language) a good English word was prostituted to ignoble uses and the "Trust" was born. Everything was ready now for the monopolization of the monopolies. But the American people awoke to the danger and began to put into more definite words the somewhat indefinite rules of the common law, to adjust the rules of the common law to the complex condition of modern society and to make penal that which had merely been illegal.

More than half the States of the Union passed acts of which the two statutes here under investigation are types, and the Congress of the United States enacted the principles of the common law into the provisions of a penal statute which wisely administered by the executive department and wisely construed by the courts promises to become not less important in the preservation of liberty than the War of Independence was efficacious in its making.

In no one of the State enactments nor in the Federal act, was there merely an effort to regulate the combinations that made for monopoly. If there are "good" trusts and "bad" trusts that fact had no legislative recognition. Each State acted upon the assumption that in so far as its own commerce was concerned it had the absolute power to prohibit, upon the assumption that it ought to prohibit, and upon the assumption that it had the right to fix the punishment for an infraction of the law. The Federal Congress declared its right to absolutely prohibit combinations affecting interstate commerce, absolutely prohibited such combinations and fixed punishment assumed to be sufficient to accomplish the purpose of the act.

Both the State and Federal governments apparently conceived that no regulation of these trusts was possible. The

prohibition was absolute. The experiences since the beginning of the effort have confirmed the necessity for absolute prohibition and have left doubt only as to the sufficiency of the penalties.

Recognition of the impending danger by the legislatures and congress and the resulting legislation came after recognition by the trusts of the financial capabilities of combination. These advantages they had no intention of abandoning and a conflict has resulted in which it is yet to be determined whether the concentrated power of the trusts or the power of the people is the greater. Every device known to the lawless has been used to defeat the will of the people and retain the advantages of unlawful combinations. Unable to prevent legislation and not able always to prevent effort to enforce these acts these trusts have appealed to all those constitutional provisions designed for the protection of human life and liberty in an effort to perpetuate industrial vassalage and retain property unlawfully acquired. Having amassed property by violations of law they hope to retain it by appeals to the law. Having flagrantly and insolently disregarded laws whose penalties were not severe they contend that the infliction of penalties more nearly apportioned to the gravity of the offense constitutes the taking of their property without due process of law.

The laws that have been more recently passed were enacted with a knowledge of the difficulty of their enforcement.

There was recognition of the fact that corporations were principally to be dealt with and that efforts to reach the individuals who were responsible for their conduct presented practical difficulties rendering their personal punishment substantially impossible. There was recognition of the fact that if the monetary penalties were small the trusts could afford to take the chance of their infliction and if they were assessed could afford to pay them for the profits that were

to be derived from violations of the laws. The legislatures have had to deal with an oil trust with a capitalization of a hundred million, with a harvester trust with a capitalization of many millions, with a sugar trust with a capitalization of many millions, with a tobacco trust with a capitalization of many millions, with a beef trust with a capitalization of many millions, with many other trusts with capitalization of many other millions. Under these circumstances small penalties would have encouraged conduct it was the purpose of the legislature to prohibit. But even the naming of comparatively large penalties have not produced the desired results, and the evidence in this case shows that at least one of these trusts continued in its profitable violation of the law, evidently hoping to evade the penalties by concealing its character. The record does not show other violations of the law, but since the court judicially knows that which everybody else knows, it knows that however severe the penalties may be regarded they have not been sufficient to secure compliance with the law.

But in any event it is the province of the legislature to determine the matter of discretion involved in fixing the penalties necessary to enforce laws, and not for the courts to exercise either the power of veto or of correction.

## TENTH PROPOSITION OF DEFENDANT IN ERROR.

*The penalties assessed by the jury were not excessive.*

### STATEMENT.

See statement at beginning of brief.

### AUTHORITIES.

It is claimed that the penalties are so clearly excessive that their infliction constitutes the taking of property without due

process of law. As has been shown the legislature had a right to prohibit the conspiracies of which defendant has been found guilty, and a right to name the punishment to be inflicted for a violation of the prohibition. The jury as a part of the court trying the case had a right to and did fix the punishment within the terms of the law. The objection was made in the State court that the penalties named by the law and the penalties fixed by the jury constituted cruel and unusual punishment in contravention of the State constitution. The State court passed upon the question thus presented adversely to appellant, and held that the law was not open to that objection. No Federal question based upon the penalties of the law or upon the penalties fixed by the jury has been or can be presented.

But if the question were before the court in a way to require its attention the court would necessarily hold that the punishment is in no sense excessive. Of course no complaint could be made of the provisions which forfeit the charter or cancel the permit of a corporation for violating the law. These results could follow even without specific provision in the law to that effect.

The facts in the case at bar would amply warrant the infliction of the maximum penalties, while the jury awarded less than one-third of that amount. The Court of Civil Appeals in disposing of this case uses this language:

> "The verdict, while large, is much under the maximum permitted by the law. Its magnitude is mainly attributable to appellant's repeated and long continued violations of the law, covering a period of six years."

During this period the character of the operations of the defendant were carefully concealed. It was not until internal dissensions among the conspirators brought about the conditions under which honest men get their dues that the

State had sufficient evidence to warrant the institution of a suit.

The following quotation is from one of the briefs of plaintiff in error:

> "We contend that the action of the court as one of the departments of the State government in sanctioning the act of the prosecuting officers of the State of Texas in delaying this prosecution against the plaintiff in error for nearly seven years and permitting the State to enforce penalties for each day's violation of the laws * * * is a denial to the plaintiff of the protection guaranteed, etc."

That its subtle humor may be appreciated attention is directed to the fact that in September, 1906, Mr. Hadley, the attorney-general of Missouri, had after many futile efforts compelled Mr. Pierce to testify and that in this testimony there was abstracted from him evidence sufficient for the conviction of defendant. Within two weeks from the acquisition of this essential evidence the voluminous petition in this case had been filed, service had been had and the machinery for taking testimony was in operation. Prior to that time the State could do nothing. Conscious of the fact that other oil corporations could not do business within her borders, that her citizens were being furnished with oil the sale of which the laws of other States would not permit, that her citizens were paying more for bad oil than the citizens of other States were paying for good, that she was getting no substantial benefit from the great oil discoveries within her borders, and none from the refineries which had been established, she was yet unable to prove the conspiracy so detrimental to her interests. In the meantime starting in 1900 with a capitalization of $400,000 the property of the Waters-Pierce Oil Company had become worth, according

to the testimony of her president, forty or fifty millions of dollars. In Texas the physical properties had become worth by 1906 at least half a million and the business establishment worth very much more. In addition to this vast increment in wealth, the company had been paying in dividends as much as 700 per cent per annum. The Texas business according to the testimony of officers of the company constituted at least one-third of the business of the corporation. It was doubtless the most profitable business that the company had, for nowhere else was its monopoly so complete. Considering the dividends of seven hundred per cent, and the enormous addition to the value of its assets, the profits could not have been less than five or six millions a year. Of this amount at least one-third, at least one and a half millions, was contributed by the unwilling people of Texas. By the judgment in this case the State will recoup the exactions of only one year out of six. It is easy to see how the defendant could afford to take the chances, and easy to see how notwithstanding the penalties of which it complains it can afford to continue to violate the laws of Texas. It is apparent that while Texas has a right to prohibit the operation of unlawful conspiracies within her borders it has not had the power to prevent the operation, and the penalties prescribed have been inadequate to the ends to be accomplished. Not only does the evidence show that the defendant violated the law, but it shows that it knew it was violating the law, that it kept the fact carefully concealed, and that doubtless realizing the probabilities of ultimate detection it took advantage of the monopoly to do those things the mere possibility of the doing of which is a sufficient justification for the existence of the laws against monopoly. It levied tribute as if it feared each year would be its last. That the application of these remarks may be understood it is to be recalled that the "Old" Waters-Pierce Oil Co. was excluded from Texas by the judgment of the Texas

courts sustained by the judgment of this court. Granted by the State officers after judgment rendered time within which to wind up its affairs and leave the State, upon the day before it was to retire it went through the form of dissolving by a vote of its stockholders. Thereupon another charter was taken out, the stock (except that assigned to dummy directors) being apparently subscribed and paid for by H. Clay Pierce. The concern operating under this new charter is the defendant in this case. The "new" concern was called, as was the "old," the "Waters-Pierce Oil Company"; its capitalization was the same, its property the same, its business organization was the same. No change of any kind was made except that upon some of its stationery the words "incorporated under the Laws of Missouri in 1900," was placed with a rubber stamp and necessity for more careful study of the law was recognized by the substitution of the general attorney of the concern for one of the dummy directors. The fact that nearly two-thirds of the stock of the concern was subscribed in trust for the Standard Oil Company was carefully concealed and the subsequent transfer in blank of the certificates did not appear upon the books of either company. The fact that the Standard Oil Company actually controlled the operations of the company was artfully obscured and the business intercourse between these two branches established by the oil conspiracy was further hidden by having the organization at 26 Broadway, New York, addressed at 75 New Street. The division of territory by which the "Old" Waters-Pierce Oil Company had been freed from competition was maintained, and the old understanding that only the refineries of the oil trust should be patronized was kept in force. All this was done with a circumspection and secrecy not theretofore regarded necessary by a concern never loquacious but always more prodigal of words than of facts. The monopoly which the secret combination maintained was used with

remorseless rapacity. Considered in connection with the chief offenders little will be said of the law other than that its penalties were insufficient and nothing can be said of the verdict of the jury other than to express astonishment at its moderation.

## THE RECEIVERSHIP.

The questions presented by the receivership arise in another case in which defendant in error has filed a brief. If it were necessary herein to say anything it would be enough to say that the Court of Civil Appeals declined to pass on any matter connected with the receivership in affirming the judgment attacked in this proceeding in error.

It is respectfully submitted that the case should be dismissed or the judgment affirmed.

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*Assistant Attorney-General.*

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# WATERS-PIERCE OIL COMPANY *v.* STATE OF TEXAS (NO. 1).

ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

No. 359. Argued November 2, 3, 1908.—Decided January 18, 1909.

The jurisdiction of this court, under § 709 Rev. Stat., to review the proceedings of state courts is limited to specific instances of denials of Federal rights specially set up in and denied by the state court.

This court does not review, but accepts as conclusive the findings of facts made by the state court.

Although the state court may incorrectly charge as to certain provisions of a statute if the jury finds that defendant has violated those provisions and also other provisions not involving any Federal question, and only one penalty is assessed, the judgment rests on a non-Federal ground sufficient to sustain it, and this court has not jurisdiction to review it under § 709 Rev. Stat.

Although an agreement to violate the anti-trust law of a State may be made outside of the State, if the parties thereto or their agents execute it, or attempt so to do, within the State, they are under the jurisdiction of the State and their conviction for such acts is not without due process of law.

States having power to prevent unlawful combinations in restraint of trade may provide the procedure for enforcing the same, subject only to the qualification that such procedure must not deny or conflict with fundamental or constitutional rights.

Even though it would be giving a penal statute a retroactive effect to make it apply to an unlawful agreement executed prior to the passage of the act by defendant's predecessor in interest, defendant is subject to conviction for violating the act after its enactment by making itself a party to and carrying out its illegal provisions.

Where defendant has had a fair trial and the question of liability has been submitted to a jury and the judgment reviewed and sustained by an appellate court, this court will not hold that there has been a deprivation of due process of law because the state statute permitted, and the court charged, that conviction could be had not only for acts accomplishing, but also for those tending or reasonably calculated to bring about, the things prohibited.

The anti-trust laws of Texas involved in this case are not unconstitutional as depriving any one of due process of law because vague and indefinite as prohibiting acts which "tend" or are "reasonably calculated" to restrain trade and prevent competition.

The fixing of punishment for crime and penalties for unlawful acts is within the police power of the State, and this court cannot interfere with state legislation in fixing fines, or judicial action in imposing them, unless so grossly excessive as to amount to deprivation of property without due process of law.

Where a state anti-trust law fixed penalties at $5,000 a day, and, after verdict of guilty for over 300 days, a defendant corporation was fined over $1,600,000, this court will not hold that the fine is so excessive as to amount to deprivation of property without due process of law where it appears that the business was extensive and profitable during the period of violation, and that the corporation has over $40,000,000 of assets and has declared dividends amounting to several hundred per cent.

106 S. W. Rep. 918, affirmed.

THE facts are stated in the opinion.

*Mr. Moorfield Storey, Mr. E. B. Perkins* and *Mr. Henry Samuel Priest,* with whom *Mr. J. L. Thorndike* was on the brief, for plaintiff in error:

By the proceedings in the Texas courts defendant has been

subjected to the penalties of the act of 1899 by reason of an agreement made by another company, the old Waters-Pierce Company, with the Standard Oil Company, confining the business of those two companies to different parts of the United States. This agreement was made in 1878, many years before the act was passed. The defendant cannot be so subjected to penalties without giving a retroactive effect to the act and depriving the defendant of its property without due process of law.

The defendant did not by acquiring the business and property of the old Waters-Pierce Company succeed to any of the liabilities of that company. *Armour* v. *Bement's Sons*, 123 Fed. Rep. 56.

The state courts by imposing on the defendant a liability on account of an agreement made by the old company have undertaken to deprive the defendant of its property without due process of law. *Woodward* v. *Central Vermont Ry. Co.*, 180 Massachusetts, 599; *Davidson* v. *New Orleans*, 96 U. S. 102.

But if the defendant is to be regarded as the old company in a new form, then the question is to be treated in the same manner as if the old company were sued for penalties for having entered into the agreement for a division of territory in 1878 and remaining a party to it on and after June 1, 1900. *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 36, 39. And in 1878 there was no law in Texas forbidding such an agreement. *Mogul Steamship Co.* v. *McGregor*, A. C. 1892, 39.

Although the words of the act refer to the future, yet as the state courts gave it retroactive effect the defendant has thereby been deprived of its constitutional right. *General Oil Co.* v. *Crain*, 209 U. S. 211, 228.

The agreement was not only made before the act of 1899 was passed, but it was made outside of the State of Texas, and it did not provide that either company should do anything in Texas. By imposing penalties on the defendant by reason of such an agreement the State is punishing an act done out of its jurisdiction and so depriving the defendant of its property with-

ıe process of law. *State* v. *Lancashire Ins. Co.*, 66 Arkan-
66; *O'Neil* v. *Vermont*, 144 U. S. 332, 341; *United States* v.
r, 209 U. S. 39, 44; *In re Palliser*, 136 U. S. 257, 266.
only provision of the agreement that affected Texas was
he Standard Oil Company should not do business in that
which it could not do without carrying its oil into that
for the purpose and thereby engaging in interstate com-
. The State had no authority to regulate such commerce
posing penalties for entering into contracts relating to it.
l Oil Co. v. *Crain*, 209 U. S. 228, 229; *Caldwell* v. *North*
na, 187 U. S. 622; *Leisy* v. *Hardin*, 135 U. S. 100, 119;
k v. *Pennsylvania*, 203 U. S. 507.
defendant has also been subjected to the penalties of the
1899 for the doings of the Standard Oil Company in ac-
g shares in the defendant company, in which the defend-
elf had no part. Such an imposition of penalties upon the
lant for the acts of somebody else is a taking of its prop-
ithout due process of law. *Case* v. *Bank*, 100 U. S. 446;
v. *Bank*, 1 Ch. 615, 619, 629; Lindley on Companies (6th
31; *Davidson* v. *New Orleans*, 96 U. S. 102; *Hobson* v.
eton, 9 B. & C. 303.
s acquisition of the shares also took place outside of Texas
nder the laws of Missouri, and was a matter to which the
of Texas could not constitutionally extend its jurisdic-
*State* v. *Lancashire Ins. Co.*, 66 Arkansas, 466.
the course that has been pursued, the jury have been en-
to convict the defendant and impose penalties upon it on
ıt of a combination formed outside of the State of Texas
has not been found to have regulated any prices in Texas
n to have had any effect upon them. As this is a matter
ch the State of Texas has no authority, the defendant is
s means deprived of its property without due process of

combination effected by the acquisition of shares by the
ard Oil Company was effected when that company first
ed the shares in the old Waters-Pierce Company, long

before the act of 1899 was passed. The imposition of penalties on this ground therefore gives the act the effect of an *ex post facto* law.

In like manner the defendant has been subjected to the penalties of the act of 1903 for what the Standard Oil Company did in acquiring the shares. This has been done on the ground that defendant thereby entered into a combination, and that thereby the two companies were placed under the same management or control, and that the Standard Oil Company had acquired the shares with the purpose on the part of its own officers of lessening competition in Texas. The constitutional rights of the defendant have been violated in the three ways previously mentioned, by imposing penalties on the defendant for the acts of somebody else, for acts done outside of Texas, and for acts done before the statute. *General Oil Co.* v. *Crain*, 209 U. S. 211, 228; *Kring* v. *Missouri*, 107 U. S. 228.

Both the acts of 1899 and 1903 are too indefinite and uncertain in their terms to make it an offense to do what the defendant has been found by the jury to have done, and that the imposition of penalties for doing that deprives the defendant of its property without due process of law. *Montana* v. *Rice*, 204 U. S. 291, 299; *Sullivan* v. *Texas*, 207 U. S. 422; *Tozer* v. *United States*, 52 Fed. Rep. 917; *Ex parte Jackson*, 45 Arkansas, 158; *Louisville & Nashville R. R. Co.* v. *Commonwealth*, 99 Kentucky, 132; *S. C.*, 35 S. W. Rep. 129; *Louisville & Nashville R. R. Co.* v. *R. R. Commission*, 19 Fed. Rep. 679, 691; *Railroad Commission Cases*, 116 U. S. 336; *United States* v. *Brewer*, 139 U. S. 278.

The penalties that have been imposed upon the defendant are also so excessive as to constitute a deprivation of its property without due process of law. While the Eighth Amendment against excessive bail and fines may not apply to the different States, *Pervear* v. *Commonwealth*, 5 Wall. 475; *O'Neil* v. *Vermont*, 144 U. S. 332, the prohibition is one of fundamental rights of life, liberty and property, the observance of which by the

States, as well as by the general government, is essential to due process of law, and is enforced by the Fourteenth Amendment. *O'Neil* v. *Vermont*, 144 U. S. 339–341, 370. For instances of penalties held to be excessive, see *State* v. *Galveston, Harrisburg, San Antonio Ry. Co.*, 100 Texas, 153, 175; *S. C.*, 97 S. W. Rep. 71; *State* v. *Whitaker*, 48 La. Ann. 527. See also *Porter* v. *Dawson Bridge Co.*, 157 Pa. St. 374–379.

The arbitrary admission of evidence that could have no possible connection with the issues in the case and could only confuse and excite the prejudice of the jury; directing the jury, therefore, to consider such evidence as tending to prove some of the issues in favor of the State, and directing them to bring in a verdict for the State if they found facts of which there was no evidence whatever, amounted to a denial of a trial according to law, and the judgment deprived the defendant of its property without due process of law.

To bring the case under *In re Converse*, 137 U. S. 631; *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 566; *Smiley* v. *Kansas*, 196 U. S. 453, there must be, not only the form, but the substance, of a trial according to the regular course of procedure, and not a reckless disregard of defendant's rights. *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 565; *Fayerweather* v. *Ritch*, 195 U. S. 297; *Patterson* v. *Colorado*, 205 U. S. 461.

The trial must be according to the modes of proceeding applicable to such a case, secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice. In determining what is due process of law regard must be had to substance, not to form. *Chicago, Burlington & Quincy R. R. Co.* v. *Chicago*, 166 U. S. 234.

The prohibitions of the Fourteenth Amendment extend to all acts of the State, whether done through its legislative, executive or judicial authorities. *Scott* v. *McNeal*, 154 U. S. 45; *Waterworks Co.* v. *Owensboro*, 200 U. S. 45; *Londoner* v. *Denver*, 210 U. S. 386.

It cannot reasonably be said that any of the doings or agreements of the old company had any such fair relation to the question whether the defendant had violated the Texas anti-trust laws, as to make it evidence upon that question. *People* v. *Cannon*, 139 N. Y. 43, 45; *Commonwealth* v. *Anselvitch*, 186 Massachusetts, 378, 379.

The defendant did not succeed to the liabilities or obligations of the old company, *Armour* v. *Bement's Sons*, 123 Fed. Rep. 56, and the legislature could not have imposed those liabilities or obligations upon the defendant. *Woodward* v. *Central Vermont Ry. Co.*, 180 Massachusetts, 599.

The permit was a contract with the State for valuable consideration under which the defendant was entitled to do business in Texas for ten years, and the revocation of the permit without convicting the defendant of misconduct by due process of law was, like the imposition of the penalties, a deprivation of its property without due process of law. *American Smelting Co.* v. *Colorado*, 204 U. S. 103; *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 47.

The order appointing the receiver, being dependent on the judgment, must fall with the judgment.

Upon the reversal of the judgment, the defendant is entitled to be put in the same position as if there had never been any such judgment. 2 Wms. Saund. 101 *gg;* 2 Tidd's Practice (9th ed., 1828), 1186, 1187; Tidd's Forms (1828), 540, 556–558.

After the judgment for penalties had been superseded by the appeal and bond, the judge had no authority to complete the appointment of a receiver, and the order completing such appointment deprived the defendant of its property without due process of law. A *supersedeas* stops all sort of proceedings. *Smith* v. *Nicholson*, 2 Stra. 1186; *Sampson* v. *Brown*, 2 East, 439.

So, by the laws of Texas, as declared by its Supreme Court, the judge had no authority to go on and complete the appointment of the receiver after the original judgment had been superseded. In doing so he acted arbitrarily and without au-

thority of law, and, if the appointment is allowed to be put in force, the defendant will be deprived of its property without due process of law.

The judge and officers of the court in completing the appointment of the receiver acted as representatives of the State, and their acts were those of the State. *Scott* v. *McNeal*, 154 U. S. 45; *Waterworks Co.* v. *Owensboro*, 200 U. S. 45; *Londoner* v. *Denver*, 210 U. S. 386.

*Mr. R. V. Davidson*, Attorney General of the State of Texas, *Mr. R. L. Batts* and *Mr. G. W. Allen*, with whom *Mr. Jewel P. Lightfoot*, *Mr. John W. Brady* and *Mr. T. W. Gregory* were on the brief, for defendant in error:

No substantial Federal question requiring the exercise of the jurisdiction of this court is involved in this case. *Arkansas Southern R. R. Co.* v. *German Bank*, 207 U. S. 275; *Leathe* v. *Thomas*, 207 U. S. 98; *Stickney* v. *Kelly*, 209 U. S. 422; *Thomas* v. *Iowa*, 209 U. S. 263; *Bachtel* v. *Wilson*, 204 U. S. 36.

Neither the act of 1899 nor the act of 1903 is an *ex post facto* law, nor is either retroactive, nor was either given a retroactive effect in this case. *Glue Co.* v. *Glue Co.*, 187 U. S. 611; *United States* v. *Trans-Missouri Traffic Association*, 166 U. S. 290; *United States* v. *Joint Traffic Ass'n*, 171 U. S. 505; *Pearsall* v. *Great Northern R. R. Co.*, 161 U. S. 646; *Louisville & Nashville Ry. Co.* v. *Kentucky*, 161 U. S. 677; *State* v. *Insurance Co.*, 94 U. S. 535; *Mugler* v. *Kansas*, 123 U. S. 668; *Waters-Pierce Oil Co.* v. *State*, 44 S. W. Rep. 941; *State* v. *Missouri, Kansas & Texas Ry. Co.*, 91 S. W. Rep. 214; *Ford* v. *Milk Shippers' Assn.*, 27 L. R. A. 298.

Neither the act of 1899 nor the act of 1903, as construed by the highest state courts of Texas, denies to plaintiff in error the equal protection of the law. *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115; *Smiley* v. *Kansas*, 196 U. S. 447; *Mugler* v. *Kansas*, 123 U. S. 665; *Gundling* v. *Chicago*, 177 U. S. 188; *Soon Hing* v. *Crowley*, 113 U. S. 708; *Nutting* v. *Massachusetts*, 183 U. S. 553; *Wurts* v. *Hoagland*, 114 U. S. 615; *Duncan* v.

*Missouri*, 152 U. S. 382; *Eldridge* v. *Trezevant*, 160 U. S. 469; *Lowe* v. *Kansas*, 163 U. S. 88; *Missouri Railway Co.* v. *Mackey*, 127 U. S. 209; *Pacific Express Co.* v. *Seibert*, 142 U. S. 352; *Powell* v. *Pennsylvania*, 127 U. S. 687; *American Sugar Co.* v. *Louisiana*, 179 U. S. 95; *Booth* v. *Illinois*, 184 U. S. 429; *Capital City Drug Co.* v. *Ohio*, 183 U. S. 246.

Neither the act of 1899 nor the act of 1903 deprived plaintiff in error of its property without due process of law.

There was a petition, filed in a court of competent jurisdiction, setting out in detail the things done by plaintiff in error, and laws it had violated. An answer was filed setting up the defenses in detail, and there was a trial before the court and a jury, lasting ten days, and a great mass of testimony introduced by both sides, and the jury found the plaintiff in error guilty, and the court entered a judgment in accordance therewith. The case was thereupon carried to the Court of Civil Appeals in the regular way, and after a full hearing and careful consideration by that court, it affirmed the judgment of the trial court. *Simon* v. *Craft*, 182 U. S. 427; *Remington Paper Co.* v. *Watson*, 173 U. S. 443; *New Orleans Waterworks* v. *Louisiana*, 185 U. S. 336; *Railway Co.* v. *Missouri*, 156 U. S. 478; *Iowa Central Ry. Co.* v. *Iowa*, 160 U. S. 389; *Murray* v. *Hoboken Land Co.*, 18 How. 272; *New Orleans Debenture Redemption Co.* v. *Louisiana*, 180 U. S. 320; *Rothschild* v. *Knight*, 184 U. S. 334; *Consolidated Rendering Company* v. *Vermont*, 207 U. S. 541; *Cosmopolitan Club* v. *Virginia*, 208 U. S. 384; *Caldwell* v. *Texas*, 137 U. S. 697; *Miller* v. *Texas*, 153 U. S. 539; *Minder* v. *Georgia*, 183 U. S. 559.

If there was any error in the charge of the trial court upon the matter of stock-ownership the error is immaterial, and any Federal question that might have been predicated of it has been eliminated from the case by the action of the Court of Civil Appeals in basing a judgment of affirmance upon other grounds. *Missouri, Kansas & Texas Ry. Co.* v. *Ferris*, 179 U. S. 602; *Hammond* v. *Johnson*, 142 U. S. 73; *Harrison* v. *Morton*, 171 U. S. 38; *Klinger* v. *Missouri*, 13 Wall. 257; *Ken-*

*nard* v. *Louisiana*, 92 U. S. 480; *Lent* v. *Tillson*, 140 U. S. 316; *Chicago, Burlington & Quincy R. R. Co.* v. *Chicago*, 166 U. S. 226; *Glue Co.* v. *Glue Co.*, 187 U. S. 611; *United States* v. *Trans-Missouri Traffic Assn.*, 166 U. S. 290; *State* v. *Missouri, Kansas & Texas Ry. Co.*, 91 S. W. Rep. 214; *Baldwin* v. *Kansas*, 129 U. S. 52.

The combination effected between the Standard Oil Company and the Waters-Pierce Oil Company by the acquisition of the stock of the latter by the former for the purposes for which the acquisition was made and with the effect intended violated the laws of Texas and the infliction of penalties therefor would not have given the laws either an extraterritorial effect, or a retroactive effect, or otherwise have violated the Constitution of the United States.

Neither the act of 1899 nor that of 1903 is vague, uncertain or indefinite. *Swift & Co.* v. *United States*, 196 U. S. 375; *United States* v. *Freight Ass'n*, 166 U. S. 325; *Northern Securities Case*, 197 U. S. 244; *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115; *Smiley* v. *Kansas*, 196 U. S. 474; *State of Texas* v. *Laredo Ice Co.*, 73 S. W. Rep. 952; *Missouri, Kansas & Texas Ry. Co.* v. *State*, 91 S. W. Rep. 214; *San Antonio Gas Co.* v. *State*, 54 S. W. Rep. 289; *People* v. *Sheldon*, 139 N. Y. 251; *Drake* v. *Seibold*, 81 Hun, 178; *People* v. *North River Ref. Co.*, 121 N. Y. 582.

The jurisdiction of the legislature of Texas to pass laws prohibiting the making of agreements or the forming of combinations in restraint of trade in Texas, or the carrying out in Texas of such agreements or combinations, is absolute and complete. *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28; *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115; *Smiley* v. *Kansas*, 196 U. S. 447; *Addyston Pipe Co.* v. *United States*, 175 U. S. 211; *Mugler* v. *Kansas*, 123 U. S. 665; *Slaughter House Cases*, 16 Wall. 63; *Barbier* v. *Connolly*, 113 U. S. 31; *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 410; *United States* v. *E. C. Knight Co.*, 156 U. S. 1; *Waters-Pierce Oil Co.* v. *State*, 44 S. W. Rep. 936; *Anheuser-Busch Brewing Assn.* v. *Houck*, 27 S. W. Rep. 692; *State* v. *Laredo Ice Co.*, 73 S. W. Rep. 952; *Coal Co.* v. *Lawson*,

34 S. W. Rep. 919; *State* v. *Missouri, Kansas & Texas Ry. Co.*, 91 S. W. Rep. 214; *People* v. *Sugar Trust*, 121 N. Y. 582; *State* v. *Standard Oil Co.*, 49 Ohio St. 137; *Harding* v. *American Glucose Co.*, 182 Illinois, 551; *Arnot* v. *Pittson Coal Co.*, 68 N. Y. 558.

Having complete jurisdiction to pass laws prohibiting the making of agreements or the forming of combinations in restraint of trade in Texas, or the carrying out in Texas of such agreements or combinations, the legislature has the absolute right to prescribe the punishment for a violation of such laws, and the laws under consideration are open to no constitutional objections on account of the penalties. *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115; *Ripley* v. *Texas*, 193 U. S. 504; *Ohio* v. *Lloyd*, 194 U. S. 445; *Marvin* v. *Trout*, 199 U. S. 212; *McCray* v. *United States*, 195 U. S. 27; *Devine* v. *Los Angeles*, 202 U. S. 302; *Railway Co.* v. *Hume*, 115 U. S. 512; *Tel. Co.* v. *Indiana*, 165 U. S. 304; *Coffey* v. *Harlan County*, 204 U. S. 659; *Railway Co.* v. *Seegers*, 207 U. S. 73; *N. W. L. I. Co.* v. *Riggs*, 203 U. S. 251; *O'Neil* v. *Vermont*, 144 U. S. 323.

MR. JUSTICE DAY delivered the opinion of the court.

This case was begun in the state Circuit Court of Travis County, Texas, to forfeit the permit of the plaintiff in error, the Waters-Pierce Oil Company, a corporation of the State of Missouri, to conduct business in the State of Texas, and to assess penalties against it for violation of the anti-trust laws of that State. The prosecution was under two laws of the State, one of 1899 and one of March 31, 1903. The proceeding was brought by the Attorney General of Texas and the county attorney of Travis County, to recover penalties, under the act of 1899, from the thirty-first day of May, 1900, until the thirty-first day of March, 1903, at the rate of $5,000 per day, and under the act of 1903, from the thirty-first of March, 1903, till the twenty-ninth of April, 1907, at the rate of $50 per day, and to cancel the permit of the defendant to do business, other than interstate, in Texas.

The jury returned a verdict against the defendant, and as-

sessed penalties, under the act of 1899, from May 31, 1900, to March 3, 1903, 1,033 days. Such penalties were assessed at the rate of $1,500 a day during that period, being the total sum of $1,549,500. The jury also found against the defendant under the act of 1903, and assessed the penalties for each day between April 1, 1903, and April 29, 1907, 1,480 days at the rate of $50 per day, making a total of $74,000. The jury further found that the permit of the defendant to do business in the State of Texas should be cancelled. Thereupon the court rendered a judgment for the State of Texas for the sum of the penalties assessed, $1,623,500, and ordered a cancellation of the defendant's permit to do business in the State except as to its interstate commerce business. This judgment was affirmed upon appeal to the Court of Civil Appeals of Texas (106 S. W. Rep. 918), and upon application to the Supreme Court of Texas that court refused to grant a writ of error, and the case was brought here.

The case was submitted upon oral arguments and elaborate briefs and a voluminous record. It was argued, in many aspects, as though this were a proceeding in error to review the weight of the evidence adduced in the state courts, to reëxamine the rulings of the court upon the admissibility of testimony, and to determine the effect of the statute of limitations in the State.

The jurisdiction of this court to review the proceedings of the state courts, as we have had frequent occasion to declare, is not that of a general reviewing court in error, but is limited to the specific instances of denials of Federal rights, whether those pertaining to the constitutionality of Federal or state statutes, or to certain rights, immunities and privileges of Federal origin, specially set up in the state court and denied by the rulings and judgment of that court. Sec. 709, Rev. Stat. U. S. Nor does this court sit to review the findings of facts made in the state court, but accepts the findings of the court of the State upon matters of fact as conclusive, and is confined to a review of questions of Federal law within the jurisdiction conferred upon this court. *Quimby* v. *Boyd*, 128 U. S. 488; *Egan* v. *Hart*, 165 U. S. 188; *Dower* v. *Richards*, 151 U. S. 658; *Thayer* v. *Spratt*, 189

U. S. 346. We shall not, therefore, undertake to follow counsel in the consideration of all the questions argued, but shall limit our review to questions of a Federal nature which we deem to be properly made in this record and essential to the decision of the case.

Epitomizing the Texas anti-trust statutes for the purposes of his charge the learned judge who presided in the District Court, speaking first of the act of 1899, stated them as follows:

"For the purposes of this charge you are instructed that this act made it unlawful for any corporation transacting or conducting any kind of business in this State to enter into, or become a party to, any agreement or understanding with any other corporation or individual to fix or regulate the price in Texas of any article of manufacture or merchandise or to control or limit in Texas the trade in any article of manufacture or merchandise.

"You are further instructed that said statute also made it unlawful for any corporation transacting or conducting any kind of business in this State to bring about or permit any union or combination of its capital, property, trade or acts with the capital, property, trade or acts of any other person or corporation, whereby the price in Texas of any article of manufacture or merchandise would be fixed or sought to be fixed, regulated or sought to be regulated; or whereby the price in Texas of any article of manufacture or merchandise would be reasonably calculated to be fixed or regulated, or whereby the trade in such article of manufacture or merchandise in Texas would be sought to be controlled or limited, or would be reasonably calculated to be controlled or limited.

"The statute known as the anti-trust law of 1903 became effective on March 31st, 1903, and has since continued in force. For the purposes of this charge you are instructed that this statute defines a trust to be a combination of capital, skill or acts, by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes, viz:

"1. To create or which may tend to create or carry out restrictions in trade or commerce in Texas, or to create or carry out restrictions in the free pursuit in Texas of any business authorized or permitted by the laws of this State.

"2. To fix, maintain or increase the price of merchandise in Texas.

"3. To prevent or lessen competition in Texas in the sale of merchandise.

"4. To abstain from engaging in business or in the sale of merchandise in Texas, or any portion thereof.

"Said statute of 1903 further defines a monopoly to be a combination or consolidation of two or more corporations when effected in any of the following methods, viz:

"1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust, as above defined.

"2. When any corporation acquires the shares or certificates of stock, franchise or other rights, or the physical properties or any part thereof of any other corporation for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

"3. Oil, all other products of petroleum, and goods, wares or merchandise of any character which the defendant or its agents, may have purchased or acquired in any manner outside of the State of Texas and caused to be transported to its agents or others within the State, are the subjects of interstate commerce when they enter this State, and so remain until such commodities are removed from the original tanks, vessels or other packages in which they are imported into the State and become mixed with the common mass of property of similar character in this State. The anti-trust laws of Texas have no reference to agreements or pools or arrangements of any character concerning subjects of interstate commerce, and no agreement,

pool or other arrangement, if any, which the defendant may have entered into with reference to the sale of any subject of interstate commerce can be considered by you as violating any anti-trust law of Texas. But neither oil purchased by the defendant from the Corsicana Refinery or elsewhere in Texas, nor other merchandise purchased by defendant at points in Texas, nor such oil or other merchandise purchased by defendant at points outside of the State and transported into the State and removed from the original packages or vessels in which it was brought into the State and mingled with other property of similar character in the State, is the subject of interstate commerce, but on the contrary is the subject of local commerce, and any agreement or pool or arrangement entered into by defendant with reference to such property or the sale thereof, if any such sale there were, would be unlawful, if in violation of the anti-trust laws of this State."

The penalties denounced by the act of 1899 were not less than $200 nor more than $5,000 for each day the defendant might be found to have violated the law; under the act of 1903 the penalty was fixed at $50 for each day, and a forfeiture of the right to do business within the State of Texas was declared.

The complaint in the case is voluminous, and its averments contain the history of the so-called conspiracy between the Waters-Pierce Oil Company and a number of persons composing the Standard Oil Company, beginning in January, 1870, for the purpose of monopolizing and controlling the business of refining and transporting and selling petroleum and similar products throughout the United States and in the State of Texas. It charges that the Waters-Pierce Oil Company, incorporated in 1878, and the predecessor of the defendant company, was a party to that conspiracy, and for the purpose of carrying out the same had entered into contracts with corporations and individuals engaged in the business of selling petroleum and similar products within the State and suppressed competition therein. It charges that the Waters-Pierce Oil Company had entered into an agreement with the Standard Oil Company of New Jer-

sey for the purpose of monopolizing the trade in petroleum and for the purpose of carrying out certain contracts and conspiracies, entered into for the purposes aforesaid, and permitted the Standard Oil Company to acquire a majority of the shares of stock of the Waters-Pierce Company.

The original Waters-Pierce Oil Company, it states, had been dissolved, and the new company, the present defendant, organized on May 29, 1900, had assumed all the contracts and agreements of its predecessor, and it was averred that the dissolving of the old Waters-Pierce Company and the forming of the new company, the defendant in this case, was in further pursuance of the conspiracy for the purpose of continuing the monopoly and control which had been acquired by the old company, and for the purpose of rendering ineffective the judgments of the state court and of this court (*Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28), wherein the right of the Waters-Pierce Company to do business in Texas was forfeited.

It was further averred that the new corporation was of the same name as the old one, with the same amount of stock, which was distributed to the holders of stock in the new corporation in the same proportion among the shareholders as it was in the old corporation. It is charged that a major part of the capital stock, although in fact owned by the Standard Oil Company of New Jersey, stood for a time in the name of H. C. Pierce, but was in fact owned by the Standard Oil Company. That the conduct of the business in the new corporation was not changed, and that it was controlled by the Standard Oil Company of New Jersey in the same manner as the old company had been; that the old contract, whereby there was a division of territory and the limitation of the operations of the Waters-Pierce Oil Company to the State of Texas and some other territory, was maintained and enforced. That other concerns had been acquired in the carrying out of the scheme charged; that said companies had been put out of business or were used in controlling and monopolizing the trade and business aforesaid; that the defendant, the new corporation, was a party to these arrange-

ments, participated in them, and was engaged in carrying them out.

The things charged were alleged to have the effect to control the defendant and a large number of other companies by the same corporation and persons, with the acquiescence and consent of the defendant; that all competition in Texas between companies was destroyed; that certain sections and parts of the United States were assigned to the various companies; that the defendant was permitted to do business in Texas, and that with its knowledge and consent, upon its instance and demands, all other companies had been excluded from doing business in the State of Texas; that by the agreement the defendant was obliged to secure all the oil sold by certain named refiners at prices determined by the Standard Oil Company and those interested in it, with the effect of monopolizing and controlling the business in oil and the production of petroleum in Texas by fixing the prices of such products in that State.

The plaintiff summarizes the unlawful results accomplished as follows:

"(1) The plaintiff in error is dominated and controlled by and its business dictated by the Standard Oil Company of New Jersey.

"(2) A large number of individuals and corporations doing business in the sale of petroleum products are excluded from doing business in the State, and competition is lessened.

"(3) The price of oil had been maintained at an exorbitant figure, being from ten to twenty-five per cent higher than that of oil sold in the territory not claimed by plaintiff in error.

"(4) Competition had been suppressed and business destroyed in the State by unconscionable and unfair means.

"(5) A substantially complete monopoly in petroleum products had been established, the plaintiff in error having sold, during the period of ten years past, at least ninety-five per cent of all petroleum products sold."

The defendant answered and filed a large number of special pleas and exceptions, taking issue upon the charges made in the

petition, and alleging the unconstitutionality of the acts of 1899 and 1903, and alleging that if the petition of the State of Texas be granted it would be denied the equal protection of the laws, be subjected to *ex post facto* laws, deprived of its property without due process of law, and have the obligations of its contracts impaired, contrary to the provisions of the Constitution of the United States.

At the trial at the May term of the District Court of Travis County a verdict was rendered in favor of the State, and penalties were assessed, and the judgment rendered as herein before stated. In the Court of Civil Appeals of the State of Texas that court found the facts to be as found by the verdict in the trial court, and in concluding its opinion upon the question of fact said:

"In appellant's motion for a new trial in the court below, and in its presentation of the case here, the verdict of the jury has been challenged, the contention being that the testimony fails to show that appellant has violated any of the anti-trust laws of this State. The evidence is very voluminous, and it is not necessary that it be set out or epitomized in this opinion. It is sufficient, we think, to show that from the date of its permit to do business in this State, May 31, 1900, appellant has been a party to an agreement or understanding with the Standard Oil Company of New Jersey, one object of which was to create a monopoly and control the price of petroleum oil and prevent competition in its sale in a large and specified territory, including the State of Texas; and that, to a large extent, such object has been accomplished. In so far as that agreement related to this State, appellant, acting by its agents, performed it within the State; and such performance within the limits of the State constitutes violations of Texas laws and renders appellant amenable to such laws, although the agreement between it and the Standard Oil Company may not have been made in this State. To a large extent the case rests upon circumstantial evidence; but we cannot say that the jury were not warranted in the conclusions drawn from it. Hence we hold that the verdict is sup-

ported by testimony, and no error was committed in overruling the motion for a new trial."

The court left the case to the jury upon a charge which permitted them to find whether the defendant company, acting through its duly authorized agents, had entered into or had become a party to an agreement or understanding with the Standard Oil Company of New Jersey on June 1, 1900, to fix or regulate the price of oil in Texas, and whether the company remained or continued to be a party to such agreement, and carried out the same in Texas on dates subsequent to June 1, 1900, and prior to March 31, 1903, and whether the oil, in reference to which such agreement was made and carried out was the subject of local as distinguished from interstate commerce.

And the court further charged that if within the time above stated the defendant had brought about or permitted any combination or union of its capital with that of the Standard Oil Company of New Jersey whereby the price of such oil in Texas was found to be controlled or limited, fixed or regulated, or whereby such price would be reasonably calculated to be fixed or regulated, or whereby the trade in such oil in Texas was sought to be controlled or limited, they might return a verdict for the State.

And the court charged that if they should find that the defendant, through its duly authorized agents, had entered into a combination of its capital with the capital of the Standard Oil Company of New Jersey for the purpose of creating in Texas, or which tended to create in Texas, or carry out in Texas, restrictions in the free pursuit of selling oil, or having the effect of increasing the price of such oil in Texas, or to prevent or lessen competition in selling the same in said State; and that the defendant remained or was a party to and acted under such combination, if such there was on March 31, 1903, and thereafter prior to April 29, 1907, they might return a verdict of guilty.

The jury was further instructed that if they found from the evidence that the direction of the affairs of the Standard Oil Company of New Jersey and those of the defendant company

were under the same management or control after March 31, 1900, and prior to April 29, 1907, and that they were placed under such common management or control by their respectively authorized officers, and if such management or control created or tended to create, or to carry out restrictions in the sale of oil in Texas, as above stated, or to fix, maintain or increase the prices of such oil in said State, or to prevent or lessen competition in the sale of such oil, they might return a verdict for the State. The jury found each of the issues submitted against the defendant. The Court of Civil Appeals affirmed this finding of fact and we must accept the same as established for the purposes of this proceeding in error.

Numerous exceptions were taken to the charge at the trial and are the subjects of assignments of error in the state court and in this court. We are concerned with such as relate to the Federal questions involved in this proceeding.

In the eleventh paragraph of the charge the court instructed the jury as follows:

"XI. If you find from a preponderance of the evidence that the Standard Oil Company of New Jersey had on March 31, 1903, or on any date subsequent thereto and prior to April 29th, 1907, acquired a majority of the capital stock of the defendant corporation and thereby effected a combination of said two corporations, and if you further find from preponderance of the evidence that said stock was acquired and combination effected, if any, with the purpose and intention on the part of the managing officers and directors of said Standard Oil Company of New Jersey of preventing or lessening the competition in the sale in Texas of the character and kind of oil above mentioned, or that the effect of said combination, if such there were, tended to affect or lessen the competition in the sale in Texas of said oil, you will return a verdict for the State, and say by your verdict, we the jury find for the State on the issues submitted for our consideration in paragraph eleven of the court's charge. In this connection you are instructed that if the defendant entered into a monopoly of the character mentioned in this paragraph

of the charge, each day between March 30, 1903, and April 29th, 1907, that it remained a party to such monopoly, if there were any such days, constituted a separate violation of the anti-trust laws of Texas."

The judges of the Court of Civil Appeals differed in their views as to the correctness of this charge, the learned justice who wrote the opinion holding the view that it was calculated to mislead the jury to the belief that they might convict upon this issue regardless of whether the defendant had any knowledge of, participated in or aided the Standard Oil Company in acquiring the stock of the defendant for the purposes stated.

But the court agreed that if wrong this part of the charge afforded no ground for reversal, because the jury found that the appellant had violated other provisions of the act, and assessed but one penalty for each day's violation, and therefore the judgment would have been the same, and the error, if any, was harmless.

In thus deciding the Court of Civil Appeals did not determine a Federal question, nor necessarily decide one adversely to the plaintiff in error, controlling in character, if it appears upon this record that the verdict and judgment can stand upon other grounds free from objection, so far as Federal rights are concerned.

Much of the argument for plaintiff in error is predicated upon the contention that the acquiring of the stock of the Waters-Pierce Company by the Standard Oil Company and the making of the agreement charged were not shown to have been acts done in Texas. It is contended that such acquiring of stock, and agreement, if any, were acts beyond the jurisdiction of the State. But an inspection of the record discloses that the court charged that no agreement made by the defendant outside of the State of Texas could be made the basis of forfeiting its permit to do business in the State, unless such agreement was executed, or attempted to be executed, in the State by the duly authorized agents of the defendant. And in the findings which we have above quoted as to the evidence the state court has

found that the defendant has been since May 31, 1900, a party to an agreement with the Standard Oil Company of New Jersey to create a monopoly and to control prices and prevent competition in Texas, and that to a large extent the object has been accomplished. These findings of facts are conclusive upon us, and show that the conviction was had, for acts and transactions committed and carried out within the State of Texas.

The argument to the effect that the rulings of the court as to the admission of testimony, and upon questions of general law deprived the defendant of its property and rights without due process of law requires us to notice the limitations upon the authority of this court when dealing with legislative acts and proceedings to enforce the same in the state courts. That state legislatures have the right to deal with the subject-matter and to prevent unlawful combinations to prevent competition and in restraint of trade, and to prohibit and punish monopolies, is not open to question. *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115; *Smiley* v. *Kansas*, 196 U. S. 447. Having the power to pass laws of this character, of course the State may provide for proceedings to enforce the same. The State, keeping within constitutional limitations, may provide its own method of procedure and determine the methods and means by which such laws may be made effectual. "The limit of the full control which the State has in a proceeding of its courts, both in civil and criminal cases, is subject only to the qualifications that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution." *West* v. *Louisiana*, 194 U. S. 258, 263; and see *Davis* v. *Texas*, 139 U. S. 651; *Brown* v. *New Jersey*, 175 U. S. 172, 175; *Allen* v. *Georgia*, 166 U. S. 138, 140; *In re Converse*, 137 U. S. 624, 632, and *Twining* v. *New Jersey*, 211 U. S. 78, decided at this term of court, where the subject is fully discussed, and previous cases in this court cited.

It is contended that the acts in this case were given a retroactive effect in violation of the Federal Constitution. Art. I, § 10. This argument is predicated largely upon the contention

that the conviction in this case was because of the old agreement of the former Waters-Pierce Oil Company, made long before the passage of the present statute, at a time when it was legal, and before the creation of the defendant company. But in view of the facts found in the state court, to which we have already referred, there was ground for conviction, not because of the making of the old agreement for the division of the territory and the suppression of competition while the old company was in existence, but because the new company was found to have carried out the old agreement and made itself a party thereto, and by continuing the old arrangement after the passage of the law, had brought itself within its terms. Of a similar contention this court said in *Trans-Missouri Traffic Association Case*, 166 U. S. 290:

"It is said that to grant the injunction prayed for in this case is to give the statute a retroactive effect. That the contract at the time it was entered into was not prohibited or declared illegal by the statute, as it had not then been passed; and to now enjoin the doing of an act which was legal at the time it was done would be improper. We give to the law no retroactive effect. The agreement in question is a continuing one. The parties to it adopt certain machinery, and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement, after it had been declared to be illegal, becomes a violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued it then becomes a violation of the act."

It is further insisted that the acts in question are so vague, indefinite and uncertain as to deprive them of their constitutionality, in that they punish by forfeiture of the right to do business, and the imposition of penalties, under provisions of an act which do not advise a citizen or corporation, prosecuted under them, of the nature and character of the acts constituting

a violation of the law. These objections are found in the words of the act of 1899, denouncing contracts and arrangements "reasonably calculated" to fix and regulate the price of commodities, etc. And in the act of 1903 acts are prohibited which "tend" to accomplish the prohibited results. It is insisted that these laws are so indefinite that no one can tell what acts are embraced within their provisions. In support of this contention it is argued that laws of this nature ought to be so explicit that all persons subject to their penalties may know what they can do, and what it is their duty to avoid. And reference is made to decisions which have held that a criminal statute should be so definite as to enable those included in its terms to know in advance whether the act is criminal or not. Among others, *Tozer* v. *United States*, 52 Fed. Rep. 917, is cited, in which the opinion was by Mr. Justice Brewer, then judge of the Circuit Court, in which it was held that the criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. To the same effect is *Railway Co.* v. *Dey*, 35 Fed. Rep. 866, also decided by Judge Brewer at circuit. And also the case of *Louisville & Nashville Railway* v. *Commonwealth*, 99 Kentucky, 132, is relied upon, in which a railroad was indicted for charging more than a just and reasonable rate, in which it was held that the law was unconstitutional, for under such an act it rests with the jury to say whether a rate is reasonable, and makes guilt depend, not upon standards fixed by law, but upon what a jury might think as to the reasonableness of the rate in controversy. But the Texas statutes in question do not give the broad power to a court or jury to determine the criminal character of the act in accordance with their belief as to whether it is reasonable or unreasonable, as do the statutes condemned in the cases cited.

Take the act of 1903, which denounces acts which "tend" to bring about the prohibited results. It is not uncommon in criminal law to punish not only a completed act, but also acts which attempt to bring about the prohibited result. In *United States* v. *Knight*, 156 U. S. 1, this court said: "Again, all the au-

thorities agree that in order to vitiate a contract or combination it is not essential that its result be a complete monopoly. It is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from a free competition." This language was quoted with approval in the *Addyston Pipe Co. Case*, 175 U. S. 237. And in the *Northern Securities Case*, 193 U. S. 197, while the Sherman Act directly condemned conspiracies and combinations in restraint of trade or monopolizing or attempting to monopolize the same, this court said (page 332):

"That to vitiate a combination, such as the act of Congress condemns it need not be shown that the combination in fact results, or will result, in a total suppression of trade, or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition."

As to the phrase, "reasonably calculated," what does it include less than acts which, when fairly considered, tend to accomplish the prohibited thing, or which make it highly probable that the given result will be accomplished? Again, speaking of the Sherman Act, this court said in *Swift & Co.* v. *United States*, 196 U. S. 375:

"The statute gives this proceeding against combinations in restraint of commerce among the States and against attempts to monopolize the same. Intent is almost essential to such a combination and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent, for instance, the monopoly, but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. *Commonwealth* v. *Peaslee*, 177 Massachusetts, 267, 272. But when that intent and the consequent dangerous probability exists, this statute, like many others, and like the common law

in some cases, directs itself against that dangerous probability as well as against the completed result."

It is true that the decisions quoted are in civil cases involving contracts and arrangements held invalid when attacked in proceedings in equity, and did not involve penalties such as were imposed in the case now under consideration.

And it is to be remembered that we are dealing with an act of the legislature, sustained in courts of the State, with reference to its validity in view of the prohibitions of the Federal Constitution against deprivation by state action of liberty or property without due process of law. In this case the defendant has had a trial in a court of justice duly established under the laws of the State, the question of its liability has been submitted to a jury. The judgment has been reviewed in an appellate court, and the correctness of the findings of fact and rulings of law in the lower court affirmed. We are not prepared to say that there was a deprivation of due process of law because the statute permitted, and the court charged that there might be a conviction not only for acts which accomplished the prohibited result, but also for those which tend or are reasonably calculated to bring about the things forbidden.

Again, it is contended that the fines imposed are so excessive as to constitute a taking of the defendant's property without due process of law. It is not contended in this connection that the prohibition of the Eighth Amendment to the Federal Constitution against excessive fines operates to control the legislation of the States. The fixing of punishment for crime or penalties for unlawful acts against its laws is within the police power of the State. We can only interfere with such legislation and judicial action of the States enforcing it if the fines imposed are so grossly excessive as to amount to a deprivation of property without due process of law. *Coffey* v. *Harlan County*, 204 U. S. 659.

The business carried on by the defendant corporation in Texas was very extensive and highly profitable, as the record discloses. The property of the defendant amounted to more

than forty millions of dollars, as testified by its president. Its dividends had been as high as seven hundred per cent per annum. It was the theory of the State, sustained by the verdict and judgment, that the former course of business was continued, notwithstanding the judgment of ouster in the former case. Within the bounds of the statute the penalties were left to the discretion of the jury trying the case. While the penalties imposed are large they are within the terms of the statute. Under the act of 1899 the jury imposed a penalty at the rate of $1,500 a day; under the act of 1903 at the rate of $50 per day. Assuming for this purpose that the defendant was guilty of a violation of the laws over a period of years, and in transacting business upon so large a scale, as shown in this case, we are not prepared to say, after confirmation of the verdict and judgment in courts of the State, that there was want of due process of law in the penalties assessed.

Remembering, as we have had frequent occasion to say, that our province in this case is limited to an examination of objections arising under the Federal Constitution, we are unable to find in this record any ground for reversing the judgment of the state court.

*Affirmed.*

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## WATERS-PIERCE OIL COMPANY *v.* STATE OF TEXAS (NO. 2).

ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

No. 360. Argued November 2, 3, 1908.—Decided January 18, 1909.

The review of a judgment of a state court is confined to assignments of error made and passed upon in the judgment brought here for review; assignments of errors in this court cannot bring new matter into the record.

When a state court decides a case upon a non-Federal ground which is

sufficient to maintain the decision this court will not review the judgment.

Procedure in matters under its jurisdiction is for the State and its courts to determine; and nothing in the Federal Constitution prevents a state court from acting in a proceeding for receivership of a corporation brought by the State on testimony taken in the suit by the State against the same corporation and on the judgment in which suit the receivership proceeding is based.

An attempt to raise the Federal question in the petition for rehearing in the highest court of the State will not avail if the petition is overruled without specifically passing on the questions.

Writ of error to review 105 S. W. Rep. 851, dismissed.

THE facts are stated in the opinion.

*Mr. Moorfield Storey, Mr. E. B. Perkins* and *Mr. Henry Samuel Priest*, with whom *Mr. J. L. Thorndike* was on the brief, for plaintiff in error.

*Mr. R. V. Davidson*, Attorney General of the State of Texas, *Mr. R. L. Batts* and *Mr. G. W. Allen*, with whom *Mr. Jewel P. Lightfoot, Mr. John W. Brady* and *Mr. T. W. Gregory* were on the brief, for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

This case was argued and submitted with Waters-Pierce Oil Company, plaintiff in error, against the State of Texas, just decided, No. 359, *ante*, p. 86. It is brought here to review the action of the Court of Civil Appeals of Texas affirming an order of the District Court of Travis County appointing a receiver to take charge of the property and business of the Waters-Pierce Oil Company. In view of the statement made in No. 359 it is unnecessary to repeat the facts leading up to the judgment in this case. On the same day that the judgment was rendered in the former case the State of Texas, acting through its Attorney General and the county attorney of Travis County, filed in the District Court of Travis County an application for the appoint-

ment of a receiver, reciting the judgment rendered in the earlier case, averring that a suit was pending in Missouri for the forfeiture of the charter of the Waters-Pierce Oil Company; that a master had been appointed in that case by the Supreme Court of the State wherein the action was pending; that he had reported in favor of dissolving the corporation, which recommendation had the force and effect of a judgment forfeiting the charter of said company, and it was alleged that the penalties recovered in that case could not be collected outside of the State of Texas; that the property of the defendant within the State of Texas was inadequate to pay the judgment; that the great bulk of the property situated in the State subject to the payment of the judgment consisted of accounts, cars, money on hand and other property, easily movable, and that if the same was carried beyond the limits of the State the judgment could not be collected. It was averred that under and by virtue of an act of the State of Texas, passed April 11, 1907, the State has a lien upon all said property to secure the payment of the above-mentioned judgment.

A receiver was asked for to take charge of the property and assets of every kind belonging to the defendant and situated in the State of Texas. And the State also asked for a writ of injunction, prohibiting the removal from the State of Texas of any of the property of the defendant. On the same day the court granted the temporary injunction as prayed for, and set the application for a receiver for hearing on June 8, 1907.

On the seventh of June the defendant's motion for a new trial in the principal case having been overruled, the defendant gave notice of appeal to the Court of Civil Appeals of Texas, and tendered a supersedeas bond in the sum of $3,275,000, which bond was not accepted. On June 10, 1907, the court reached the conclusion that a receiver should be appointed, and continued the temporary injunction in force, from which action the defendant gave notice of its intention to appeal to the Civil Court of Appeals. At the time of the making of this order the judge of the court announced his determination to appoint

Robert J. Eckhardt receiver, and postponed the hearing until June 13, 1907, to hear objections to the appointment, and on that date the court made its order appointing Eckhardt receiver, fixing the bond in the sum of $250,000. On June 19, 1907, Eckhardt filed his bond, which was approved and he qualified as receiver, and after the appointment of a receiver and the approval of his bond as aforesaid a supersedeas bond in the sum of $100,000, for appeal from the order appointing a receiver, was approved. On June 15, 1907, the motion for new trial being overruled in the main case, the Waters-Pierce Oil Company appealed, and gave a bond, which was approved by the clerk.

On the appeal of the present case, involving the receivership, to the Civil Court of Appeals of Texas an application was made for an injunction restraining a receiver, who had been appointed by the Circuit Court of the United States for the Eastern District of Texas, upon which application the court declined to make any order interfering with the Federal receiver, but ordered its receiver to appear in conjunction with the attorneys of the State of Texas in the Circuit Court of the United States, and there urge and insist upon the rights of the state courts to prior jurisdiction. 103 S. W. Rep. 836.

The right to the Federal receivership is involved in No. 224 of this term, heretofore argued and submitted to this court.[1]

On October 23, 1907, the appeal of the Waters-Pierce Oil Company from the order appointing a receiver came on for hearing in the Court of Civil Appeals. The judgment of the District Court was affirmed. 105 S. W. Rep. 851. Subsequently the Supreme Court of Texas refused a writ of error to that judgment. The present proceeding in this court seeks a reversal of the judgment of the Court of Civil Appeals of Texas affirming the order in the District Court appointing the receiver.

It is well settled in this court that a review of the judgment of a state court is confined to the assignments of error made and passed upon in the judgment of the state court brought here for review. The assignment of errors in this court cannot bring into

[1] See *post*, p. 118.

the record any new matter for our consideration. *Harding* v. *Illinois*, 196 U. S. 78.

Looking to the assignments of error in the Court of Civil Appeals, we find that the first one to mention the Federal Constitution is No. IX, in which the constitutionality of the act of the State of Texas approved April 11, 1907, is challenged, and that act is alleged to be void because in violation of § 10 of Article II of the Constitution of the United States, which denies to any State the right to pass *ex post facto* laws.

The tenth assignment assails the same act, because in violation of § 1 of the Fourteenth Amendment of the Federal Constitution. Assignment 12 is likewise based upon objections to the act of April 11, 1907. The amended assignments of error contain additional assignments, numbers 15 and 16, which likewise, are also leveled at the act of April 11, 1907.

The act of April 11, 1907, undertakes in § 1 thereof to give a lien upon the property of any corporation within the State, or on any corporation created by the laws of the State, or any foreign corporation authorized to do business within the State, which shall violate the anti-trust laws of the State, for fines and penalties, with costs of suit recovered in such cases, and gives the like lien for the recovery of such fines and penalties where any such law had been theretofore violated, or should be violated before the taking effect of the act, and provides for the appointment of a receiver in such cases.

When we examine the opinion of the Court of Civil Appeals we find that it sustained the proceeding for the appointment of a receiver, not only under the act of April 11, 1907, but as well by virtue of subdivision 3 of article 1465 of Sayles' Civil Statutes for Texas, passed originally in 1887, which subdivision provides that a receiver may be appointed where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

It is well settled in this court that where a state court decides a case upon an independent ground not within the Federal objections taken, and that ground is sufficient to maintain the

judgment, this court will not review the case. *Leathe* v. *Thomas*, 207 U. S. 93; *Eustis* v. *Bolles*, 150 U. S. 361; *Giles* v. *Teasley*, 193 U. S. 146.

The only other assignments of error in the receivership proceedings which mention the Federal Constitution are numbers 13 and 14, which are as follows:

"XIII. The court erred in appointing the said receiver without any evidence being introduced before it at the time said appointment was made to show that defendant did not intend to change its status and methods of doing business so as to conform to the laws of the State of Texas, and without evidence affirmatively showing that defendant could not make use of its property and carry on its business in accordance with law, and in holding that the court was authorized to so appoint a receiver for defendant's property in the State of Texas and deprive defendant of the instrumentalities by which it had been convicted of violating the laws of said State, based upon its past conduct and the said judgment of conviction rendered against it on June 1, 1907.

"Wherefore, defendant says that the said action of the court was unauthorized and in violation of § 1 of the Fourteenth Amendment to the Constitution of the United States, and has the effect of depriving defendant of its property without due process of law and in denying to it the equal protection of the laws.

"XIV. The court erred in disregarding the supersedeas bond filed by the defendant in connection with its appeal from the main judgment recovered against it on June 1, 1907, and in requiring defendant to file the additional bond in the sum of one hundred thousand dollars to supersede the order appointing the said receiver and to avoid having to surrender its property to said receiver by reason of said appointment, and this action on the part of the court was without lawful warrant and in violation of § 1 of the Fourteenth Amendment to the Constitution of the United States, in that the effect of such action by the court was to deprive the defendant of its property without due

process of law and to deny to it the equal protection of the law."

We are of opinion that neither of these assignments presents substantial questions of a Federal character. The practice of the state courts in acting upon matters within their jurisdiction is left for the States and their courts administering their laws to determine, and if the court saw fit to act upon the testimony already heard and the conviction already had of the violation of the anti-trust laws of the State, there is nothing in the Federal Constitution which prevents it from so doing. Nor does the time or manner in which the state court saw fit to approve the receiver's bond present any question under the Fourteenth Amendment. See the cases cited in *Waters-Pierce Oil Co.* v. *Texas*, No. 359, *ante*, p. 86. The attempt to assign new errors in the petition for rehearing, which was overruled without an opinion passing on Federal questions, cannot avail. See *McCorquodale* v. *Texas*, 211 U. S. 432, decided at this term of this court, and previous cases therein cited. We are therefore of the opinion that no substantial Federal question is presented in this case, and the writ of error must be dismissed.

*The writ of error is dismissed.*